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NO. 956.

Court of King's Bench

(APPEAL SIDE)

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

The People of the State of New York,

(Plaintiffs in the Court below)

APPELLANTS

—vs—

Heirs of the late John M. Phillips,

(Defendants in the Court below)

— & —

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

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

RESPONDENTS

— & —

The Montreal Safe Deposit Company,

TIERS-SAISIS

C A S E

VOLUME 3. — PAGES 1001. TO 1500.

BERTRAND, GUERIN, GOUDRAULT and GARNEAU,
Attorneys for Appellants.

COOK, MAGEE, NICHOLSON and O'DONNELL,
Attorneys for the Heirs of the late
John M. Phillips, Respondents.

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

J.-D. de LAMIRANDE et Cie, 4557 rue St-Denis, Montréal.
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C A S E

MR. HACKETT: But not as difficult as if somebody else had not got it before.

MR. COOK: But that does not affect our position in the matter as representing these defendants. And I certainly will very strongly object to any adjournment or any application for further commissions in connection with the matters in issue between the parties in this case.

10 These defendants have been accused of very serious offenses, and it is highly unfair and improper that the charges against them should not be brought to a conclusion.

We are here, Mr. Hackett and myself, for the purpose of meeting these charges, and I must request my friends on the other side to have the matter definitely closed before any adjournment is asked for.

20 MR. GOUDRAULT: We simply made the statement as regards Mr. Hall to show that we were very earnest in making all possible searches in order to find all evidence and in order to reserve our rights which we now do, to produce any further evidence pertaining to the matters at issue herein, and which have been referred to by witnesses who have been heard or are to be heard, and we reserve our rights to produce such evidence before this Commission, if same is adjourned, or produce these documents if a new commission is granted by the proper court in Montreal, or at the trial when the case is finally brought before the Court in Montreal.

30 MR. HACKETT: It is your right to bring anybody that you see fit to summon before the Court who hear the case, provided they have not already been heard here.

MR. GOUDRAULT: We further reserve our right to have any witness who was already heard here, heard before our Courts in Montreal, if the Courts in Montreal so allow.

40 Plaintiffs further reserve their right to bring before this Commission, if same is adjourned, or before a new commission, if one is granted by our Courts, or at the trial before our Courts in Montreal, any or all of the witnesses who have either been subpoenaed or not, and whose names appear in the list which accompanies or is annexed to the motion for this Rogatory Commission.

I understand, Mr. Commissioner, that we have heard 38 witnesses and filed 200 exhibits, and the commission has lasted 70 hours sitting. Well, now, plaintiffs wish to ask that this commission be adjourned to a later date, subject to the call of the Commissioner, and plaintiffs reserve their right to make applica-

tion before the Courts in Montreal for another commission; if they so wish, in order to hear any other witnesses that have not been heard before this Commission.

MR. HACKETT: I oppose the application, and will defer argument on it unless the Commissioner asks for it.

MR. COOK: I join with Mr. Hackett in that.

10 THE COMMISSIONER: Mr. Goudrault, I should like to know what efforts have been made to call before this commission the witnesses enumerated by you, by process of subpoena under my name, and through the authority given to me under this commission as Commissioner.

MR. GOUDRAULT: As regards the witnesses that have not been served, where a subpoena was issued, the affidavits of the process servers will give the details as to the reasons why the subpoenas were not served. That is the usual practice, I presume. It is in our courts.

20 THE COMMISSIONER: Your answer does not enlighten me at this time.

MR. GOUDRAULT: The process servers' affidavits will give the details as to the efforts they have made to reach and serve these various witnesses.

THE COMMISSIONER: Well, have you made the efforts and what efforts have you made in general?

30 MR. GOUDRAULT: As far as we are concerned, or as far as the process servers are concerned?

THE COMMISSIONER: Both.

40 MR. GOUDRAULT: As far as we are concerned, I personally, and Mr. Moore of the Attorney General's department, have been endeavoring — Mr. Moore, for the last two or three months, and myself since I am here, I have been endeavoring to reach these witnesses. I may say I have exhausted all means of trying to locate these witnesses. Some of them are actually in New Jersey, where I understand this commission has no authority to serve a subpoena. And I am further informed that some of these witnesses have been evading service purposely. Although they reside within the limits of your jurisdiction, they have taken care that their names and addresses be not in the telephone directory.

Furthermore, I have personally interviewed the process servers, two of them, and have asked them, at my office on several

occasions and through the telephone, to do their utmost to try to locate these witnesses.

As regards Mr. Moore, well I can not speak for him, — he is not here just now — but under my instructions, and if I am privileged to say, under my supervision, he did carry on that same work in my presence, and I am sure while I was not there.

We further requested the Attorney General of the State of New York to help us to locate some of these witnesses.

10 MR. HACKETT: That statement, I submit, Mr. Commissioner, makes apparent the futility, after six months of effort, of keeping the commission open any longer.

THE COMMISSIONER: I was going to ask Mr. Goudrault another question now.

MR. GOUDRAULT: I am just trying to answer the question of Mr. Commissioner. He wants to know what efforts we have made. The returns, or the affidavits of the process servers, will show that in some instances some of these witnesses are out
20 of town, in Florida, to the best of the information that these process servers could gather.

One Andrew Zorn, I am informed, is in Missouri, and Peter Campbell also is out of town; so is Mr. Keating and so is Mr. Titcomb. Mr. Paino has been searched for every day for several weeks, and our information is that he evades service.

Furthermore, Mr. Commissioner, we are going to produce those affidavits and they will form part of the record.

Mr. Commissioner, if you wish to have further information
30 as regards the service of these subpoenas, I think the process servers will put in their affidavits the searches they have made. They can yet be brought before yourself, if you so desire; but I think their affidavits should be sufficient.

THE COMMISSIONER: Well, assuming an adjournment should be granted you, what assurance is there that you would secure any of these gentlemen's attendance by service of a subpoena upon them?

MR. GOUDRAULT: Several of them are out of the State:
40 and under our request to the Attorney General, who is, as I understand, at the head of the Law Department of the State of New York, he is to keep in touch with us and he will do his utmost, his Department will, and I am sure they will, and so will the authorities of the City of New York do their utmost to find these people and locate them. And I personally am positive that they will succeed in many instances with several of these witnesses who we consider are important to this case.

We have no objection to stating that the following witnesses will not be heard because we will not endeavor to serve them. They are now actually out of town. I mean Mr. Arthur E. Keating, Mr. George W. Titcomb, Mr. Paul J. Artella. Two of these gentlemen, Andrew Zorn, and Peter Campbell, are out of the State; so is Mr. Thomas M. Cassidy.

10 MR. COOK: Mr. Commissioner, you were appointed, if I remember rightly, by a judgment of the Superior Court of Montreal, rendered on the 30th of March, 1930. The delay of nine months was given for the purpose of completing the commission. Mr. Goudrault was outside that delay, but both Mr. Hackett and myself agreed that we had no objection to having it extended; we would not question the validity of the fact that we are proceeding outside the time originally fixed. Nor do we intend to do so. But having made that concession to Mr. Goudrault as to the technical validity of these proceedings, he surely should not ask now that a further extension be given, after we have proceeded here for four weeks. Mr. Hackett and myself are most anxious to
20 have the commission disposed of; and if it is not now disposed of, I don't know when it will be.

MR. GOUDRAULT: Plaintiffs are most anxious also to have this commission disposed of. And the reasons why they ask this adjournment have been, in my opinion, above stated. And it is a question of justice to the plaintiffs, that witnesses who are very essential to the case should be heard. And we do therefore ask for an adjournment of this commission, and we reserve our right also to apply for any other commission that may be
30 necessary in this state or out of this state for the purposes of our case, and to the ends of justice.

As regards this commission, Mr. Commissioner, being issued since the 30th of March, 1930, I quite agree. But Mr. Cook and Mr. Hackett know there were some discussions as regards the time in which the said commission was to be opened and proceeded with, and I think that we finally came to a gentlemen's agreement as to the date to be set in January, because some time in the fall.

40 MR. COOK: We are not raising any question as to that.

MR. GOUDRAULT: Mr. Cook was not ready.

MR. COOK: We are not raising any question as to that.

(Discussion of the record).

MR. HACKETT: I would suggest, Mr. Commissioner, that this matter be left for the determination of the Court. If the sug-

gestion be accepted, and we are held up until some time much later, such irreparable loss will result, because this case will have to be prepared all over again. We are ready for trial now.

I will ask you, Mr. Commissioner, to close the commission up, and let my friend reserve to himself any rights that you may think are equitable, but let the court which is seized of this case take the responsibility of determining whether or not we should be further detained here.

10

MR. GOUDRAULT: Mr. Commissioner, I ask for an adjournment, as you are the best judge of the matters. You have been presiding over this commission for the last 18 or 19 days, and we have told you our efforts in trying to locate and find these witnesses who are most important, and I do ask that our request for an adjournment be granted. The defendants' attorneys may always ask the Court in Montreal for a direction, if they wish.

20 THE COMMISSIONER: I will adjourn this commission to a date not later than the first of May, 1931.

I should like to have a stipulation put on record, on behalf of myself as Commissioner, and the Clerk and the assistant clerks, that, in place of certifying at the end of the deposition of each witness, we may insert our several witness, at the end of all the testimony and depositions; at the end of the entire testimony.

MR. HACKETT: That is agreeable to me, Mr. Commissioner.

30

MR. COOK: To me also. I am agreeable.

MR. GOUDRAULT: I agree to that.

MR. HACKETT: Mr. Commissioner, I would like it clearly understood, and I hope that it will not be embarrassing to you, that I reserve the right to apply to the Court from which this commission issued, for a direction to you to close the commission forthwith and return it to the Superior Court of Montreal.

40

THE COMMISSIONER: That is quite agreeable to me.

MR. COOK: I would like to associate myself with what my friend, Mr. Hackett, has just stated.

And I would like to take this opportunity, Mr. Commissioner, on behalf of all counsel, — and here I speak for Mr. Goudrault as well as for Mr. Hackett, — of thanking you for your very kind and patient hearing of all the witnesses who have been brought before you, and for the very courteous and considerate manner in which you have executed this commission. I wish to tender you my very sincere thanks, on behalf of all counsel.

10 THE COMMISSIONER: I would like to state that I am most appreciative of the kind remarks of counsel, and to say that I have enjoyed having them before me. It has been a great source of pleasure. And I am delighted to have made your several acquaintances, and I am sincerely pleased that I have gained many new friends.

20 (Whereupon, at 1.00 p.m., the commission adjourned to a date not later than May 1, 1931, as above stated.)

30

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Continued

Hearing held at the offices of Cadwalader, Wickersham & Taft,
40 Wall Street, New York City, on Monday, June 29th, 1931,
11 a. m.

10 BEFORE:

DE COURSEY FALES, Commissioner.

APPEARANCES:

For the Plaintiff:

20 JOHN J. BENNETT, JR., Attorney General of the State
of New York, by

CHARLES A. SCHNEIDER, Deputy Assistant Attorney
General,

(On behalf of Bertrand, Guerin, Goudrault &
Garneau, Suite 823, Insurance Exchange Bldg.,
Montreal, P. Q.)

For Estate of John M. Phillips:

30 WARD WICKLOW, Esq., of Wood & Gehrig, Hempstead,
L. I.),

(On behalf of J. W. COOK, ESQ., of Cook & Magee,
Transportation Building, Montreal, P. Q.)

For Estate of Francis Phillips, severing its defense:

WARD WICKLOW, Esq., of Wood & Gehrig, Hempstead,
L. I.),

40

(On behalf of JOHN T. HACKETT, Esq., of Foster,
Place, Hackett, Mulvena, Hackett & Foster, Notre
Dame Street, Montreal, P. Q.)

Wesley Davis was sworn as Assistant Clerk by Melville Southard, Notary Public.

The parties herein consent that Messrs. Unger and Edelbaum be present at the hearing.

10 THE COMMISSIONER: The hearings in this Commission, having been set for this day, are now adjourned on the consent and agreement of all the attorneys representing the parties and with the assent of the Judge of the Superior Court, District of Montreal, Quebec, to the tenth day of September, 1931, at the offices of Messrs. Cadwalader, Wickersham & Taft at 11 o'clock in the forenoon of that day.

The witnesses that have been called before the Commission by virtue of subpoena directing them to appear before me, are hereby ordered to be present on said tenth day of September, 1931, at the offices of Cadwalader, Wickersham & Taft, at 11 o'clock.

20 MR. SCHNEIDER: May I suggest that we add to the record the letter which you have there, consenting to the adjournment.

30 THE COMMISSIONER: At the request of the Office of Bertrand, Guerin, Goudrault & Garneau, on behalf of the representatives of the Attorney General, Mr. Schneider, the copy of the letter addressed to him as Deputy Assistant Attorney General, signed Mr. Maurice Goudrault, is offered for identification, and attached to the record together with the attached telegram dated Montreal, January 22, 1931.

MR. SCHNEIDER: If your Honor please, I should like to have in the record that these subpoenas were issued pursuant to petition dated June 17, 1931, and that the subpoenas bear the signature of Mr. Justice Walsh, directing the attendance today, and that the following witnesses have been subpoenaed to appear:

40 Angelo Paino,
Thomas Cassidy,
Andrew Zorn,
Carmine E. Petracca,

and, if your Honor please, I take it from what your Honor said before, that these witnesses are required to be present on September 10th, 1931.

THE COMMISSIONER: That is right.

MR. CASSIDY: Where is Zorn ?

MR. SCHNEIDER: He appeared; he telephoned.

MR. CASSIDY: Where are the other fellows ?

MR. UNGER: Petracca is due tomorrow at 11.00.

MR. SCHNEIDER: If your Honor please, will your Honor
10 please hold the hearing open tomorrow for the appearance of
those witnesses.

THE COMMISSIONER: Subject to adjournment and the
appearance of any witnesses subpoenaed to appear before me, the
hearing will be continued tomorrow, June 30, 1931, at 11.00
o'clock, for the purpose of ordering any witnesses to appear on
the adjourned hearing, at the offices of Cadwalader, Wickersham
& Taft, on September 10, 1931.

MR. SCHNEIDER: I take it we now stand adjourned ?

20 THE COMMISSIONER: We now stand adjourned. (To
Mr. Edelbaum) : If you will have your witness here.

MR. EDELBAUM: I certainly will.

MR. UNGER: We have had another subpoena prepared,
but, out of deference to your Honor, we will get him outside.

THE COMMISSIONER: Then you will appear before me
on September 10, 1931, at my office.

30 MR. CASSIDY: I will.

MR. SCHNEIDER: Is the matter adjourned ?

THE COMMISSIONER: The matter stands adjourned.

(Mr. Andrew Zorn here appeared before the Commission-
er).

40 THE COMMISSIONER: (To Mr. Zorn) : You are ordered
to be here on September 10, 1931, at this office, at 11 o'clock, un-
less otherwise directed. The matter is now adjourned to Sep-
tember 10, 1931, at 11 o'clock, unless otherwise directed. The
matter is now adjourned to September 10, 1931, at 11 o'clock,
subject to appearance of witnesses on June 30th, 1931, to be or-
dered to appear on September 10, 1931.

(The letter and telegram addressed to Mr. Charles A. Schneider, Deputy-Assistant Attorney General, referred to on page 1463 hereof, reads as follows) :

“Montreal Que 27 1250 P

“Charles A. Schneider — Deputy Assistant Attorney General,
80 Centre St.

10 By consent of parties and with assent of Judge hearing on
Monday to be adjourned to tenth September 1931 advisable to
serve new subpoenas Monday on witnesses.

Bertrand, Guerin, Boudrault & Garneau.”

(On letterhead of Bertrand, Guerin, Goudrault & Garneau,
276 St. James Street West, MONTREAL.)

“Montreal, June 27th, 1931.

20

“Mr. Charles A. Schneider,
Deputy-Assitsant, Attorney General,
Department of Law,
80 Centre Street,
New York City, N. Y.

Dear Mr. Schneider:—

RE: PEOPLE v. PHILLIPS' ESTATE

30

Confirming my telephone of this morning, I beg to inform you that Counsels in the case went before Chief Justice Green-shields and it was there and then agreed by all parties concerned, and with the assent of the Judge, that the Commissioner adjourn the Hearing fixed for Monday the 29th instant to Thursday, the 10th of September 1931, and that witnesses summoned for the 29th of June be instructed to return on the 10th of September.

40

“Yet, in my opinion, it is most important that new subpoenas be issued for the 10th of September and immediately served on the witnesses, especially Cassidy.

“I have, this morning, received a copy of Mr. Fales' letter to yourself, of the 26th of June, in which he states that he will be willing to sit between September the 14th or sometimes during the latter part of that month. Although the subpoenas should be issued for the 10th, I think that if Cassidy is in New York in

September, we could still serve him with a new subpoena for the 14th, in case Mr. Fales could not proceed on the 10th.

“I understand you are to attend before Mr. Fales at eleven A.M., on Monday, and I would suggest that the proceedings be taken by an official reporter. You can easily arrange this with Marshall & Munson, 150 Nassau Street, or any other stenographer who would have to be sworn to.

10 “Thanking you, I beg to remain

Yours very truly,

(Signed) Maurice Goudrault.”

Whereupon, at 11.30 o'clock an adjournment was taken to September 10th, 1931, at 11.00 a.m.

20

30

40

Continued

Hearing held at the offices of Cadwalader, Wickersham & Taft, 40 Wall Street, New York City, on Tuesday, June 30th, 1931, 11.00 a.m.

BEFORE:

DE COURSEY FALES, Commissioner.

10

(Mr. Carmine Petracca appeared before the Commissioner.)

20

THE COMMISSIONER: (To Mr. Petracca) I am Mr. Fales, the Commissioner, and this is Mr. Davis, Assistant Clerk, who was sworn yesterday. The Assistant Attorney General will be here shortly, and I will ask you to wait for him, but I will state to you right now formally so that it will go into the record, that yesterday was the day appointed by me to resume hearings in the matter of People of the State of New York v. Estate of John M. Phillips, deceased, and on consent of all the attorneys, in which the Judge of the Superior Court at Montreal acquiesced, an adjournment of the hearings has been made to the tenth day of September, 1931, at eleven o'clock in the morning, at this office. At this time you are directed to return here at the time for the hearings.

MR. PETRACCA: Will I be notified again?

30

THE COMMISSIONER: The Attorney General or his assistant will be here and they will tell you everything.

MR. PETRACCA: I only ask because I forget to come again if I am not notified.

THE COMMISSIONER: You are to attend before me as Commissioner, and I direct you to return to this office on September 10, 1931, at 11.00 A.M., unless otherwise notified.

40

(Whereupon, at 11.10 o'clock an adjournment was taken to September 10th, 1931, at 11.00 a.m.)

Continued Hearing held at the offices of Cadwalader,
Wickersham & Taft, 40 Wall Street, New York City, on
Thursday, September 10, 1931, 11 a. m.

B E F O R E :

DE COURSEY FALES, Commissioner.

10

APPEARANCES:

For the Plaintiff:

HON. JOHN J. BENNETT, JR. Attorney General of the State
of New York, by

CHARLES A. SCHNEIDER, ESQ., Deputy Assistant Attorney
General.

20 **MAURICE GOUDRAULT, C. R., ESQ.,**

(Of Bertrand, Guerin, Goudreault & Garneau),
Suite 823, Insurance Exchange Bldg., Montreal, P. Q.

(The following witnesses appeared: Eugene J. Tully, J.
Franklin Perrine and Andrew Zorn).

30 **THE COMMISSIONER:** In pursuance of an Order of the
Superior Court of the District of Montréal, Province of Quebec,
I am hereby directed to adjourn the hearing from the 10th of
September 1931 to the 14th day of September, 1931, and there-
after, at the office of Cadwalader, Wickersham & Taft, New
York City.

Mr. Tully, Mr. Perrine and Mr. Zorn, you are directed, by
virtue of an Order of the Superior Court of the District of Mon-
tréal, Province of Quebec, to be at the adjourned hearing on the
14th of September, 1931, at 11 a. m., at this office.

40

At 11:15 a. m. adjourned to Sept. 14, 1931, 11 a. m.

Continued Hearing held at the offices of Cadwalader,
Wickersham & Taft, 40 Wall Street, New York City, on
Monday, September 14, 1931, 11:00 a. m.

B E F O R E :

DE COURSEY FALES, Commissioner.

10

APPEARANCES:

For the Plaintiff:

MAURICE GOUDRAULT, C. R., ESQ.,

(Of Bertrand, Guerin, Goudreault & Garneau),
Suite 823, Insurance Exchange Bldg., Montreal, P. Q.

For Estate of John M. Phillips:

20 J. W. COOK, ESQ., and

HUGH O'DONNELL, ESQ.,

(Of Cook and Magee), Transportation Bldg.,
Montreal, P. Q.)

For Estate of Francis Phillips, severing its defense:

JOHN T. HACKETT, ESQ.,

30 (Of Foster, Place, Hackett, Mulvena, Hackett & Foster)
Notre Dame Street, Montreal, P. Q.

THE COMMISSIONER: Do you want the same stipu-
lation on the record as we had before, as to Mr. Unterweiser and
all the assistants of the Attorney General, and also of counsel
and their associates being present?

MR. GOUDRAULT: I have no objection.

40 THE COMMISSIONER: There being no objection, the
same stipulations will be ordered placed on file as heretofore.

(The persons referred to, who were present at the hear-
ing, were as follows):

Montrose Strassburger, Esq., Assistant Corporation
Counsel, representing the City of New York;

Henry Unterweiser, Esq., and
Charles A. Schneider, of the Office of the Attorney General of the State of New York;

William T. Moore, Esq., associated with Mr. Gaudrault;

Ward Wicklow, Esq., and
James N. Gehrig, Esq., representing the Estate of John M. Phillips, Deceased;

10 Francis A. Lewis, associated with Mr. Hackett;

F. D. Unger, Esq., of the Office of the Attorney General of the State of New York.

The following witnesses appeared: Messrs. Cassidy, Schlemmer, Zorn, Paino and Petracca.

20 THE COMMISSIONER: My direction is, gentlemen, that Mr. Cassidy and Mr. Schlemmer will stay here; and Mr. Zorn, Mr. Paino and Mr. Petracca are directed to be back at two o'clock this afternoon.

Now, Mr. Schlemmer will take the stand, and the other witnesses will please leave the room.

30 Deposition of witnesses, sworn and examined on the 14th day of September in the year of Our Lord one thousand nine hundred and thirty-one, at eleven o'clock in the forenoon, in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of the commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a lawyer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses in a cause therein pending between The People of the State of New York, plaintiff and Heirs of the late John Phillips, et al., Defendants:—
40 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:

Claire D. Schlemmer for plaintiff (direct examination).

DEPOSITION OF CLAIRE D. SCHLEMMER.

CLAIRE D. SCHLEMMER, age 47; residence, Fredericksburg, Va.; occupation, farmer; a witness produced, sworn and examined on the part and behalf of the people of the State of New York, the plaintiff, deposeth and saith as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Schlemmer, what is your occupation? A.—Farmer.

Q.—Were you ever connected with a contracting corporation in New York? A.—Yes, I was president of the Awixa Corporation.

Q.—Were you its president — when did the company come into existence?

20

MR. HACKETT: We have all that, Mr. Goudrault.

MR. GOUDRAULT: Oh, there are a lot of other things I want to get.

THE WITNESS: (Answering) About 1920.

Q.—Were you the first president? A.—Yes.

Q.—Were you president during the existence of the company right down to the end? A.—Yes.

30

Q.—How long was it in operation? A.—About ten years.

Q.—Who were the stockholders of the corporation? A.—Why, Mr. James F. Richardson and B. Richardson and Martha V. Schlemmer.

Q.—Was that Mr. Richardson's wife? A.—Yes.

Q.—And Mrs. Schlemmer? A.—Yes.

Q.—Your wife?

MR. COOK: And himself.

THE WITNESS: Yes.

40

Q.—What did your company build? A.—We built public work, improvements.

Q.—Did your company have anything to do in Jamaica, in the Jamaica district? A.—Yes. We built some sewers in the Jamaica district.

Claire D. Schlemmer for plaintiff (direct examination).

Q.—What sewer? A.—In Jamaica Heights we had two jobs, and the large disposal plant at Jamaica, and three pipe sewers near Jamaica.

Q.—You say you built the Jamaica disposal plant? A.—Yes.

Q.—When did you secure the contract? A.—In 1925.

10 Q.—From whom? A.—We bought the contract from Welsh Bros., after we had been second bidder on it.

Q.—Mr. Schlemmer, will you look at Plaintiff's Exhibit C-145, and state if that is the assignment you referred to in your previous answer? A.—(Examining paper). Yes.

Q.—Did you pay anything for this assignment? A.—Yes.

Q.—How much and to whom? A.—As I remember, we paid \$100,000 for it.

Q.—To whom? A.—To Welsh Brothers.

20 Q.—I heard you to say that you were also bidder on the original contract; your firm was? A.—Yes.

Q.—Who had the lowest bid on that original contract?

MR. HACKETT: I object to the evidence; it is already in, with the story of the advertisements, biddings, and lettings, and that is the proper testimony. Mr. Schlemmer is only dependent upon his memory, and I object to the evidence as not being the best.

MR. COOK: I join in that objection.

30 THE COMMISSIONER: I will allow the evidence to go down upon the record, subject to your objections, and allow you an exception.

BY MR. GOUDRAULT:

Q.—Mr. Schlemmer, do you recollect the difference between your company's bid and that of Mr. Welsh's firm, with reference to that disposal plant?

MR. O'DONNELL: Same objection.

40 THE COMMISSIONER: The answer will be allowed, subject to the objection and exception.

THE WITNESS: (Answering) Our bid was \$1,697,000, and the Welsh bid was \$1,651,000. That is in round numbers.

Q.—So that makes a difference of \$46,000? A.—Yes.

Claire D. Schlemmer for plaintiff (direct examination).

Q.—You said you paid \$100,000. for that assignment? A. I believe that is right. I believe Mr. Richardson had given testimony along that line.

MR. HACKETT: Personally, you don't remember it?

THE WITNESS: That is as near as I do remember.

10 Q.—I see. And in how many amounts and to whom was this \$100,000 paid? A.—To Welsh Brothers.

Q.—To Welsh Brothers? A.—Yes.

Q.—How much was paid to Welsh Brothers? A.—As I remember, \$75,000. went to Welsh Brothers, and \$25,000. to Campbell as a commission.

Q.—\$25,000. to Campbell? A.—Yes.

Q.—Was that \$25,000. paid to Campbell — was it paid by check or cash of your corporation? A.—I think it was paid by check.

20 Q.—Have you got that check? A.—No, I have not the check.

Q.—The cancelled check? A.—I haven't it. I don't know where it is. I presume it was in our records, and lost.

Q.—What is that? A.—I presume it was lost from our records.

Q.—Your records were lost? A.—Yes.

Q.—The cancelled checks were lost? A.—Yes. Whether that was lost, or the whole of them, —

30 MR. O'DONNELL: You have not looked for that?

A.—No.

BY MR. GOUDRAULT:

Q.—They were stolen? A.—Yes. The office of the corporation was robbed.

Q.—The office of the corporation was robbed? A.—Yes.

40 Q.—That accounts for your inability to produce that check to Campbell? A.—Yes.

MR. O'DONNELL: He said he did not look for it.

Q.—Was that for the same assignment that this money was paid to Campbell? A.—Yes.

Q.—Did your firm contribute \$1,000. for a gold dinner set to John M. Phillips? A.—I believe we did.

Claire D. Schlemmer for plaintiff (direct examination).

Q.—Do you know, or just believe? A.—I know we contributed something, and I believe it was \$1,000.

Q.—Do you remember who made the solicitation? A.—No, I don't remember.

Q.—Do you remember when that was made? A.—Well, it was at the time of that notorious dinner.

10 Q.—Was that before the date of the assignment of the Welsh Brothers Contracting Company to your firm? A.—I don't remember when that contribution was.

Q.—Well, will you look at this Exhibit C-145, which purports to be the assignment from Welsh Brothers to your firm, for the Jamaica disposal plant, and state on what date the assignment was executed? The 6th of July? A.—The 6th of July.

Q.—1925. Would that subscription be before that?

20 MR. HACKETT: He says he does not know. He has said so twice.

MR. GOUDRAULT: I will ask him a third time and be sure.

THE WITNESS: I do not know when the subscription was made. I know there was a subscription, but I do not know the date.

Q.—Did you know Peter Campbell for long? A.—Not very long.

30 Q.—This contract for the Jamaica disposal plant involved a considerable amount of money, didn't it? A.—Yes.

Q.—Did your company make any profit? A.—Yes, we did.

Q.—After deducting the \$100,000. it paid? A.—Yes. We made then between \$175,000, and \$190,000., in that neighborhood.

Q.—Net to your company? A.—Net to our company.

Q.—And that after deducting the \$100,000., you had paid for the assignment? A.—Net to us.

40 MR. HACKETT: I object to that evidence as irrelevant, and having no bearing.

THE COMMISSIONER: It will be taken, subject to your objection, and exception.

Q.—What you say about the \$25,000. to Peter Campbell, does that apply to the checks with which you paid the Welsh

Claire D. Schlemmer for plaintiff (direct examination).

Brothers Contracting Company? Have you got that check? A.—
No, I have not.

Q.—Did you pay by check to the Welsh Contracting Com-
pany? A.—I think I paid the check to Peter Campbell.

Q.—For \$25,000? A.—For \$25,000.

Q.—How much to Welsh Brothers Contracting Company?
A.—And I think the Welsh Construction Company got \$75,000.
10 beyond that.

Q.—From whom? A.—From our firm. I presume Mr.
Richardson paid that, because he handled the inside stuff.

Q.—Do you know personally if it would have been paid
by check, by your company's check? A.—I do not know, no.

Q.—After you secured the assignment from the Welsh
Construction Company, what did your company do? A.—Why,
as soon as we had the assignment properly recorded, and we re-
ceived word to go ahead, we went right to work.

Q.—Was any screening necessary for that disposal plant?
20 A.—Yes.

Q.—Where did you get it from? A.—From the Sanitation
Corporation.

Q.—Did you make a contract with the Sanitation Corpo-
ration? A.—Welsh Brothers had already made a contract, and
we had that assigned to us.

Q.—Will you look at this paper, and state if that is the
contract you are referring to with the Sanitation Corporation?
A.—(Examining paper). Yes.

Q.—That is between your corporation and the Sanitation
30 Corporation? A.—Yes.

MR. GOUDRAULT: I now offer for evidence, this con-
tract as Plaintiff's Exhibit C-201.

(The said contract, dated June 26, 1925, between Awixa
Corporation and the Sanitation Corporation, was received in evi-
dence and marked Plaintiff's Exhibit C-201, of this date).

THE WITNESS: The fact was that the Sanitation Cor-
40 poration had made a contract with Welsh Brothers, and we took
that contract over as a part of our assignment.

BY MR. GOUDRAULT:

Q.—Then will you look at this contract and state if this
is the contract you are referring to between Welsh Brothers and
the Sanitation Corporation?

Claire D. Schlemmer for plaintiff (direct examination).

MR. COOK: Has that been filed already?

MR. GOUDRAULT: It will be.

MR. COOK: You have not filed it yet?

MR. GOUDRAULT: No.

10 BY MR. GOUDRAULT:

Q.—What is your answer? A.—(Examining paper) This is the contract between the Awixa Corporation and the Sanitation Corporation. (Witness refers to Plaintiff's Exhibit C-201).

Q.—Now, will you look at Exhibit C-144, and state if that is the contract you are referring to between the Welsh Brothers and the Sanitation Corporation? A.—(Examining paper) Yes. This is between the Sanitation Corporation and Welsh Brothers, dated June 5, 1925.

20 Q.—I see. And your company took it over together with the assignment of the contract from the Sanitation Corporation by way of a new contract in which entered the Awixa Corporation and the Sanitation Corporation, is that right? A.—Yes. When we bought this contract from Welsh Brothers, we took over — we gave Sanitation the sub-contract to build this machinery at a price that had already been agreed upon with Welsh Brothers.

30 Q.—And then your corporation entered into a contract with the Sanitation Corporation, and that is the Exhibit C-201, is that right? A.—It was on the 26th of June, 1925, and refers to the 6th day of July, which is that date over there (indicating).

Q.—Will you look at Exhibit C-145, which is the contract between Welsh Brothers and the Awixa Corporation, and state if this is your signature appearing on this exhibit? A.—That's an affidavit.

Q.—I am asking you if it is your signature. A.—Yes.

Q.—As President of the Awixa Corporation?

40 MR. COOK: Mr. Goudrault, please don't do that. The witness says that is not a contract, but an affidavit.

Q.—Will you now look at Exhibit C. ...

MR. COOK: Now, Mr. Goudrault, please have the record made clear. This witness says that is not a contract, that it is an affidavit.

Claire D. Schlemmer for plaintiff (direct examination).

Q.—Will you look at Exhibit C-145, and state if it is a contract or an affidavit? A.—This is a contract.

Q.—Sure. And your signature appears on that contract?

A.—And my signature appears over here, — that is my signature, as president of the Awixa Corporation. I said my signature was by affidavit.

Q.—By affidavit in the contract? A.—Yes.

10 Q.—Will you now look at Exhibit C-201, which is the contract between the Awixa Corporation and the Sanitation Corporation, and state if this is your signature appearing there as president of the company? A.—Yes.

Q.—Attested by whom? A.—Fred R. Curran.

Q.—Do you know him? A.—Yes, sir.

Q.—Who was he? A.—Why, he was an attache of Mr. Phillips' office.

20 Q.—I see that on that same contract also, that Peter B. Campbell has executed the affidavit as regards the signature. Do you know Peter B. Campbell? A.—Yes.

Q.—Who was he? A.—He was a Notary Public in Queens.

Q.—Where did he have his office? A.—Why, I would see him around Phillips' office, but I don't know whether he had an office there or not.

30 Q.—Do you recollect, Mr. Schlemmer, at what time you transferred your material and property, in order to execute that contract of the Jamaica disposal plant after you had secured the assignment from Welsh Brothers Contracting Company? Was it long after? A.—When we did what?

Q.—You did have the assignment from Welsh Brothers Contracting Company to your company? A.—Yes.

Q.—For the Jamaica disposal plant? A.—Yes.

Q.—Then what did you do? A.—We were finishing two jobs over in Jackson Heights, and we moved down there very shortly afterward, because our plant was becoming idle, and we moved there just as soon as we could go to work.

Q.—Moved where? A.—To Jamaica.

Q.—To do the work and execute the contract? A.—Yes.

40 Q.—Do you remember what was the amount of money involved in the contract between Welsh Brothers Contracting Company and the Sanitation Corporation, in connection with the work of the contract to be executed for the Jamaica disposal plant? A.—\$593,000.

Q.—And by way of assignment, or by way of a new contract the Sanitation Corporation, your contract endeavored to

Claire D. Schlemmer for plaintiff (direct examination).

take that material and pay the sum to the Sanitation Corporation, is that right? A.—That's right.

Q.—And your corporation paid that amount to that corporation? A.—Yes.

10 Q.—Will you look at Exhibit C-201, and state what is the date of the contract of your company with the Sanitation Corporation? We are always speaking of that Jamaica disposal plant contract. A.—26th of June, 1925.

Q.—Now, will you look at Exhibit C-145, which is the assignment from the Welsh Brothers Contracting Company to the Awixa Corporation, and state if you there see if this assignment was duly approved by the Borough President of the Borough of Queens? A.—It says here "Approved, July 6th, Maurice Connolly, Borough President, Borough of Queens".

Q.—Do you know that signature? A.—Why, I didn't see Mr. Connolly make it. but I think it is his signature.

20 Q.—And the date is — A.—July 6th, 1925.

Q.—So I understand that your company transferred over to Jamaica, the necessary material to execute that contract after you had the assignment from Welsh Brothers to your company duly signed, is that right? A.—Yes, sir.

Q.—I see. And then after that, your company, the Awixa Corporation, took over the Welsh Brothers contract with the Sanitation Corporation? A.—That's right.

Q.—And the date of that is June 26th, 1925, is that right? A.—Right.

30 Q.—And the approval by the Borough President, Maurice E. Connolly, was on July 6th, 1925? A.—That's right.

40 Q.—How did you come to bind the Awixa Corporation, of which you were the president, to pay the sum of \$593,000. to the Sanitation Corporation, without having the approval of the Borough President? A.—I didn't know about this thing at the time, about this approval having to be signed in that way, and thought that when we took the assignment from Welsh Brothers, that it was o. k., and I believe you will find in there that there is another date put down below, and initialled by W. L. D. and C. D. S., which would be W. L. D'Olier, of the Sanitation Corporation and myself, which would legalize that point.

Q.—Who was Mr. D'Olier? A.—He was president of the Sanitation Corporation.

Q.—Did you transact this assignment with the Welsh Brothers Contracting Company, on behalf of the Awixa Corporation? A.—Yes.

Claire D. Schlemmer for plaintiff (direct examination).

Q.—And you properly executed all assignments and contracts? A.—I think so.

Q.—Did you personally know if you had to have the approval of the Borough President before the assignment could be properly made? A.—No, I did not.

10 Q.—Did you wait for Connolly's approval to bind yourself with the Sanitation Corporation? A.—No. I signed the contract before Connolly's approval was on there, not knowing about the approval. When we did find it out, D'Olier and I initialled a later date in that paper.

Q.—This is what you are referring to there, on Exhibit C-201? (Indicating). A.—Yes, that's right.

Q.—It is changed from the 5th day of June to the 6th of July, 1925? A.—Yes. It was made out by somebody else.

Q.—Although I take it this assignment had been duly signed on the 26th of June? A.—Yes.

20 Q.—Before the approval of the Borough President? A.—That's right.

Q.—This contract between the Awixa Corporation and the Sanitation Corporation was executed over at — where — where was it executed? A.—I don't remember where it was executed.

Q.—Well, will you look at Exhibit C-201, and state? A.—It was executed before Fred R. Curran, and probably somewhere in the Borough of Queens, and also before Peter P. Campbell, who were both notaries.

30 Q.—I see. How did you come to have that contract that you have now in your hands, C-201, before it was signed? A.—I couldn't say that. I don't remember.

Q.—Do you remember if it was signed on behalf of the Sanitation Corporation by Mr. D'Olier, when it was first brought to you? A.—No, I don't remember that.

Q.—Who gave you this C-201, this contract, for you to sign and execute? A.—I don't remember. I presume it was Campbell, because Campbell had carried on these negotiations mostly. Either Campbell or Curran brought it to me. We met somewhere; I couldn't say.

40 Q.—You don't remember where you met? A.—No, I don't remember.

Q.—Did Campbell and Curran have an office, to your knowledge? A.—I don't know. Curran was around Phillips's office, and Campbell was often in Phillips's office.

Q.—Where was that office? A.—49 Jackson Avenue, at that time.

Q.—Where is that? A.—Long Island City.

Claire D. Schlemmer for plaintiff (direct examination).

Q.—Long Island City? A.—In Long Island City.

Q.—Did you know at the time a man by the name of Kelly?

A.—I know a lot of Kellys.

Q.—Connected with the Sanitation Corporation? A.—
Yes.

Q.—Do you remember meeting that man Kelly in connection with this assignment, or this contract with your company?

10 A.—I think Kelly came over to the Awixa field office, which was down near North Beach, on Trains Meadow Road.

Q.—For what purpose? A.—I think he brought these contracts down there, as you recall it to me.

Q.—And then did you sign them? A.—I presume we went down to meet a notary public then, because we signed before a notary public.

Q.—That would be Curran? A.—That would be Curran and Campbell. They both appear on there.

20 Q.—Exactly. But do you know where you went to meet them? A.—No, I can't say where we went to meet them. Possibly at 49 Jackson Avenue. There was no notary public out where we were, out where the field office was. It was out in the sticks of Queens, there.

Q.—What did you do? Did you meet Kelly there, or was Mr. D'Olier there when that assignment was signed and executed? A.—I don't remember.

Q.—Was Kelly there? A.—Kelly was there.

30 Q.—I see. On behalf of the Sanitation Corporation? A.—
Yes.

Q.—Now, did he go with you wherever you went, to have this signature and contract duly executed and signed before a notary public? A.—I think Kelly and I went downtown in my car, to 49 Jackson Avenue. That is my recollection. I am not perfectly ...

Q.—I see. That is just what we want, your best recollection. And then? A.—And I signed the thing, and came away. I don't remember that D'Olier was there at that time. He may have been.

40 Q.—Do you remember Kelly being there? A.—I remember Kelly coming down with these papers to the office.

Q.—You mean 49 Jackson Avenue? A.—No, down to my office.

Q.—And then? A.—Then we went down in my car to 49 Jackson Avenue.

Q.—Was Kelly with you? A.—Kelly with me.

Claire D. Schlemmer for plaintiff (direct examination).

Q.—Do you remember, about the time, whether the signature of Mr. D'Olier appeared on that document? A.—No, I do not remember.

Q.—Did you leave Kelly there at 49 Jackson Avenue? A. I couldn't say.

Q.—Did you go to New York that night, that day? A.—I don't remember.

10 Q.—You had your car or Kelly had his car? A.—I had my car.

Q.—And you don't remember what you did with Kelly? A.—No, I don't remember. He had no reason to come back to our place, I am sure, and I presume I left him there.

Q.—You left him there? A.—Yes.

Q.—You didn't bring him to New York? A.—No. I was busy at that time.

20 Q.—Mr. Schlemmer, will you explain how is it that you bound your company to pay \$953,000. to the Sanitation Corporation before you had the assignment of the Welsh Brothers contract?

MR. HACKETT: Mr. Commissioner, this has been explained many times. And I ask for a direction that it be not necessary to go over it again.

THE COMMISSIONER: I will allow the answer, but I wish, Mr. Goudrault, we would not have to go over the same ground so many times.

30 MR. GOUDRAULT: I am very sorry, sir, but I think Mr. Hackett is mistaken this time, because we have a question and an answer pertaining to the —

MR. HACKETT: Go on with your questions. I withdraw everything. That was the fourth time this witness has told that same story.

40 MR. GOUDRAULT: Then we will make sure of that and save time. Mr. Schultz, will you read your previous evidence as regards Mr. Schlemmer?

MR. HACKETT: Don't do that. I withdraw everything.

THE COMMISSIONER: For the sake of brevity, the objection is withdrawn.

MR. HACKETT: The question is there. Read him the question.

Claire D. Schlemmer for plaintiff (direct examination).

MR. GOUDRAULT: All right, read the question.

(Question read by the Clerk).

10 THE WITNESS: (Answering) We had the assignment of the contract, but it was not approved by the Borough President. I did not know it had to be approved by the Borough President at that time.

BY MR. GOUDRAULT:

Q.—I see. You did answer that. Mr. Hackett is right. But will you look at this exhibit here, C-145, which is the Welsh Brothers assignment to the Awixa Corporation, if I am not mistaken, and state what is the date that appears there? A.—July 6th.

Q.—1925? A.—Right.

20 Q.—So am I right in stating that your company bound itself to pay the Sanitation Corporation \$593,000, before — first, before the assignment of the Welsh Brothers contract to the Awixa Corporation. and also before the approval of this assignment by the Borough President? A.—Will you state that question again?

MR. GOUDRAULT: Read it, Mr. Schultz?

(Question read by the Clerk).

THE WITNESS: (Answering) That is apparently so,—

30 BY MR. GOUDRAULT:

Q.—What's that? A.—That is apparently so, from your records here.

40 Q.—That is to say, you as president of the Awixa Corporation, bound yourself to pay the Sanitation Corporation \$593,000 before the contract was actually assigned from the Welsh Brothers Contracting Company to the Awixa Corporation, and before this assignment was duly approved by the Borough President, is that right? A.—We had already made this deal with Welsh Brothers, that this was what we were to do, and we were going ahead in good faith with it.

Q.—I see. But the contract speaks for itself as regards dates. Now, how much was that contract for, the Jamaica disposal plant? A.—\$1,651,000.

Q.—\$1,651,000. Did you know who got the approval of the Borough President? A.—No, I don't.

Claire D. Schlemmer for plaintiff (direct examination).

Q.—Did you endeavor yourself to have this approval? A. I don't think I did. As I remember this thing, I left the papers with Kelly — or with Campbell, may be; I couldn't say.

Q.—Was any precast pipe used in that Jamaica disposal plant? A.—Very little.

Q.—How much of it? A.—Three or four or 500 feet; something like that. You have it in your contract record there.

10 Q.—Do you know how much — did you get any prices for pipe? A.—Yes, I did.

Q.—Where did the company get the pipe from?

MR. COOK: Mr. Commissioner, I wish to register a very strenuous objection to this line of cross-examination, as being entirely irrelevant, and having no bearing whatever on the issues. And I really think that we should not proceed with this any further, if we are going to get somewhere. It has nothing to do with the issues in the case at all.

20

MR. HACKETT: I associate myself with that objection.

MR. COOK: And I strenuously object to this line of questioning.

THE COMMISSIONER: I will allow the answer, subject to your objections, and grant you an exception.

MR. GOUDRAULT: What is the question, Mr. Schultz?

30 (Question read by the Clerk).

THE WITNESS: (Answering) John M. Phillips.

Q.—Do you know how much you paid for pipe, for that particular job? A.—I think there was a lump sum of about \$15,000.00. The amount of pipe was very small in percentage on this job. This job consisted mainly of the large disposal plant and the machinery in it. The disposal plant was one of the largest caissons that was put down in Jamaica.

40 Q.—Pipe was needed, and pipe was secured from Phillips, and paid for? A.—Yes.

Q.—How much did your company pay for the pipe? A.—I believe it was \$15,000, lump sum.

Q.—Have you any data as regards the length of the pipe or the width of the pipe, the dimensions of the pipe, that were needed for that Jamaica disposal plant? A.—There was some 96-inch pipe that made the connection from the Paino job in to us.

Claire D. Schlemmer for plaintiff (direct examination).

Q.—Do you know how many feet of that 96-inch? A.—No, I can't say. But you have your contract records there that show the whole thing.

Q.—Did you state that you do not remember the sizes of the pipe? A.—There was some 96-inch.

Q.—You don't remember the other dimensions? A.—There was some —
10

MR. O'DONNELL: We object to verbal evidence as to the pipe, inasmuch as the specifications and the contracts speak for themselves.

THE COMMISSIONER: I will allow the answer, subject to your objection, and give you an exception.

THE WITNESS: (Continuing) There was some 96-inch pipe and some smaller pipe, about 3 or 3½ feet in diameter.

Q.—Did you ask Phillips for a quotation for the pipe that was used in that Jamaica disposal plant, Mr. Schlemmer? A.—I don't remember asking him whether Welsh had made a contract with him for this pipe before I took the assignment. I just can't say.
20

Q.—Do you remember receiving any quotation from Phillips? A.—It was a lump sum on this pipe. And I negotiated finally with Phillips, and bought the pipe from Phillips.

Q.—I see. Do you remember receiving a letter from Phillips in this connection, in connection with the prices for the pipe? A.—I don't remember whether we had a letter. I presume we did. We had a complete file.
30

Q.—Do you remember receiving a letter dated the 26th of June, 1925? A.—I don't remember.

Q.—Was there any other contract executed by the Awixa Corporation in Queens County? A.—Yes.

Q.—What are the jobs that your company made in Queens County? A.—The one on Jamaica Avenue, —

Q.—Do you remember how you got that contract on Jamaica Avenue? How your corporation got it? A.—The Jamaica Avenue contract was bought from the Riverdale Construction Company.
40

Q.—Do you remember how much your company paid the Riverdale Corporation? A.—I believe it was \$5,000.

Q.—Do you know or do you remember the name of the official of the Riverdale Corporation? A.—Elkins.

Claire D. Schlemmer for plaintiff (direct examination).

Q.—Do you remember if it was paid by check or otherwise, this \$5,000? A.—I believe it was paid by check.

Q.—To whom, do you know? A.—To the Riverdale, I presume.

Q.—Did you see Elkins on that occasion? A.—Yes.

Q.—Did you negotiate with him? A.—Yes.

10 Q.—Was he the one that stated — I mean you finally arranged for \$5,000? A.—Yes.

Q.—Did you pay him by check or cash? A.—Paid him by check.

Q.—Was there any precast pipe used for that Jamaica Avenue job? A.—Yes. There were three sizes, 36, 30 and 27-inch pipe.

Q.—I see. What quantity? A.—I can't say.

Q.—From whom did you company buy this pipe, precast pipe? A.—Phillips.

20 Q.—Did you actually pay Phillips for that pipe? A.—Yes.

Q.—What was the amount charged and paid? A.—We paid Phillips a lump sum of \$167,000. for that pipe.

Q.—For that particular job, the Jamaica Avenue job? A.—That's right.

Q.—Did you pay Phillips by check? A.—Well, now, Mr. Richardson paid him; I don't know. I suppose he paid him by check.

Q.—Of your corporation? A.—Yes.

30 Q.—Did you see Phillips yourself for pipe for that particular contract? A.—Yes. He wanted first \$30. a foot for the 36-inch pipe, and \$20. for the 30-inch, and \$15. for the 27-inch pipe. That would make a total of \$173,940, but I talked him out of it down to \$167,000. flat.

Q.—Lump sum? A.—Lump sum.

Q.—Do you remember the date of the assignment of this contract from the Riverdale Company to your corporation? A.—Assigned to Awixa from Riverdale August 6th, that is 1926.

40 Q.—Did Phillips tell you the price of the pipe before the assignment? A.—Yes. I don't say that "yes" though, as regards this lump sum. He had these per foot prices on up to that time.

Q.—Well, now, look at this letter dated August 10, 1926, from John M. Phillips to Awixa Corporation, and state if that is the data you are referring to as to the price paid for pipe for that particular job on Jamaica Avenue? A.—\$167,000.

Claire D. Schlemmer for plaintiff recalled (direct examination).

MR. GOUDRAULT: Plaintiff now offers for evidence, this letter, as Plaintiff's Exhibit C-202.

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-202, of this date).

Q.—Do you know if that is Phillips's signature there?

10 A.—Yes, I am sure it is.

Q.—Will you now look at Plaintiff's Exhibit C-109, which is the contract between the Riverdale Construction Company, Inc., and the City of New York, for the construction of the Jamaica Avenue sewer, dated the 29th of July, 1926, and state if this contract was assigned to your company? A.—Yes.

Q.—You actually did the job? A.—Yes.

Q.—Your corporation did? A.—Yes.

Q.—You were paid by the City? A.—Paid by the City.

Q.—In full? A.—Yes.

20 Q.—The amounts of pipe to be used appear, do they not, in this contract? A.—Yes, sir.

Q.—Also the dimensions? A.—Yes.

Q.—Did your company actually fulfil this contract to the satisfaction of the City. and did it put in precast pipe of the dimensions called for, and the length called for as per contract? A.—Yes.

(Recess from 12:50 to 2:00 p. m.)

30

AFTER RECESS. 2:00 o'clock p. m.

CLAIRE D. SCHLEMMER, recalled:

BY MR. GOUDRAULT:

40 Q.—Mr. Schlemmer, will you look at Exhibit C-159, contract No. 66597, which is the contract between the Awixa Corporation and the City of New York, for the construction of a sewer on 25th Street, and state if your signature therein appears, and if your company made that particular job? A.—(Examining paper) Yes.

Q.—The dimensions for the pipe and the quantities of pipe do appear in that contract also, that were used for that particular job? A.—Yes.

Claire D. Schlemmer for plaintiff recalled (direct examination).

Q.—Where did you get the pipe from? A.—John M. Phillips.

Q.—Do you remember how much you paid Phillips for that particular pipe? A.—I believe it was \$32.50.

Q.—Was that an average price — what size of pipe? A.—90-inch.

10 Q.—Do you know the number of feet of pipe that was used in there, as the contract calls for? A.—Around 4,000 feet.

Q.—I see. The contract was executed by your corporation? A.—Yes.

Q.—And were you paid by the City? A.—Yes.

Q.—Did you pay Phillips for the pipe? A.—Yes.

Q.—Have you got your checks? A.—No.

Q.—Where are they? A.—I don't know. They were stolen with the others.

20 Q.—But you are sure your corporation paid Phillips for that pipe? A.—I know we paid him for the pipe.

Q.—Do you recollect if the Awixa Corporation also constructed a sanitary sewer for the City of New York on Horstman Avenue? A.—No. The Horstman Avenue was a sewage disposal plant.

Q.—I see. Was that built by your company? A.—Yes.

Q.—Was any pipe used, any precast pipe used, for the construction of that sewer? A.—Which?

Q.—The Horstman. A.—Horstman Avenue?

Q.—Yes. A.—A small amount.

30 Q.—Do you remember how many feet? A.—It is my recollection that we paid him \$15,000. for a lump sum, for a minor amount of pipe, compared with that whole job.

Q.—Did you get that contract direct from the City of New York, or did you get it by way of assignment? A.—The Horstman Avenue?

Q.—Yes. A.—From Welsh Brothers.

Q.—I see. Will you then look at Plaintiff's Exhibit C-161, and state if that is the contract you are referring to? A.—(Examining contract) Yes.

40 Q.—That is the contract that was executed by your company with the City of New York? A.—That's right.

Q.—The quantity of pipe that you used in that particular job, precast pipe, would be indicated in the contract itself, wouldn't it? A.—Yes.

Q.—Was it used by your company, the amount therein stipulated? A.—Yes.

Claire D. Schlemmer for plaintiff recalled (direct examination).

Q.—And where did you secure your pipe from? A.—Phillips. This was a large disposal plant, with all this machinery in, and this was a connection from one end to another, taking in all the sewers. They were short connections.

BY MR. COOK:

10 Q.—So when you speak of paying Phillips \$15,000, you mean for all the precast pipe that you needed in this contract? A.—In this Horstman Avenue contract.

MR. COOK: Horstman Avenue contract.

BY MR. GOUDRAULT:

Q.—And the \$15,000. that you are speaking of now, is what you have testified to this morning? A.—That's right.

20 Q.—Now, in this contract is attached the agreement with the City of New York as regards the assignment from the Welsh Brothers Contracting Company to the Awixa Corporation. Will you look at it and state if therein appears your signature to the contract? A.—Yes.

Q.—With the City of New York? A.—Yes.

Q.—That is your signature (indicating). A.—That is my signature.

MR. HACKETT: What was the total of the Horstman Avenue disposal plant contract?

30 THE WITNESS: \$1,651,000.

Q.—Do you remember testifying as to this particular item of the purchase of pipe from Phillips, before today, Mr. Schlemmer? A.—I didn't get your question.

Q.—Do you remember testifying, giving evidence, on this very question of the payment for precast pipe that your company used in the Horstman Avenue sewer? A.—Yes.

Q.—You remember? A.—Yes. And I think that that is what I have stated before. That is approximately.

40 Q.—Did you state this morning that you got quotations from Phillips as regards this particular job, or not? A.—I don't remember.

Q.—You don't remember. You say you paid about \$15,000? A.—Yes.

Q.—Could it be more or less? A.—I think that's about right. I speak from memory; it is quite a while back. I haven't any notes on that, either.

Claire D. Schlemmer for plaintiff recalled (direct examination).

Q.—Now, will you look at Plaintiff's Exhibit C-160, which is a contract between the City of New York and your corporation for the construction of a sanitary sewer on 158th Street, and state if this is the job that was executed by your firm for the City of New York? A.—(Examining contract) Yes.

10 Q.—Do you recollect the sizes of pipe and the quantity of pipe, of precast pipe used in that particular job? A.—Yes. There was 3,990 feet of 36-inch pipe.

MR. HACKETT: Just a minute. The notes that you are reading from, I suppose have been taken from the exhibits in the record?

THE WITNESS: Yes, they have.

MR. HACKETT: Then why don't we rely on the record? He has merely taken his notes from the record, and they are in, the contracts are in.

20

BY MR. GOUDRAULT:

Q.—Your answer to his question was "yes"? A.—Yes.

Q.—That you took them from the original contracts? A.—Yes.

MR. HACKETT: Which are filed as exhibits.

Q.—Where did you get that pipe for that particular job, from whom? A.—From Phillips.

30 Q.—Did you pay Phillips for that pipe? A.—Yes.

Q.—Do you remember the total amount you paid? A.—No, I don't remember the total amounts. The amounts given in the City contracts are 3,990 feet of 36-inch pipe, and 2,228 feet of 33-inch pipe. I have not answered your question in full before. We paid \$30. per foot for each size.

Q.—You paid \$30. per foot, whatever the size? A.—Either size.

Q.—Now, all the pipe on this contract called for to be used, was it actually used by your company in executing the contract? A.—Those figures don't vary over less than 1%.

40 Q.—I see. Will you now identify your signature on this original contract. C-160, and state if that is your signature? A. There it is (indicating).

Q.—That is your signature? A.—Yes, sir.

Q.—As president, on behalf of the Awixa Corporation? A. Right.

Claire D. Schlemmer for plaintiff recalled (direct examination).

Q.—Will you now look at Plaintiff's Exhibit C-57, which is the contract with the City of New York and the Highway Improvement and Repaid Company, Inc., for the construction of a sanitary sewer on Foch Boulevard, and state if you know anything about this contract? A.—(Examining contract) Yes. Do you want me to look at the signature?

10 Q.—You understand this contract is between the Highway Improvement and Repair Company, Inc., and the City of New York? A.—Yes.

Q.—Did your company, the Awixa Corporation, actually do the job? A.—Yes.

Q.—By way of assignment? A.—Yes.

MR. HACKETT: To help, I will admit that it was properly assigned.

20 MR. COOK: And I too will admit it, Mr. Goudrault. So now you are safe.

MR. GOUDRAULT: I see.

BY MR. GOUDRAULT:

Q.—Now, were the quantities of pipe and dimensions of pipe that are mentioned in this contract, C-57, was that actually used by your company in the execution of its job for the City of New York? A.—Those quantities are always approximately right. Within a very small margin, less than 1 per cent.

30 Q.—They do not amount to anything? A.—The variations are very small.

Q.—Where did you get the pipe from? A.—John M. Phillips.

Q.—The precast pipe. Did you pay Phillips for the pipe? A.—Yes.

Q.—Do you know how much you paid Phillips for the pipe? A.—We paid him \$30. a foot.

Q.—Whatever the dimension? A.—Only one dimension, 54-inch pipe. 5220 feet.

40 Q.—Now, will you look at Plaintiff's Exhibit C-109, which is the original contract from the City of New York to the Riverdale Construction Co., Inc., for the construction of a sanitary sewer in Jamaica Avenue, and state if it is your company that also has executed this contract for the City of New York? A.—(Examining paper) Yes.

Q.—Where did you get the pipe that you used on that particular job? A.—John M. Phillips.

Claire D. Schlemmer for plaintiff recalled (direct examination).

Q.—Do you remember the price you paid Phillips for the pipe used in that particular job? A.—That is the one we had this morning, that we paid him \$167,000, a flat sum.

MR. HACKETT: After you had beat him down from a higher price —

10 THE WITNESS: From about \$174,000 down to \$167,000.

MR. HACKETT: And you beat him down after the assignment had been ratified by Connolly?

THE WITNESS: Yes.

MR. COOK: If this evidence was given this morning, Mr. Commissioner, I object to it being given again this afternoon.

BY MR. GOUDRAULT:

20 Q.—Have you got the average price paid for the pipe there, if any?

MR. HACKETT: There was not any.

MR. O'DONNELL: It was a lump sum.

MR. HACKETT: He beat him down from the first sum.

BY MR. GOUDRAULT:

30 Q.—Now, did you state that this pipe was all used there, the pipe that the contract called for? A.—Yes.

Q.—It was all used in that contract? A.—Yes.

Q.—You got this also by way of assignment, I understand? A.—Yes.

MR. GOUDRAULT: Will defendant's counsel admit that it was duly assigned to the Awixa Corporation?

MR. COOK: I will not concede anything.

40 MR. GOUDRAULT: All right.

MR. HACKETT: It was proved twice this morning.

MR. GOUDRAULT: Well, we will make sure.

BY MR. GOUDRAULT:

Q.—Will you now look at Plaintiff's Exhibit C-118, and state if that is the assignment from the Riverdale Construction

Claire D. Schlemmer for plaintiff recalled (cross-examination).

Company to the Awixa Corporation for the construction of that Jamaica Avenue sewer, and state if the signature therein is your signature? A.—(Examining paper) Yes.

Q.—That is the contract for which you paid Phillips \$167,000? A.—The Jamaica Avenue job we paid him \$167,000.

MR. HACKETT: You testified to that this morning.

10

THE WITNESS: Yes.

Q.—You stated this morning that you had paid Elkins \$5,000. for that assignment of the Riverdale job? A.—Yes.

Q.—Now, did you pay it by check or by currency? A.—Paid it by check.

Q.—You are sure of that? A.—I am sure that I gave him a check for \$5,000.

Q.—Do you remember getting the cash for him? A.—And then I got cash for him later.

20

Q.—How is that? Explain that? A.—I presume he could not get the check cashed, or wanted to use it at that time, or something, and he asked me to get the check cashed for him, which I did.

Q.—And you gave him the proceeds of that check? A.—Yes. He got the \$5,000.

MR. GOUDRAULT: Your witness.

CROSS EXAMINATION:

30

BY MR. HACKETT:

Q.—Mr. Schlemmer, this work represented by the several contracts which have been under discussion today, was very hazardous work from the point of view of the contractor, was it not? A.—Very hazardous.

Q.—You were going through a territory which was, — A. Wet.

40

Q.—(Continuing) — difficult to handle. You had to pump, you had to retain, and you had to meet a great many unknown quantities? A.—Very.

Q.—And you had taken the work for a definite figure? A. Yes.

Q.—Which entails on the part of the contractor, a big hazard? A.—Very hazardous. For three years we did not stop a pump.

Claire D. Schlemmer for plaintiff recalled (cross-examination).

Q.—Yes. Now, in work of that description, I am informed that contractors figure on profits of from 25 to 50 per cent., and notwithstanding that, they are sometimes stuck. Is that correct? A.—Yes, that is true. On this first job, the Jackson Heights job, we lost a lot of money.

10 Q.—And the purchase of contracts and the assignment of contracts is a very ordinary transaction between contractors, is it not? A.—A common practice.

Q.—A common practice. I believe you said you had your plant near Jackson Heights, was it? A.—Yes. At Jackson Heights.

Q.—At Jackson Heights, where you had just finished two jobs. A.—Yes.

Q.—So it was very much in your interest to get a nearby job? A.—Yes.

20 Q.—And that made it possible for you to do the work at a better figure than somebody who had to assemble a plant and bring it there? A.—Right.

Q.—And that would, in a way, explain the amount that you paid to Welsh Brothers for that particular job? A.—We were finishing a job, we had a lot of plant running into a great many thousands of dollars, and with nothing in sight, and we did not get that job, I was only a little high on that job, but I had to get a job or let my organization go.

30 Q.—And is it not a fact that it is frequently in the interest of people who are contracting in a big way, to take work for a narrow margin of profit if they can hold their organization together as a consequence? A.—Exactly.

Q.—You have told us that you did not know when you purchased the first of these contracts that the approval of the assignments had to be obtained from the City? A.—No.

Q.—But there was no reason to obtain the approval of the City to the assignment of contracts which you took over from Welsh Brothers, with the suppliers of machinery, whatever their name was? A.—Sanitation Corporation.

40 Q.—Sanitation Corporation? A.—That was not necessary.

Q.—I wanted to make that quite clear. That was merely a condition of your contract with Welsh? A.—Yes.

Q.—And you also took over his contract with Phillips? A.—Yes.

MR. HACKETT: You have answered all my questions.

MR. COOK: No cross-examination.

Thomas M. Cassidy for plaintiff (direct examination).

REDIRECT EXAMINATION.

BY MR GOUDRAULT:

10 Q.—Did you identify your signature on Exhibit C-90? is the assignment of the Highway Improvement and Repair Construction Company to the Awixa Corporation for the construction of a sewer on Foch Boulevard. Will you identify your signature? A.—(Examining paper) That is my signature.

20 Q.—How long had you been working for the City of New York prior to the first assignment that you testified about? A.—The first job that we did in the City of New York is that particular 4,000 feet of 90-inch pipe. That was about October, 1923. And then there was another job, without any pipe into it, joining that, aggregating, the two jobs, about a million dollars, and we were cleaning them up along about May, 1925, or June, in there, when we took this assignment of the Horstman Avenue job.

MR. GOUDRAULT: I see. Thank you very much, Mr. Schlemmer.

(Witness excused).

DEPOSITION OF THOMAS M. CASSIDY.

30

THOMAS M. CASSIDY, age 52; residence, Garden City Hotel, Garden City, Long Island; occupation, racing business, breeding, racing and stabling of horses, 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:

40 Q.—You knew John M. Phillips in his lifetime, Mr. Cassidy? A.—Yes.

Q.—I understand you are married to his widow? A.—Yes.

Q.—Where were you married? A.—St. Regis Hotel, December, 1929, I think it was.

Q.—Do you remember the date? A.—Late in December.

Q.—That would be December, 1929? A.—Yes.

Q.—St. Regis Hotel, in New York? A.—Yes.

Thomas M. Cassidy for plaintiff (direct examination).

Q.—You have not got a certificate of marriage with you?

A.—No.

Q.—Where could that be had? A.—The City Clerk.

MR. SCHNEIDER: Will Mr. Hackett consent that upon the receipt of the Certificate we may offer it in evidence as if this witness had produced it?

10

MR. HACKETT: Let us put it in now. Give it a number and say "to be produced".

MR. SCHNEIDER: Yes.

(The Marriage Certificate referred to was received in evidence as Plaintiff's Exhibit C-203, to be produced).

BY MR. GOUDRAULT:

20

Q.—Where was the civil ceremony performed? A.—At the St. Regis. There was only one ceremony, and it was performed at the St. Regis Hotel, 55th Street and 5th Avenue, in December, 1929.

Q.—Have you a marriage contract with Mrs. Phillips? A.—I don't know what you mean by marriage contract. We just got an ordinary license that is issued by the Commissioner of Licenses, for that purpose.

Q.—And no other papers were signed except that one? A. That is all.

30

Q.—Who performed the marriage ceremony? A.—Judge Walsh, Justice of the Supreme Court.

Q.—John L. Walsh? A.—John L. Walsh.

Q.—For how long did you know John M. Phillips in his lifetime? A.—Thirty years or more.

Q.—Did you ever have any deposit boxes in banks here in New York? A.—Did I?

Q.—Yes. A.—Yes.

Q.—Where? A.—Do I have to answer that?

40

MR. GOUDRAULT: It is up to the Commissioner.

THE WITNESS: I don't see where that has anything to do with this.

MR. COOK: I object to the question as irrelevant.

THE WITNESS: Certainly. It has nothing to do with this at all.

Thomas M. Cassidy for plaintiff (direct examination).

THE COMMISSIONER: Mr. Goudrault, I do not think it is necessary for you to ask him the question in that form.

BY MR. GOUDRAULT:

- 10 Q.—Did you have any deposit boxes in which you put any papers or moneys or securities belonging to Phillips? A.—Yes.
- Q.—In New York? A.—Yes.
- Q.—How many of them? A.—One.
- Q.—Where was that? A.—The Bowery and East River National Bank. It is now the Bank of America, 41st Street and Broadway.
- Q.—Did you at any time in that deposit box, keep any cash or securities belonging to John M. Phillips? A.—Yes. Both.
- Q.—Did you have a bank account for John M. Phillips? A.—Never.
- 20 Q.—Did you have a bank account for John M. Phillips? A.—Never.
- Q.—Did Phillips ever give you any money to deposit? A. Yes. But I have a bank account. I cleared it through my account. I never had a bank account for him.
- Q.—You would make disbursements for him upon his instructions? A.—Yes.
- Q.—Out of your own bank, out of moneys belonging to Phillips? A.—Out of moneys that we won on the horses.
- 30 Q.—Do you remember in what year you had a bank account in which Phillips's money was put in by you to be paid out? A.—1927; it might have been 1926, 1927 — part of 1928. No, — 1926, 1927. I am quite sure of 1927 and 1926.
- Q.—Do you remember any trips to Montreal with Phillips, John M. Phillips? A.—Yes.
- Q.—Did you make one or two? A.—Two.
- Q.—Do you recollect the first trip, as to the date? A.—I don't remember the exact date. No. I remember all the details about the trip, but I don't remember the date.
- 40 Q.—Would you remember the month? A.—Well, it was, I think, in December. I think it was December or January, early January.
- Q.—Of what year? A.—1927 or 1928.
- Q.—It would be December, 1927, or January, 1928? A.—I might have made one in December and one in January. I might have made two trips.
- Q.—The first trip was with whom? A.—Just he and I.

Thomas M. Cassidy for plaintiff (direct examination).

Q.—What was the purpose of going to Montreal with Phillips? A.—I went up there to see whether we could hire a safe deposit box in Canada.

Q.—Who wanted to hire a safe deposit box? A.—Phillips.

Q.—Do you know personally whether, as a matter of fact, on that first trip he did hire a safe deposit box? A.—He didn't.

10 Q.—Where did you register in Montreal? A.—At the Mount Royal Hotel.

Q.—Phillips also? A.—Phillips did. I did not. I went in the morning, and got out at night.

Q.—Do you personally know in what name he registered in Montreal, in the hotel? A.—I think he registered in his own name the first time. I don't remember.

Q.—Do you know whether Phillips registered as J. Martin, the second time? A.—I think it was Martin, John Martin.

20 Q.—You don't know how long Phillips was in Montreal on that first trip? A.—He did not come back with me. No, he did not. He stayed a couple of days; I don't know how long.

Q.—Do you personally know if Phillips had any securities or money with him, on that first trip? A.—No. I don't know. I believe he had some money; not any great amount of money. He certainly had some money.

Q.—You don't know how much? A.—No.

Q.—Did you personally carry any money on that particular trip for him? A.—No. For myself.

30 Q.—For yourself. I see. A.—Just to defray some expenses.

Q.—Now, you said you made another trip, most likely in January, 1928; is that right? A.—I am quite sure the second one was in January. I am not quite so sure of the first. But they were within about two weeks, it might have been three weeks.

Q.—With whom did you go on that second trip? A.—John M. Phillips and his son Francis.

Q.—Did you carry on that trip any cash or securities belonging to John M. Phillips? A.—Cash.

40 Q.—How much cash? A.—Well, it was somewhere in the neighborhood of three hundred and some odd thousand dollars, I don't know how much — \$350,000, something like that.

Q.—Where was that money coming from? A.—I sold some bonds for him.

Q.—Do you recollect the quantity of bonds and the denomination of the bonds that you sold for Phillips? A.—I know they were New York City bonds. The amount I sold, I think all totalled something over \$700,000. worth. I think the premiums on

Thomas M. Cassidy for plaintiff (direct examination).

the bonds brought the amount up to a greater amount in money than the face value of the bonds.

Q.—The premium would have made the amount of \$700,000 exceeded? A.—Exceeded \$700,000.

Q.—Now, did you have those bonds in your safety deposit box here in the Bowery Bank? A.—Yes.

10 Q.—Do you recollect what you did when Phillips gave them to you, or did you have them very long? A.—No, I did not have them long. I got them for the purpose of selling.

Q.—Were they registered in Phillips' own name? A.—No. They were New York City bonds.

Q.—Payable to Bearer? A.—Payable to Bearer. New York City bonds.

Q.—And you sold them out for him? A.—Yes.

20 Q.—Do you remember when he gave you the bonds? A.—I don't remember exactly when he gave me the bonds. But it was right about the time I sold them. He gave me various amounts at different times; he did not give me the whole bunch at once. I can't remember what amounts, but several different times he gave me bonds, and each time I sold them for him.

Q.—I see. Would you carry those bonds in the security box for a certain length of time before you sold them? A.—I just carried them long enough to get a quotation and sent them down and clear them; that is all.

Q.—Through what broker did you sell them? A.—I sold them through the bank.

30 Q.—Through the bank. How did you get the proceeds of the bonds, by cashier's checks? A.—Cashier's checks, and cash.

Q.—They were all City of New York bonds, to the best of your recollection? A.—All of them.

Q.—They were Phillips's bonds? A.—Yes.

Q.—John M. Phillips? A.—Yes.

Q.—In each instance did you receive from the bank a sale certificate? A.—In each instance I received from the bank a cashier's check for the proceeds, which I immediately cashed and converted it into money.

40 Q.—You must have received also — did you receive as well a sales memorandum from the bank? A.—No. They sold the bonds, you see, themselves, and gave me a cashier's certificate. I don't remember. I might have received a sales certificate. I don't remember. I have no recollection of it now.

MR. HACKETT: What is the name of that bank, now?

Thomas M. Cassidy for plaintiff (direct examination).

THE WITNESS: It is the Bank of America now. It is sixteen hundred and something Broadway. It is on the corner of 41st Street and Broadway.

MR. SCHNEIDER: That would not be the correct number. It is 1461, in the 1400's. Broadway and 41st Street, northwest corner.

10 THE WITNESS: Southwest — no, northwest is right.

BY MR. GOUDRAULT:

Q.—Did you carry other loans for John M. Phillips at the bank? A.—Yes.

Q.—At what bank? A.—At this same bank.

Q.—Did you put up any security for those loans? A.—Put up bonds.

Q.—What bonds? A.—New York City bonds.

20 Q.—You mean John M. Phillips's bonds? A.—Yes.

Q.—Do you recollect, Mr. Cassidy, the loans or the loan that was made? Was there one or two three? A.—I think there were two loans. The first loan was \$40,000, and the second loan, the amount of the second loan — let me see. I think the second loan was \$80,000. I wouldn't be so sure about that. But I am quite sure it was \$80,000. I think that loan was \$80,000.

Q.—Do you remember when those loans were made? A.—Well, all of these transactions took place in December, 1927, and January, 1928, all over the course of about a month or so.

30 Q.—I understand that those loans were liquidated and closed out, weren't they? A.—Yes.

Q.—By you? A.—Yes.

Q.—For Phillips? A.—Yes.

Q.—With what money? A.—Proceeds of the bonds that were up as collateral security.

Q.—Was there any cash coming back? A.—Yes, sir.

Q.—To whom did you give that? A.—I gave part of it to Phillips, and part of it to a messenger that he sent to receive it.

40 Q.—Do you remember the part that you gave to Phillips? A.—Well, I don't know how much I gave to Phillips. I gave a fellow named Caplis, I gave him \$60,000. or \$70,000, and I got a receipt from him. I think it was \$70,00.

Q.—Did you sell those bonds, \$700,000 worth of bonds, at one time? A.—No.

Q.—Or at various times? A.—At various times.

Q.—I see. By batches? A.—Yes.

Thomas M. Cassidy for plaintiff (direct examination).

10 Q.—When you say that there two loans made, one of \$40,000, and one of \$80,000 for Phillips by you at the bank, you are not positive; there may be another loan that you don't recollect? A.—My understanding is that I secured a loan on some bonds in giving Caplis that money, but it is just possible that I might have sold some bonds and gave him the money. But I think I increased the loan— I am not sure about that. But that is a matter of record. You can find it in the bank, it is there. That is open and shut.

Q.—So I understood you to say that it was in December and January, just previous to your second trip to Montreal, that the last batch of bonds were sold? A.—Yes.

Q.—And you gave the proceeds to Phillips? A.—No, I did not give them to Phillips.

Q.—Did you keep the money? A.—No. I put it in a box in Montreal.

20 Q.—You put it in a box in Montreal? A.—Yes.

Q.—How much did you put in? A.—Three hundred and some odd thousand. I don't remember exactly how much there was.

Q.—That was on your second trip? A.—Yes.

Q.—In January, 1928, to the best of your recollection. When you arrived in Montreal, where did you register on that second trip, Mr. Cassidy? A.—I did not register. They registered at the Hotel Mount Royal.

30 Q.—You did not register? A.—No. It was the same as before, I went in the morning and got out at night.

Q.—Do you know if Phillips, on that second trip, did rent a deposit box? A.—No. I rented it.

Q.—You did? A.—Yes.

Q.—Where? A.—I think it was in the Montreal Safe Deposit Company. I think that was the name of it.

40 Q.—Do you remember the street? Oh, it does not matter. A.—I know where it is. I could go there. I could describe the building, where it is, and describe the box, and everything. That is my recollection about the thing. I don't think I registered either time up there. I don't know. I might have registered up there. I did not stay there; I went in the hotel in the morning and went out at night, but whether I registered or not, I don't know.

Q.—And you rented a safe deposit box? A.—Yes.

Q.—And did you personally put the money in? A.—I rented it. It was registered in Francis M. Phillips's name.

Thomas M. Cassidy for plaintiff (cross-examination).

Q.—And did you put the money in? A.—I put in this money that I am talking about, three hundred and some odd thousand dollars.

Q.—The proceeds of the sale of bonds? A.—It was less than the proceeds of the sale of bonds. The amounts of the two last sales of bonds were in excess of the amount we put in the box, except he kept some money out for some purpose.

10 Q.—John M. Phillips kept the money? A.—Yes.

Q.—I mean the amount in excess of that \$300,000. which was deposited in the safe deposit box. A.—The difference between the proceeds of the bonds and the amount I put in the box, Phillips kept.

Q.—I see. Do you recollect how you came to have the bonds from John M. Phillips? A.—He asked me if I could dispose of them, and he gave them to me.

20 Q.—Where did he give them to you? A.—Some in his place and some in mine.

Q.—You mean in your residence? A.—Yes.

Q.—His place, is that his own residence? A.—His own residence at Freeport. He gave some of them to me in his own residence at Freeport, and others he brought over to my place.

MR. HACKETT: Where was your place?

THE WITNESS: 222 Stewart Avenue, Garden City, Long Island.

30 BY MR. GOUDRAULT:

Q.—Was that just before you went to Montreal? A.—Well, no. The first batch he gave me, no. Quite a bit before we went to Montreal, I think. I secured a loan on that, I think. And it was some time after that that we went to Montreal on the first trip, and I sold some more bonds subsequently, and then we made the final trip to Montreal.

MR. GOUDRAULT: That is all. Your witness.

40 CROSS EXAMINATION BY MR. COOK:

Q.—Dr. Cassidy, you knew the late Mr. Phillips for many years? A.—Yes, quite a number of them.

Q.—He was an intimate friend of yours? A.—Yes.

Q.—And you were closely connected with him in many business transactions, were you not? A.—Well, I was not closely connected with him in many business transactions. I was never

Thomas M. Cassidy for plaintiff (cross-examination).

connected with him in any of his business transactions, as far as this sewer business.

Q.—Never in his business transactions in connection with the sewers? A.—No.

Q.—But in connection with his racing transactions, you were connected with him? A.—Yes, we were very intimately connected.

10 Q.—And you were, in addition to a close connection which existed between you with regard to racing for many years, you were also an intimate friend of his? A.—Yes.

Q.—So that it was quite natural that Mr. Phillips would have implicit confidence in you? A.—I imagine so, yes.

Q.—Now, Mr. Phillips gave you these bonds that you speak of from time to time, I understand, at different times? A.—Yes.

20 Q.—Until finally you had some \$700,00. of these bonds belonging to Phillips in your possession? A.—Well, that is not quite so, no.

Q.—That is not quite correct, but it is approximately correct? A.—What I mean by that, I did not have \$700,000. at any one time. I disposed of some, I hypothecated some at different times. I did not at any time have \$700,000. worth. That was the total of all the transactions.

Q.—That was the total of all the transactions which took place from time to time? A.—From time to time, yes.

Q.—With John M. Phillips? A.—Yes.

30 Q.—And in the result, towards the end of the year 1927 or the early part of 1928, you found yourself in possession of a considerable sum of money belonging to Mr. Phillips? A.—Yes.

Q.—Mr. John M. Phillips? A.—John M. Phillips.

Q.—When I speak of Mr. Phillips, Dr. Cassidy, I mean Mr. Phillips, Sr., not the son. Now, do you know what was the reason that Phillips desired to have this money deposited in Montreal? Did he tell you the reason? A.—Well, he said he wanted to have —

40 MR. HACKETT: Just a second. I will make an entry, Mr. Commissioner, of the objection to any evidence of conversations between the deceased Mr. John M. Phillips, and the witness.

THE COMMISSIONER: I will allow the answer to be made and I will allow you an exception.

MR. COOK: Would you read the question?

(Question read by the Clerk).

Thomas M. Cassidy for plaintiff (cross-examination).

MR. COOK: Well, strike out "did he tell you the reason?"

BY MR. COOK:

Q.—What was the reason? A.—He told me that he had to have some money to be in a liquid condition to carry on his business.

10 Q.—To carry on his business? A.—Yes. He was afraid the Federal authorities might come in and lien the balance of the stuff.

Q.—He was afraid a claim might be made by the Federal Authorities against him? A.—Yes.

Q.—And he wished to have some liquid cash? A.—To carry on his business.

Q.—To carry on his business in the State of New York? A.—Yes.

20 Q.—And it was for that reason that he wished to make this deposit of money in Montreal? A.—Yes.

Q.—Now, on the first occasion when you went to Montreal, you went alone with Phillips? A.—Yes.

Q.—And whom did you see in Montreal, Dr. Cassidy? A. Well, I met a Colonel Clarence — C. M. Smith, — Clarence M. Smith. His name was Colonel Smith. I met him at the Windsor Hotel. He was head of the National Surety Company, their branch in Canada, and he brought me to the Montreal Safe Deposit Company, and he introduced me.

30 Q.—Introduced you to Mr. Smith, the manager of the Montreal Trust and Deposit Company? A.—Yes; and I made some inquiries about the boxes, and looked at boxes.

Q.—He showed you a box and told you how much the cost of the box was? A.—Yes.

Q.—And then you came back to New York? A.—Yes.

Q.—And later you came to Montreal again with Mr. John M. Phillips? A.—Yes.

Q.—And with his son, Francis Phillips? A.—Yes.

40 Q.—And I understand that you had then in your possession, some \$350,000? A.—Something like that.

Q.—Of cash? A.—Yes.

Q.—Who was the owner of that cash? A.—John M. Phillips.

Q.—John M. Phillips, the father? A.—Yes.

Q.—And you then went to the Montreal Safety Deposit Company and engaged a box, a safety deposit box there? A.—In the name of Francis Phillips.

Thomas M. Cassidy for plaintiff (cross-examination).

Q.—In the name of Francis Phillips. And you paid for that box yourself, did you? A.—Yes.

Q.—The first year's rental? A.—I think I paid a year's rental, I don't know. It might have been less. My recollection is it might have been less. I am not quite sure about that. I know I paid the rental, but I don't know for how long.

10 Q.—It would be a small amount, anyhow, \$18 or \$20, something like that? A.—Yes. I paid for it, but I can't remember whether we got it for six months or a year.

Q.—And then, having engaged the box in this way, you deposited the \$320,000, whatever it was? A.—More than that.

Q.—More than that — \$350,000? A.—It was not \$350,000. But it was around \$330,000 and some odd thousand, I think.

Q.—You put the money in the box yourself? A.—Yes.

Q.—I understand you carried the money up from New York in your pocket? A.—I did, yes.

20 Q.—And you carried it down and made the deposit yourself? A.—Yes, sir.

Q.—For the account of John M. Phillips, the father, in the name of Francis Phillips? A.—Yes.

Q.—That is correct? A.—Yes.

Q.—Was Francis Phillips with you? A.—Yes.

Q.—He was with you? A.—Yes.

Q.—The money you deposited was the actual proceeds of the bonds which were the property of Mr. John M. Phillips? A. Yes.

30 Q.—Now, I understand, Dr. Cassidy, that Mr. Phillips, Sr., the father, found out shortly afterwards that he required some more money for his purposes in Montreal, and went down and drew a portion, took a portion of that money out himself? A.—Well, I don't know. I couldn't say anything about that. That I don't know. But I do know the amount I put in, and the amount that was found in the box, there was some little difference between them.

Q.—Some difference? A.—Yes. I think that he took it out while he was up there.

40 Q.—Took it out for his own purposes? A.—Yes.

Q.—Was there ever at any time, any question that this was the money of Francis Phillips? A.—No question at all.

Q.—No question at all? A.—No.

Q.—It was never pretended that it was the money of Francis Phillips? A.—Not at all.

Q.—Or that he had any interest in it? A.—Never.

Q.—That is correct? A.—That is correct.

Thomas M. Cassidy for plaintiff (cross-examination).

Q.—How old a lad was Francis Phillips at this time, about? A.—About 17 or 18 years old.

Q.—He was not in business for himself at all? A.—No.

Q.—You had never had any relationship with Francis Phillips at all, had you? A.—None at all, except friendly relations. No business relations.

10 Q.—Except to know him as a son — A.—Of a friend of mine.

Q.—Of an intimate friend of yours? A.—Yes.

Q.—You never discussed the matter with Francis at all, did you? A.—No.

Q.—I understand that some time after this, Mr. Phillips was ill and in a hospital in New York, was he? A.—No, Florida; Miami.

Q.—In Miami? A.—Yes.

20 Q.—And he discussed his affairs with you at that time, is that correct? A.—Yes. Made his will.

Q.—Will you please say what happened, Dr. Cassidy, in connection with that time, in connection with the illness of Mr. Phillips? Did he send his son to Montreal to get money for him? A.—Well, yes, he sent the boy to Montreal, and the boy was stopped on the Canadian side, taken off the train and turned back into America at Detroit. They would not permit him in. He was very evasive in his questions and they took him off the train and sent him back.

30 Q.—He was very evasive in the replies that he gave — A. Particularly they asked him where his father was, and of course he thought right at that time there was an upheaval, they were trying to subpoena him, and —

Q.—I am instructed that on instructions from Mr. Phillips, Sr., you were the one who told Francis to go and get this money for his father? A.—Yes.

Q.—Is that correct? A.—I made the arrangements for him.

40 Q.—You did that on the instructions of Mr. Phillips, Sr.? A.—Yes. There were two objects; one was to get the money, and the other was to get a deed.

Q.—A deed to what? A.—To a piece of real estate.

Q.—So that at that time Mr. John M. Phillips apparently recognized and thoroughly understood that Francis had no interest in this money?

MR. HACKETT: Just a minute. I object to further cross-examination on this point by Mr. Cook, as the questions do not

Thomas M. Cassidy for plaintiff (cross-examination).

flow from the examination-in-chief, and constitute evidence in an issue between the Estate of Francis Phillips and the estate of his father rather than between the plaintiff and the defendants in this case.

10 MR. COOK: Well, Mr. Commissioner, I submit, with all respect to my friend, Mr. Hackett, that my questions clearly arise from the examination by Mr. Goudrault, and are perfectly relevant.

THE COMMISSIONER: I will allow the answers and grant you an exception.

THE WITNESS: Please read the question.

(Question read by the Clerk).

20 THE WITNESS: Now, you are putting me in the position of a mind reader. I don't know whether he did or not. I know that it was his money, and he was ordering the boy up there to get some of it.

BY MR. COOK:

Q.—For his own personal use? A.—For his own use. But as to his own personal deductions, I can't say.

30 MR. COOK: Of course, not, Mr. Cassidy. I don't mean that you should answer a question of that sort. My question is badly worded.

Q.—At all events, so far as you know, this money was the property of John M. Phillips? A.—Francis so testified before two grand juries; the Federal Grand Jury and the Grand Jury investigating affairs in Queens.

MR. HACKETT: I object to the testimony as not being the best evidence of this fact, of this alleged fact.

40 THE COMMISSIONER: I grant you an exception.

BY MR. COOK:

Q.—Did Francis speak to you about the evidence he gave before the Grand Jury? A.—Yes.

MR. HACKETT: I object to the question as attempting to elicit proof of a conversation with the deceased, which it is

Thomas M. Cassidy for plaintiff (cross-examination).

incompetent for the witness in his present position in the litigation to make.

THE COMMISSIONER: I grant you an exception.

BY MR. COOK:

10 Q.—Will you please tell us exactly what he said, as far as your recollection goes? A.—Well, he told me that he told the Federal Grand Jury, and also the Grand Jury in Queens, as to the condition over there, that all of the money, all of the bonds and everything that he had, he was just carrying them around for his father.

Q.—Which is what you believed to be the case? A.—Yes.

Q.—That applies, of course, to money that you deposited in Montreal? A.—That applied to all the money he had.

20 MR. HACKETT: I object further to this evidence, for the reason already given. It is apparent that this testimony can not help the case of the defendant, and if permitted can only avail as testimony in another issue between the Estate of John M. Phillips, deceased, and of his son; and it would not be competent to make this in cross-examination, unless the witness were called by the deceased, John M. Phillips's son, or somebody representing him.

30 THE COMMISSIONER: I will allow you an exception. And if Mr. Cook wishes to call Mr. Cassidy on his own behalf, I have no objection. And I shall construe Mr. Cook's questions as calling Dr. Cassidy on his behalf.

MR. COOK: You reserve my rights, Sir, to recall him, if necessary?

THE COMMISSIONER: Yes. That is just what I am doing, and I am also regarding your questions as in the nature of calling Mr. Cassidy originally, if you so wish.

40 MR. COOK: Now, I ask my friend, Mr. Goudrault, have you the checks that Dr. Cassidy gave?

MR. GOUDRAULT: No.

MR. COOK: Have you made an effort to get them?

MR. GOUDRAULT: No. We may produce them at the trial.

Thomas M. Cassidy for plaintiff (cross-examination):

MR. COOK: Are you going to produce them at the trial?

MR. GOUDRAULT: Yes.

MR. COOK: Will you undertake to do that?

MR. GOUDRAULT: Yes, I will do that.

10 MR. COOK: Mr. Goudrault, I would very much like to see the checks that Dr. Cassidy has spoken of, and as you say they are going to be produced, could you not produce them tomorrow here?

MR. GOUDRAULT: We might endeavor and do our utmost to get them in the morning.

MR. COOK: I want it clearly understood with you, because if so, we will ask Dr. Cassidy, if necessary, if he can, to come back tomorrow so as to identify the checks.

20

MR. GOUDRAULT: Yes, but I can't give you any definite answer now.

MR. COOK: Will you make an effort?

MR. GOUDRAULT: Sure, I will do that. I will let you know by five o'clock.

MR. COOK: As far as I am concerned, I would ask that my right to examine Dr. Cassidy further be continued until the checks are produced tomorrow, Mr. Commissioner.

30

THE COMMISSIONER: And would you like to have him directed to return tomorrow?

MR. COOK: (To the Witness): Would it be convenient for you to return tomorrow?

THE WITNESS: I will come in tomorrow, if you put me on early in the morning.

40 THE COMMISSIONER: Have you suspended until tomorrow, Mr. Cook?

MR. COOK: I am finished except for the one question with regard to the checks.

THE COMMISSIONER: Mr. Hackett, would you like to cross-examine?

Angelo Paino for plaintiff (direct examination).

MR. HACKETT: Very much, but I think I should wait.

THE COMMISSIONER: You would like to wait until tomorrow?

MR. HACKETT: Yes.

10 THE COMMISSIONER: Mr. Goudrault, counsel for the defense wish to continue their cross-examination tomorrow, and unless you have something further from Mr. Cassidy, I will direct his return here at 11 o'clock, at the continuation of the hearing, tomorrow morning.

MR. GOUDRAULT: I personally have no objection.

THE COMMISSIONER: Dr. Cassidy, you are excused until tomorrow at 11 o'clock, at which time you are directed to return here.

20 (Witness temporarily excused).

DEPOSITION OF ANGELO PAINO.

THE COMMISSIONER: Now, if you will produce your next witness, I would like to get on.

30 MR. GOUDRAULT: Mr. Paino.

ANGELO PAINO, age 43; residence, 1713 Beverly Road, Brooklyn; 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, deposeth and saith as follows:

40 MR. GOUDRAULT: I understand Mr. Paino is represented by an attorney. I have no objection that he be represented by his personal attorney, if the counsel for the defendants will agree, and then we will have a stipulation.

THE COMMISSIONER: I have no objection to Mr. Paino's counsel being present, if the other counsel have no objection. Mr. Paino's counsel is in the room.

(The attorney referred to was Maurice Edelbaum, from the office of Edward J. Reilly, Attorney for Mr. Paino, of 26 Court Street, Brooklyn).

Angelo Paino for plaintiff (direct examination).

DIRECT EXAMINATION BY MR. GOUDRAULT:

- Q.—Mr. Paino, how long have you been a contractor? A. About 18, 20 years.
- Q.—18, 20 years. Did you ever do any construction of sewers in the County of Queens, Borough of Queens? A.—Yes.
- 10 Q.—Did you ever build any sewers at other places? A.—
Yes.
- Q.—What other places? A.—In the Borough of Brooklyn.
- Q.—Anywhere else? A.—And in New Jersey.
- Q.—Did you know John M. Phillips in his lifetime? A.—
Yes, sir.
- Q.—When did you first get acquainted with him? A.—
About 1920 or 1921.
- Q.—You knew him and met him until his death? A.—
Yes, sir.
- 20 Q.—At the time that you had met him, had you then built
any sewers? A.—Yes, sir.
- Q.—When you first met him? A.—Yes, sir.
- Q.—Did you know Joseph L. Sigretto? A.—Yes, sir.
- Q.—Is he related to you? A.—Yes, sir.
- Q.—What relation? A.—Cousin.
- Q.—Did you ever work for Joseph L. Sigretto? A.—Yes,
sir.
- Q.—Was that before you got acquainted with Phillips? A.
Yes, sir.
- 30 Q.—Were you a partner or employe of Sigretto? A.—Em-
ploye, and somewhere in 1913, we done a job together.
- Q.—How long were you with Joe Sigretto? A.—On one
job.
- Q.—On what job was that? A.—Jerome Avenue.
- Q.—Was that in the Borough of Queens? A.—Borough of
Queens.
- Q.—Do you remember the year? A.—1913; 1913 or 1914.
- Q.—That was before you were acquainted with Phillips?
A.—Yes, sir.
- 40 Q.—Now, will you look at this contract. Mr. Paino, and
state if it is a contract between the City of New York and your-
self, for the construction of a sewer? A.—(Examining paper).
Yes.

MR. COOK: What is that one, please?

MR. GOUDRAULT: Broadway.

Angelo Paino for plaintiff (direct examination).

MR. COOK: Yes; but what is the exhibit number?

BY MR. GOUDRAULT:

Q.—That was for the construction of a sanitary sewer on Broadway? A.—Yes, sir.

Q.—The contract is dated — I mean the date of the award is November 3, 1924, and it bears Comptroller's No. 72459.

MR. GOUDRAULT: Plaintiff now offers for evidence this contract, as Plaintiff's Exhibit C-204.

(The said copy was thereupon received in evidence and marked Plaintiff's Exhibit C-204, of this date).

Q.—Now will you look at this contract, bearing Comptroller's No. 74182, for the construction of a sewer on 150th Avenue awarded on March 10, 1925, to Paino Brothers, and state if that is the contract that you completed for the City of New York? A.—Yes, sir. Paino Brothers completed it.

MR. GOUDRAULT: We now offer for evidence, this contract, as Plaintiff's Exhibit C-205, of this date).

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-205, of this date).

Q.—Will you now look at this contract, bearing Comptroller's No. 76,068, for the construction of a sanitary sewer on Farmers Boulevard, awarded on August 6, 1925, and state if that contract was awarded to you and executed by you for the City of New York? A.—Yes, sir.

MR. GOUDRAULT: Plaintiff now offers for evidence, as Plaintiff's Exhibit C-206, this contract.

(Said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-206, of this date).

Q.—Will you look at this contract for the construction of a sewer on Hayes Avenue, bearing Comptroller's No. 81,303, awarded on October 21, 1926, and state if that job was completed by you for the City of New York? A.—Yes, sir.

MR. GOUDRAULT: Plaintiff now offers for evidence, this contract, as Plaintiff's Exhibit C-207.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-207, of this date).

Angelo Paino for plaintiff (direct examination).

Q.—Will you look now at this contract, bearing Comptroller's number 83,769, for the construction of a sewer in 124th Street, awarded on May 2, 1927, and state if this contract between the City of New York and yourself for construction work
A.—Yes, sir.

Q.—That job was completed by you? A.—Yes.

10 MR. GOUDRAULT: Plaintiff offer for evidence, this contract, as Exhibit C-208.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-208, of this date).

Q.—Mr. Paino, will you now look at this contract, bearing Comptroller's No. 84, 612, for the construction of a sewer on Sutphin Boulevard, awarded on June 30, 1927, to Angelo Paino, and state if this contract between you and the City of New York, was
20 executed by you for the City of New York. A.—Yes, sir.

MR. GOUDRAULT: We offer in evidence, as Plaintiff's Exhibit C-209, the said contract.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-209, of this date).

Q.—Will you now look at this contract, bearing Comptroller's number 84,611, being a contract for the construction of a storm sewer on Tuckerton Street, awarded to Angelo Paino
30 on June 30, 1927, and state if that contract was awarded to you and executed by you for the City of New York. A.—Yes, sir.

MR. GOUDRAULT: Plaintiff offers now for evidence this contract, as Plaintiff's Exhibit C-210.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-210, of this date).

Q.—Will you now look, Mr. Paino, at Plaintiff's Exhibit C-204, which is the contract for Broadway, in Broadway, and state if this is your signature appearing in that contract? (Indicating)?
40 A.—Yes, sir.

Q.—You executed the contract? A.—Yes, sir.

Q.—Were you paid by the City of New York in full for that contract? A.—Yes, sir.

Q.—Where did you secure the pipe? A.—John M. Phillips.

Angelo Paino for plaintiff (direct examination).

Q.—What kind of pipe was used? A.—Precast pipe.

Q.—The quantities appear there in that contract? A.—
Yes, sir.

Q.—And were used by you? A.—Yes, sir.

Q.—And do you recollect the price that was paid by you
for pipe for that particular contract in Broadway? A.—No, I
can't.

10 Q.—Do you remember giving evidence in connection with
this contract? A.—Yes, sir.

Q.—Before. And you do not recollect the price that you
paid to Phillips for that pipe? A.—Not now.

Q.—Not now? A.—No.

THE COMMISSIONER: Mr. Goudrault, it is four o'clock
now. How much more have you got, how many more questions
have you to ask Mr. Paino, and how many more exhibits have
you?

20 MR. GOUDRAULT: I don't know how many more ques-
tions or exhibits, but I will be in a position to complete his ex-
amination in half an hour. And furthermore, my witnesses will
all be heard by tomorrow, at four o'clock.

THE COMMISSIONER: Then I think in that case I will
direct Mr. Paino to return here tomorrow morning, and he will
be heard immediately after Dr. Cassidy has been heard.

30 MR. EDELBAUM: May Mr. Paino return tomorrow af-
ternoon instead of tomorrow morning? He has a very important
appointment tomorrow morning.

THE COMMISSIONER: We will have Mr. Paino back
here tomorrow at two o'clock. The direction is changed to two
o'clock.

40 (WHEREUPON, at 4:10 P. M. the hearing was adjourned
to Tuesday, September 15, 1931, at 11 o'clock a. m.)

Depositions of witnesses, sworn and examined on the 15th day of September in the year of Our Lord one Thousand.Nine Hundred and Thirty-one, at eleven o'clock in the forenoon, in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of the commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a lawyer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses in a cause therein pending between The People of the State of New York, plaintiff and Heirs of the late John M. Phillips, et al., Defendants: — I, the commissioner acting under the said commission, and also the clerk by me employed in taking, writing down, transcribing and engrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor and effect thereof and as thereby directed heard the following depositions:

20

DEPOSITION OF THOMAS M. CASSIDY
(recalled).

THOMAS M. CASSIDY was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposes and saith as follows:

30 MR. COOK: Mr. Commissioner, yesterday afternoon my friend, Mr. Hackett, objected to certain questions that I made in cross-examination of Dr. Cassidy, and I considered then, and consider now, that these questions were relevant as flowing from the examination in chief by my friend, Mr. Goudrault; but in order that there may be no possible misunderstanding between Mr. Hackett and myself as to the correctness of my questions, I would like to take advantage of the suggestion which you made yesterday, at page 1531, that you will regard my questions as having been given in chief to Dr. Cassidy, whom I now will continue examining as my witness.

40 THE COMMISSIONER: I will direct the Clerk to make an entry on the record to that effect.

MR. COOK: In other words, I do not wish any misunderstanding between Mr. Hackett and myself.

THE COMMISSIONER: If Mr. Hackett wishes to make any objection to that procedure, he should do so at this time.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

MR. HACKETT: I certainly object to the manner in which this witness was examined in alleged cross-examination, in which he was led, prompted and assisted. If that testimony is now to be considered as having been made in chief, it could not have been elicited in chief in the manner in which it was made.

10 THE COMMISSIONER: I will grant you an exception, and regard the witness, at Mr. Cook's request, as having been called on direct on his own behalf.

MR. GOUDRAULT: Now, Mr. Commissioner, I have an application to make. I examined Mr. Cassidy yesterday as my witness, and we did not have those checks. I might file them in today..

MR. COOK: No, I will attend to that. He is under cross-examination.

20 MR. GOUDRAULT: Yes. But I still have the right to examine him.

MR. COOK: Yes, but you have not a right to break into my cross-examination.

THE COMMISSIONER: Are you examining him on direct and cross-examination both?

30 MR. COOK: I am completing my cross-examination of Dr. Cassidy, and also, in so far as may be necessary, examining him in chief —

THE COMMISSIONER: As to new matter?

MR. COOK: Against the contentions of my friend, Mr. Hackett.

MR. HACKETT: I think it well that we understand whether at the moment you have the witness in chief or under cross-examination, unless you avail yourself of the methods of a cross-examination to elicit information required in chief.

40 May I have a reservation?

THE COMMISSIONER: Yes, you have a reservation and exception.

CROSS EXAMINATION BY MR. COOK: (Continued).

Q.—Dr. Cassidy, yesterday when you were here, you spoke of certain transactions that you had with a bank known as the

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Next, C-16,727, endorsed Thomas M. Cassidy.

The next, C-16,762, endorsed Thomas M. Cassidy.

The next, C-16,915, endorsed Thomas M. Cassidy.

The next, C-17,004, endorsed T. M. Cassidy.

10 The total is \$725,142.50.

Q.—Those represented, that total amount as detailed above, represented the money obtained by you for the account of Mr. Phillips, for the sale of his bonds? A.—Yes.

Q.—Is that correct? A.—Yes.

Q.—Will you be good enough to look at the checks which I now show you, and which are the property of the Bank of America, as successor of the Bowery & East River National Bank, Broadway and 41st Street, New York City, and tell me whether
20 these are the cashier's checks that you received in settlement of the Phillips' bonds, which you sold, as above stated? A.—(Examining checks) Yes.

Q.—Those are the checks that were handed to you — A.— Those are the original checks.

Q.—The original checks, in payment of the bonds? A.— Sale of the bonds.

MR. HACKETT: Just a minute. Will counsel state whether this is the examination-in-chief or cross-examination?

30 MR. COOK: Well, if it is of any value to you, Mr. Hackett, I am perfectly prepared to say that it is examination in chief.

MR. HACKETT: Very well.

MR. COOK: And it is also, as far as Mr. Goudrault is concerned, cross-examination.

MR. HACKETT: Mr. Goudrault will speak for himself.

40 BY MR. COOK:

Q.—The endorsements on the back of these checks are your signatures? A.—Yes.

Q.—And it was a portion of the money, a portion of the total amount of \$725,142.50, that you took to Montreal when you went there with Mr. Phillips and his son, Francis, in January,

Thomas M. Cassidy for plaintiff recalled (cross-examination).

1928, and deposited in the safety deposit box of the Montreal Safe Deposit Company?

MR. HACKETT: I object to the question as put, as both leading and suggestive.

THE COMMISSIONER: I will give you an exception.

10 MR. HACKETT: Well, after all, Mr. Commissioner, shouldn't we respect some of the elementary rules of evidence, as admitted by all?

THE COMMISSIONER: Entirely off the record, —
(Statement off the record).

MR. HACKETT: I am going to ask you, Mr. Commissioner, to consider whether that is quite the situation.

20 THE COMMISSIONER: The Superior Court is not going to thank me for keeping out evidence. They can keep that out in their own turn, when it is presented to them.

BY MR. COOK:

Q.—Your answer is "Yes"? A.—Yes.

MR. COOK: I assume, Mr. Hackett and Mr. Commissioner, — I ask whether you want these checks produced, or not?

30 MR. HACKETT: Yes, I would like to have them produced.

MR. COOK: Well, I can't take them out of the jurisdiction.

THE WITNESS: You can have photostatic copies. That is what they did in the other investigation.

MR. COOK: The bank, which is the owner of the checks, does not wish to allow them to go.

40 THE COMMISSIONER: In case the parties wish to stipulate that photostatic copies may be used in place of the originals, that will be acceptable to the Commissioner.

MR. COOK: I would ask, therefore, permission to file photostatic copies of these checks as exhibits, in view of the

Thomas M. Cassidy for plaintiff recalled (cross-examination).

fact that it is impossible for me to obtain for the Court in Montreal, the actual originals which are now before your Honor.

MR. HACKETT: I have no objection, providing both sides of the documents are photostated.

MR. O'DONNELL: Yes, sure; the whole document.

10 THE COMMISSIONER: Photostatic copies will be accepted.

MR. COOK: (To Mr. Goudrault): Have you got the photostatic copies?

MR. GOUDRAULT: They can be made in half an hour, before they go back to the bank.

20 MR. COOK: I will produce photostatic copies of these various checks as follows:

Check No. C-15859, \$40,000, as Exhibit DP-1.

Check No. C-16221, \$80,000, as Exhibit DP-2.

Check No. C-16685, \$107,711.81, as Exhibit DP-3.

Check No. C-16727, \$114,952.74, as Exhibit DP-4.

Check No. C-16762, \$17,476.06, as Exhibit DP-5.

30 Check No. C-16915, \$110,287.50, as Exhibit DP-6.

Check No. C-17004, \$254,714.30, as Exhibit DP-7.

Now, Mr. Goudrault, whom will I give these checks back to?

MR. GOUDRAULT: To Mr. Unterweiser.

40 MR. COOK: By consent of the parties, the photostat copies of these checks are to avail as originals. That is all, Dr. Cassidy, from me.

(Photostatic copies of the above mentioned checks were thereafter obtained and marked in evidence as above indicated).

MR. GOUDRAULT: With the permission of the Commissioner, I will just put another question to Mr. Cassidy.

MR. COOK: May I ask one question that I omitted?

Thomas M. Cassidy for plaintiff recalled (redirect examination).

BY MR. COOK:

Q.—Dr. Cassidy, I understood you to say that you had a safety deposit box in the Bank of America now, and formerly the Bowery & East River National Bank? A.—Yes.

Q.—You have always had that? A.—I haven't always had it, but I have had it for quite some time.

10

MR. GOUDRAULT: With the permission of the Commissioner, I would just like to ask a question of Mr. Cassidy with regard to these checks, cashier's checks.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—In my examination yesterday, Mr. Cassidy, I asked you how you had disposed of the securities that you held for Phillips, John M. Phillips, and you answered that you had cashed them at the bank and received cashier's checks. A.—Yes, —

20

MR. COOK: Sold them through the bank.

THE WITNESS: (Continuing) Sold them through the bank.

Q.—Sold them through the bank, and you got the proceeds of the securities, of the bonds, by cashier's checks? A.—Yes.

30

Q.—And these seven checks which have been filed as Exhibits D-P-1 to D-P-7, are the cashier's checks that you were referring to yesterday in your evidence? A.—They are.

MR. GOUDRAULT: Plaintiff wishes to produce in evidence, the marriage certificate of Thomas M. Cassidy and Mrs. Marion J. Phillips.

(The said Marriage Certificate was received in evidence as Plaintiff's Exhibit C-203 at the hearing of September 14, 1931.)

CROSS EXAMINATION BY MR. HACKETT:

40

(Under reserve of the objections taken by Mr. Hackett to the testimony of Mr. Cassidy.)

Q.—Did I understand you to say, Mr. Cassidy, that you were in Miami when Mr. Phillips made his will? A.—Yes.

Q.—Were you with him when he made the will? A.—The will was drawn up by Andrew Caplis, sent down to Miami by a messenger, and I was one of the witnesses to it.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—Is Andrew Caplis, who, according to you, took the will to Miami — A.—He was supposed to have drawn it up. He did not take it to Miami. A man by the name of George Franz took the will to Miami.

Q.—Is the Mr. Caplis, who, according to you, prepared the will of the late John M. Phillips, the man to whom you referred yesterday as him to whom you gave money on account of Phillips? A.—Yes.

Q.—He is a lawyer? A.—Yes.

Q.—Where does he practice? A.—I don't think he practices. I don't think he has any general practice. He is in the Tax Department. He has a position of some kind in the Tax Department in Queens. I think that this was just some side work that he did for Phillips.

Q.—What is his full name? A.—The first name is Andrew. I think it is Andrew J. Caplis. It is Andrew, anyway, — Andrew Caplis.

Q.—He is still in the employ of the Borough of Queens, in the Tax Department? A.—I think so. I don't know. I couldn't answer that question. He was the last time I heard of him.

Q.—Who was the man that took the will from New York to Miami? A.—Franz. George Franz.

Q.—What relation did he bear, if any, to Caplis or to Phillips? A.—He was an employe of Phillips's.

Q.—In what capacity? A.—Clerk, or something like that, in the office in Long Island City. I don't know what his capacity was.

Q.—Where was Phillips's office at that time, in Long Island City? A.—I don't know that he had an office. I know he used to hang out in some place in Jackson Avenue, 41, I think it was; something like that; I don't remember the number.

Q.—To whom was the will delivered in Miami? A.—To Phillips.

Q.—And where was Phillips at the time? A.—In a hospital. I believe the name of the hospital has been changed since then. The Allison Hospital, it was the Allison Hospital. Now it is the St. Francis.

Q.—That was in the spring of 1928? A.—Yes.

Q.—In what month? A.—Well, I would imagine that it was in March.

Q.—You were one of the witnesses to the will? A.—Yes.

Q.—Who was the other witness? A.—I think Franz was the other one. I can't remember.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—Did Phillips sign it in your presence in the hospital?

A.—Yes.

Q.—And the will was read to you and to Phillips, and to the other witnesses? A.—I read it.

Q.—You read it? A.—Yes.

Q.—Had the will been prepared on your instructions? A. No.

10 Q.—Did you know what was in the will before you read it? A.—I had no idea that there was a will made, when I was called in.

Q.—After you read the will, it was read aloud to Phillips, and the other witness, was it not? A.—Yes. And Phillips read it over himself, took it and read it over himself.

Q.—So then it was read to you, and read by you? A.—Yes.

20 Q.—You recall that it is stipulated in the will, that Phillips's money should go to his widow and to his son, do you not? A.—And to his daughter.

Q.—Yes. In what proportion? A.—A third to each. It did not say anything about money. It said his estate, whatever it might be.

Q.—A third each? A.—Yes.

30 Q.—You also remember a proviso that if the boy died before he reached the age of 25, that his share should revert to the estate? A.—I don't remember that, but I do remember that if he died before he was 21, it would go to the other estate. He was not to receive his share until he was 25, but he could dispose of it between the ages of 21 and 25 before he died, if he survived his maturity. But I think it specifically states that if he died before maturity, his share was to be divided equally between his mother and his sister.

Q.—When you say "his mother" — A.—I mean his stepmother.

Q.—His stepmother? A.—She was more than his stepmother, because she had adopted him before she married Phillips. He was her legal son before she married Phillips.

40 Q.—But in the words of the psalm, he was not the fruit of her womb? A.—No.

Q.—Now, you are familiar with this litigation? A.—Well, I am more or less familiar with it.

Q.—You know that the people of the State of New York are claiming about two and one-half million dollars from the Estate of the late John M. Phillips? A.—I know they have some

Thomas M. Cassidy for plaintiff recalled (cross-examination).

claim, or are making some claim. What the amount is or what it is for, I have no idea.

Q.—You have told us that you have intimate knowledge of the \$350,000., in round figures, that were taken to Montreal? A.—Yes.

10 Q.—You know that apart from the controversy between the People of the State of New York and the representatives of the late John M. Phillips, that there is another controversy between the representatives themselves, as to the ownership of the money in Montreal? A.—Yes.

Q.—You are aware of that? A.—Yes.

Q.—You know that John M. Phillips is dead? A.—I do.

Q.—You know that Francis Phillips is dead? A.—Yes.

Q.—You know that he died before he was 21? A.—Yes.

Q.—You are married to the widow of the late John M. Phillips? A.—Yes.

20 Q.—You know that the testimony which you rendered here yesterday, and today, at its face value is most detrimental to the case of the Heirs of Francis Phillips? A.—Yes.

Q.—You are aware of that? A.—Yes.

Q.—Well, I want you to keep that in mind, and be very patient with me, because it will behoove me to ask you probably a good many questions that you may not think necessary, for the purpose of appraising the value of this testimony. Where were you born? A.—Long Island City.

30 Q.—What is your full name? A.—Thomas Michael Cassidy.

Q.—Where were you baptized? A.—Baptized in St. Raphael's Church, I think it was.

Q.—Where were you educated, — St. Raphael's Church — that is a Catholic Church? A.—Yes. Long Island City.

Q.—Long Island City. Where were you educated? A.—Public Schools, High School; was graduated in 1899 from the Long Island College Hospital, in medicine; spent my internship in St. John's Hospital, Long Island City.

40 Q.—And when did you leave St. John's Hospital? A.—In 1900.

Q.—You never engaged in the practice of medicine? A.—Yes, I practiced medicine.

Q.—How long? A.—Two or three years; three years, probably.

Q.—Where were you living when you were engaged in the practice of medicine? A.—Long Island City.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—Where? A.—I lived at, — let me see, what was it? Corner of East Avenue, I think, and 9th Street.

Q.—You were a member in good standing of the medical profession? A.—Yes.

Q.—For many years? A.—I still am, I guess. I don't know. I haven't practiced in all that time.

10 Q.—When did you abandon the active practice of medicine as your principal means of support? A.—It never was my means of support.

Q.—What were you doing during these years to which you have referred, when you were in the hospital, and when you were a general practitioner? A.—While I was in the hospital, I was doing nothing, practically. I acted as medical expert in the District Attorney's Office for quite some time in Long Island City, but I never received any remuneration.

20 Q.—You see, I want to be fair with you, Mr. Cassidy. I am informed that you never practiced medicine. Now, I want you to tell me whether you did. A.—I did.

Q.—And did you ever make any money at it? A.—No. I did not.

Q.—It never was a source of revenue to you? A.—I never collected a fee.

Q.—Were you ever in a position to collect a fee? A.—Yes. I suppose so.

Q.—I want to know if you registered with the proper authorities in this state from whom a license must be obtained.

30 A.—No, I never got a license.

Q.—So you never were a licensed medical practitioner in the State of New York? A.—No.

Q.—Then you practiced without a license? A.—Yes.

Q.—Then you practiced illegally? A.—No, I didn't.

Q.—I just want to get that clear. If you were never licensed, and practiced, you practiced without a license. A.—You only practice illegally when you charge a fee to practice, then you practice illegally.

40 Q.—Now, I don't want to get into a discussion with you as to the interpretation of the statute. We probably better go on with the facts. Did you graduate from a medical school? A.—Yes. I was graduated in 1899 from the Long Island College Hospital.

Q.—Why did you not take out your license from the State of New York? A.—Just carelessness, I guess. I did not take the State examination.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—Had you private means at that time? A.—Private means, — a political position.

Q.—A political position? A.—Yes.

Q.—Where? A.—Long Island City. I worked for the City of New York.

10 Q.—As what? A.—Well, I was Commissioner of Complaints.

Q.—How long did you hold that position? A.—I would imagine 3 or 4 years.

Q.—Had you ever held any other public position? A.—No.

Q.—What was the salary attached to that position? A.—I think it was \$2100. a year.

Q.—Did you do anything else beside acting as Commissioner of Complaints? A.—Yes.

20 Q.—What else? A.—Played the horses; engaged in the horse business.

Q.—When you say you played the horses, do you wish us to understand that in 1900 your principal business and principal means of support was gambling on the races? A.—I didn't say my principal. You asked me if I did something else. I told you I was Commissioner of Complaints. I didn't say my principal. You asked me if I did anything else, and I told you.

30 Q.—When did you cease to be Commissioner of Complaints? A.—Well, I was transferred to New York, — I don't know what year, — and never qualified over there. I was transferred to New York, and never drew a salary there. I was transferred from Queens to the Borough of Manhattan. You see, there are five boroughs in the City of New York —

Q.—I am aware of that. A.—I was connected, —

Q.—With the Borough of Queens. A.—Borough of Queens.

Q.—When did you cease to be in the employ of the Borough of Queens? A.—I don't remember. That is a matter of record, too. I don't remember the exact year. Nineteen hundred and something.

40 Q.—What was your next active occupation, after you ceased to be Commissioner of Complaints, which I understood you to say a while ago was 1903? A.—Or 1904.

Q.—Or 1904. A The horses.

Q.—Then in 1903 or 1904, your active occupation and your principal occupation became the horses? A.—Yes.

Q.—And by "the horses", you mean betting on horse races? A.—Yes.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—Did you follow the horses over the different tracks of this country — A.—Yes.

Q.—(Continuing) — and possibly Mexico and Canada? A.—Yes.

Q.—And that has been your occupation ever since? A.—Yes.

10 Q.—Were you ever a “bookie”? A.—Never, no.

Q.—Did you ever work for one? A.—No.

Q.—When did you meet Phillips? A.—Well, I don’t know. I imagine it was when I was in the hospital, I think. I knew him before that, but I have no recollection of knowing him very intimately when I met him in the hospital.

Q.—When did you become intimate with Phillips? A.—About 1899.

Q.—1899? A.—While I was in the hospital.

20 Q.—I thought you said that you were at the Medical School in 1899. A.—I did not say I was in the Medical School. I said I was graduated in 1899.

Q.—I see. If you graduated in 1899, you must have graduated toward the middle of 1899. A.—The examinations, — the finish of the term was March, 1899. Medical School always ended in March.

30 Q.—So it was after March that you met Phillips? A.—Some time in 1899. I did not meet him. You said, when did I become intimate with him. That was in 1899, because I used to go across to a place called Kugelman’s, and he used to hang around there, and Zorn was there at the same time.

Q.—What was Phillips doing then? A.—He was fooling around, doing the best he could, contracting sewers, building sewer heads, and doing anything he could.

Q.—He had no very definite occupation? A.—Who Phillips?

40 Q.—Yes. A.—Well, yes. he had a definite occupation. He was a bricklayer by profession, and he was doing the best he could at it at the time, I guess. He and his brothers were mixed up in the contracting business. They built some houses out in the Blissville end of the town, near Calvary Cemetery. Whether they were all together at one time, or not, I don’t know, but I know they were most all of them bricklayers.

Q.—Now, I want you to tell me where you have lived, where you had your home, from 1900 to date? A.—1900 to date?

Q.—Yes. Can you do it? A.—In a general way.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—Well, I don't want it to be too general. You told me where you were living in 1900. A.—Yes. When I came out of the hospital.

Q.—When you became Commissioner of Complaints? A. Yes.

Q.—Now, where did you live after that? A.—Millers Hotel, Long Island City.

10 Q.—Is that still in existence? A.—No. It's still there, but it is not in existence. It is converted into a garage, or something like that; old Millers Hotel.

Q.—How long did you live there? A.—A couple of years.

Q.—And after that where did you live? A.—After that I think I moved to the Hotel Astor.

Q.—Astor? A.—Yes.

Q.—Here in New York? A.—Yes.

20 Q.—How long did you live there? A.—Half a dozen years.

Q.—Half a dozen years? A.—Something like that. I can't remember the exact number.

Q.—And then where did you go? A.—Let me see.

Q.—Did you ever own a home? A.—No.

Q.—You never have? A.—No.

Q.—Where do you live now? A.—I live at the Garden City Hotel. I owned a home, an apartment, if you call that a home; a furnished apartment. I think when you are talking about a home you are talking about a house.

30 Q.—I am talking about a house which you owned. A.—No.

Q.—Where did you do your banking during those years? A.—East River, — Bowery & East River National Bank.

Q.—All the time? A.—No. I did some banking with the Corn Exchange, Long Island City Branch of the Corn Exchange, and then with the Bowery & East River. When I first went there it was some other bank. I don't think it was the Bowery & East River when I first started banking. It had some other name and then it was changed to the Bowery & East River.

40 Q.—In any event, the bank that was the Bowery & East River and is now the Bank of America, is the bank with which you have always had an account? A.—Yes. Some kind of an account.

Q.—Your principal account? A.—Yes.

Q.—Your main account? A.—Yes.

Q.—So it is with that institution,— A.—No. I banked with the Second National Bank, —

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—Wait a second. Let me ask you the question. So it is with that institution, that you have carried on your banking operations for the last 30 years? A.—No, it is not.

Q.—Will you just tell me with what bank you have carried on your banking operations for the last 30 years? A.—My first banking operation was carried on with the Corn Exchange, Long Island City Branch. My next banking operations were carried on with the Second National Bank, New York, which was at 5th Avenue, in the thirties some place, 5th Avenue and 29th Street. And when from there I banked at the Bowery & East River.

Q.—And you are there yet? A.—Yes.

Q.—Under a new name? A.—You mean the bank is under a new name?

Q.—Yes. A.—But you did not say that. You said “You are there under a new name”. The bank has a new name. I still have the same old name, but the bank has another name.

Q.—When did you open your account with the Bowery & East River? A.—I think it was in 1919.

Q.—And you have had your principal account there ever since? A.—On and off.

Q.—Your only account? A.—Only account, yes.

Q.—That is the only account you have had with any bank? A.—No. it is not the only account I have had with any bank. It has been my principal account since.

Q.—Where else have you had an account since 1919? A.—Is that necessary?

Q.—Yes.

THE WITNESS: Is it, Commissioner? I don't see what that has got to do with the money in Canada. It has absolutely nothing to do with it at all, my banks, where they are, what they are.

THE COMMISSIONER: I think you have been given a good deal of latitude, Mr. Hackett. I will allow the answer.

MR. COOK: I object.

THE WITNESS: I refuse to answer the question. I don't believe it is relevant.

MR. HACKETT: Will you read the question.

(Question read by the Clerk).

Thomas M. Cassidy for plaintiff recalled (cross-examination).

MR. COOK: There is no question as to Dr. Cassidy's accounts in this case, Mr. Commissioner.

MR. HACKETT: I think you will find that there are a whole lot, before we get through.

MR. COOK: I object to the evidence as utterly irrelevant, and ask that the question be withdrawn.

10

THE COMMISSIONER: Well, I will allow the question and give you an exception.

THE WITNESS: What rights have I got? Supposing I refuse to answer the question?

MR. HACKETT: Read him the question.

THE WITNESS: I say I refuse to answer it. Now, I want to know my standing when I refuse to answer. I have got some rights, I know, but I don't know what they are. I want to be advised what they are. He can ask me relevant questions, and I will answer them, but I am not going to sit here all day answering a lot of silly questions that have no connection with this case. If your object in doing that is to make me lose my temper, or something like that, you might succeed. But I don't know what my rights are. I must have some rights, and I want to know what they are.

20

THE COMMISSIONER: Well, I don't know that I am your counsel, so I shall not say anything at the moment.

30

THE WITNESS: I certainly have a right to refuse to answer questions. That is a constitutional right, isn't it?

THE COMMISSIONER: Mr. Cassidy, you may refuse to answer, at your peril, to this extent, the peril being that counsel here can go to the Supreme Court and ask for a ruling on the question and make you answer the question.

40

THE WITNESS: Well, I refuse to answer it. Let him go to the Supreme Court.

MR. HACKETT: Here is a man who has come here and made testimony as to his bank account, and he contends that certain moneys that were in it belonged to the deceased Phillips, and out of that grows a very intense interest in his bank account.

MR. COOK: Mr. Hackett is, —

Thomas M. Cassidy for plaintiff recalled (cross-examination).

10 THE WITNESS: Well, wait a minute. May I ask this question: Phillips has no interest in my bank accounts after his death, has he? Now, if you want to know my bank accounts up to the time of Phillips's death, you have them, and up to the time of these checks and this money. I don't see what interest you can have in what I am doing now, my deposits, or anything else.

MR. HACKETT: Read him the question.

THE WITNESS: I refuse to answer the question. Go to Supreme Court. I refuse to answer it, that's all.

THE COMMISSIONER: Read the question, Mr. Clerk.
(Question read by the Clerk).

20 THE WITNESS: I refuse to answer the question other than the way that I have answered it, giving the banks that I had my accounts in up to that time. Now I will get a ruling on that. Let's go on with the rest of it.

MR. HACKETT: No, I don't think we will go on with the rest of it. I can wait just as long as you can.

THE WITNESS: Well, I am just waiting for the curtain to ring down on me. I don't know what engagements you have, so we will wait together.

30 BY MR. HACKETT:

Q.—Do you wish the Commissioner to understand that up to the date of the death of Phillips, you had no bank account elsewhere — A.—Yes, I did. I just remember I did have a bank account—

Q.—Just a minute. Let me finish the question, please. A.—Yes.

Q.—(Continuing) — elsewhere than with the Bowery & East River Bank?

40 MR. COOK: That is not what he said, Mr. Commissioner.

THE WITNESS: That is not what I said at all. I did not answer the question in that way at all. I told you every place I had a bank account up to the time of Phillips' death, except the bank at Saratoga, and I forgot that. I just happened to remember it. There is a bank at Saratoga, the Saratoga National Bank. I had an account in there.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

BY MR. HACKETT:

Q.—You told Mr. Goudrault yesterday, that you were in the horse racing business. When did you become the owner of horses, or of a racing stable? A.—The first time I own a horse was probably — I don't exactly remember the date — I imagine about 1902 or 1903, in around there; 1903, about 1903.

10 Q.—But when did you become the owner of a stable? A.—
What do you call a stable?

Q.—A string of horses. A.—Well, I became the owner of a string of horses in about 1906, I think. I think it was 1906.

Q.—How many horses? A.—Five or six.

Q.—How many have you now? A.—I will have to stop to count them. About 18 or 20, including my brood mares and stallions and young horses. At least that many.

20 MR. COOK: Mr. Commissioner, isn't this entirely irrelevant? What possible interest have we in the question as to the horses owned by Dr. Cassidy? My friend is going very far.

MR. HACKETT: Is Mr. Cook representing Dr. Cassidy?

MR. COOK: He is my witness here.

THE COMMISSIONER: Mr. Cook is making an objection now as to the relevancy of the question. I will allow you an exception.

30 MR. GOUDRAULT: I wish to associate myself with Mr. Cook in that objection, for the same reasons.

THE COMMISSIONER: I will give you a reservation and exception.

BY MR. HACKETT:

Q.—You told us yesterday that your business relations with Mr. Phillips did not include the sewer business? A.—They did not.

40 Q.—What did they include? A.—Nothing. Just betting.

Q.—Just betting. Was Phillips a big bettor? A.—Yes, sir. He was a very big bettor.

Q.—Just what does that mean in dollars? A.—He bet as high as \$100,000. He bet over it on one race. He was a very big bettor as bettors go around race tracks. Of course, he was not a consistent \$100,000. bettor, but he was a very big bettor.

Q.—Very big? A.—Very big.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—And as bettors go, was he a successful bettor? Did he play the ponies to success? A.—I don't know what Phillips did before he and I were associated, but from that time on he made money.

Q.—He made money. In large sums? A.—Well, he made them in large sums, and lost them in large sums.

10 Q.—When did you and he become associated, in so far as race horses were concerned? A.—Well, we were never associated on race horses. But in betting, we were associated, betting on the race horses. I would imagine, — let me see, in 1926, I think it was; it might have been 1925. 1926, I think it was; 1926 or 1927.

Q.—You placed bets for him? A.—Yes.

Q.—Collected bets for him? A.—Yes.

Q.—And put the proceeds into your own bank? A.—Not always.

20 Q.—Sometimes? A.—Sometimes.

Q.—Phillips was a drinking man, was he not? A.—Yes.

Q.—You are not? A.—No.

Q.—What sort of a man was Phillips? A.—A fine fellow. I never met a finer man.

Q.—Generous? A.—Yes.

Q.—Open-handed? A.—Yes.

30 Q.—What was the largest bet you ever knew Phillips to win? A.—Oh, I don't know. He won a bet on the Suburban, which ran up around a couple of hundred thousand, two or three hundred thousand; something like that. I can't remember the exact amount now.

Q.—Were you supplying him the information on which — A.—Handicap figures, yes.

Q.—I beg your pardon. (Continuing) — He placed his bets? A.—Mostly.

Q.—Was Phillips inclined to be secretive? Did he tell you everything about his business? A.—He told everybody everything about his business.

40 Q.—He told everybody everything about his business? A.— Yes.

Q.—Were you his principal crony, dearest friend? A.— No, I wouldn't say that, no.

Q.—Had he others with whom he was equally intimate? A.—I think so, yes.

Q.—Did I understand you to say that your intimacy was more marked from 1926 on, more pronounced? A.—Well, it wasn't more marked, but we had been very, very friendly during

Thomas M. Cassidy for plaintiff recalled (cross-examination).

the time I was an interne in the hospital, and subsequently until I moved out of Long Island City and we kind of spread out a little bit, don't you know. We just did not see so much of one another. He went on and continued over there in politics, and then I would see him from time to time. But we resumed our relations at Miami in, I think it was, 1925, or the spring of 1925. I think it was 1926, probably.

10 Q.—Who were his other cronies that you knew? A.—Zorn Campbell, Curran, Franz, Caplis. And then a lot of the contractors he dealt with. He had a very large coterie of friends, and a lot of very intimate friends.

Q.—When did you first know this boy Francis? A.—I met him in Miami, in 1925 or 1926, whenever it was I met Phillips, then. I think it was 1926.

Q.—Had you never seen the boy before? A.—No.

20 Q.—Did you know of his existence? A.—Yes, I knew he had a boy and a girl.

Q.—What were the relations between the boy and the father? A.—Very friendly, the same as any father and son, I imagine.

Q.—The boy was rather sickly and a cripple, was he? A. Yes. He had had infantile paralysis.

Q.—He knocked around with the father most of the time? A.—Well, yes.

30 Q.—I just mean, to your knowledge they were together most of the time? A.—No, they were not together most of the time, no. I wouldn't say that. They were together as much as a father and son would be. But there were trips the boy didn't go with him, and there were several trips the boy took that he didn't go with the father. They were not inseparable.

Q.—You met Phillips in Miami in 1926, did you say? A. I think it was. I am not quite positive about that.

Q.—Had you any racing stable in the South then? A.—No.

Q.—You have now? A.—Not in the South.

Q.—Where is it? A.—Here. The Jamaica race track.

40 Q.—Well, had you a stable here at that time? A.—No.

Q.—In 1926? A.—No.

Q.—Did you get to know this boy better as time went on? A.—Yes. I got to know him real well.

Q.—Because he was around with his father? A.—Yes. Around with me a whole lot.

Q.—You said yesterday that he was very close-mouthed, and you used the term, I think, "evasive" in referring to his

Thomas M. Cassidy for plaintiff recalled (cross-examination).

attempt to get across the line at Detroit. A.—Yes. At least, that is what he said when he came back. That is what he told us. He told us that his principal trouble was that he was all right until they asked him where his father was, and he resented that, and wouldn't tell them.

10 Q.—But in your relationship with him, did you find that he was talkative and confiding, or inclined to be suspicious and reserved? A.—Well, he was both. It is hard to describe the boy. He was a precocious kid, and inclined to be moody.

Q.—Intelligent? A.—Yes. Very intelligent, along certain lines.

Q.—When was Phillips first married, do you know? A.—I have no idea. I have no idea when his first marriage was.

Q.—Well, was he married when you first knew him? A.—I don't think so. I think he was single.

20 Q.—You do not know to whom he was married the first time? A.—Well, I don't know. He never told me. But his brother told me he was married to some girl who was killed or died in California. I don't know that positive.

Q.—Then his second wife, who was she? A.—Bessie or Nellie Trudden. I knew her very well. I knew her father and the family very well.

Q.—She was the mother of Francis? A.—Mother of the children.

Q.—Of the children? A.—Yes.

Q.—And she is dead? A.—She is dead, yes.

30 Q.—Was Phillips married three or four times? A.—Four, I think.

Q.—Four. Who was the third wife? A.—The third is, — what's her name again — “Sugar” —

Q.—She is still alive? A.—She is still alive. She is a divorced wife. He used to have a nick name for her.

40 MR. COOK: Mr. Commissioner, this is very irrelevant. I don't think my friend should proceed with details of this character. How can this witness possibly know about the private life of Mr. Phillips?

THE WITNESS: I met her once, and did not know at the time that she was his ex-wife. And someone afterwards told me that that was Phillips's wife. I can't think of her name. He had a nickname for her, I know that.

MR. COOK: Mr. Commissioner, I object to these questions.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

THE COMMISSIONER: I will grant you an exception, Mr. Cook, and allow the question. But I hope that Mr. Hackett will tie these questions up in some way material and relevant to the issues. I assume, Mr. Hackett, that you are not asking these questions just to waste time, or that you have some ulterior motive in asking them.

10 THE WITNESS: I can't think of that woman's name. I know he got a divorce from her.

BY MR. HACKETT:

Q.—Did you receive from Mr. Phillips, bonds other than those, the proceeds of which are represented by the checks that were produced this morning as Exhibits D-P-1 to D-P-7? A.—I have no recollection of receiving any other bonds.

20 Q.—Did you realize upon any securities other than those of which you have spoken and the proceeds of which are said to be contained in the seven checks that were produced this morning? A.—I did not.

Q.—The total is seven hundred and twenty-five thousand dollars. It is your statement that about \$750,000. went to Canada, Montreal? A.—No, I didn't say \$750,000. \$350,000. —

Q.—I beg your pardon, \$350,000. A.—Yes, \$350,000; the proceeds of the sale, of the last two sales.

30 Q.—The last two sales, or the last two checks, are dated January 20, 1928. and January 18th, 1928, respectively, for \$254,714 and \$110,287. Is it your testimony that the proceeds of these two checks, to the extent, at least, of \$350,000, went to Canada? A.—Yes.

Q.—How did you take that money up? A.—In my pocket.

Q.—In what form? A.—I had it in bundles of \$50,000, except the small money, in envelopes. Put them in large envelopes, and had them in my inside pocket, inside pocket of my overcoat.

Q.—Bills of what denomination? A.—\$1,000, bills.

40 Q.—Which you got from the Bowery & East River National Bank? A.—Yes.

Q.—What did you do with the balance of the cash, the total being \$750,000? A.—Mr. Phillips took some out of it. I don't know how much he took out, in the hotel.

MR. COOK: You are talking of the \$350,000?

MR. HACKETT: I am talking about the \$700,000.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

THE WITNESS: Oh, the \$700,000. I gave it to Phillips.

Q.—And the total amount that you took up, you say you put in the box? A.—Not the total amount.

Q.—That you took up to Canada? A.—No, I didn't put the total in, because Phillips took some out. He did take some money from the total, and the balance I put in.

10 Three hundred, I think it was in the neighborhood of three hundred and thirty-thousand, or something like that.

Q.—Now, I notice that in your testimony yesterday you said that there was a discrepancy between the amount of money which you put into the box and the amount that was taken up? A.—Yes.

Q.—What was the amount of that discrepancy? A.—I can't tell offhand now. But I know it did not represent the amount that we put in. There was a difference.

20 Q.—\$20,000 or \$25,000? A.—I don't know how much. I couldn't say offhand. But I do know there was a difference.

Q.—You don't remember how much you put in? A.—I don't remember the exact amount, no. I did, at the time, because we counted the money, and he took some of the money from a bundle, then he went to the safe deposit vault, and I know when the money came out, when they took it out of the bank, and stated the amount found in the vault, that there seemed to me to be a difference between the amount I put in and the amount I took up.

30 Q.—You went up to Montreal with John M. Phillips and his son? A.—Yes.

Q.—On a night train? A.—On a night train, yes.

Q.—Now, was that the day you cashed the last check? A.—No. I think a few days might have elapsed. I know we went on a Saturday night. This wouldn't tell you, — this might be able to straighten you out on that. (Indicating). No. On Sunday night, I mean. not Saturday night.

Q.—Sunday night? A.—Yes, we left on Sunday night.

Q.—The three of you together? A.—Yes.

40 Q.—How did you travel? A.—We had a drawing room.

Q.—The three of you were in that drawing room? A.—Yes.

Q.—And you had the money? A.—Yes.

Q.—And the boy went along with his father? A.—The boy went along with us.

Q.—And you got up there on Monday morning? A.—Monday morning.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—And came back Monday night? A.—Monday night.

Q.—Did Phillips come back on Monday night? A.—No. He remained there.

Q.—Did the boy stay there? A.—The boy went to Quebec.

Q.—With his father? A.—No. I think he was joined the following morning, — I think a young fellow named Andy Butler, joined him the following morning.

10 Q.—Where does Andy Butler live? A.—Astoria, or Long Island City, some place over there. I don't know where he lives, but he comes from that neighborhood. I am quite sure he was joined by Andy Butler the following morning, and they went to Quebec.

Q.—And you came right back? A.—Yes.

Q.—And you carried all the money? A.—Up.

Q.—Up to Montreal? A.—Up to Montreal, yes.

20 Q.—And who went with you to the Montreal Safety Deposit? A.—Francis Phillips.

Q.—Francis Phillips. Have you been in Montreal since that time? A.—No.

Q.—That was in January, 1928? A.—1928. I don't remember being up there since then.

Q.—And on the first trip to Montreal, it was on the first trip to Montreal that you met Colonel Smith? A.—Yes.

Q.—On that occasion did you go to Montreal with Phillips? A.—Yes.

Q.—He went up with you? A.—He went with me, yes.

30 Q.—But did not return with you? A.—Did not return with me. That is my recollection. I don't think he came back with me. I am quite sure he didn't. I think he stayed there a few days.

MR. COOK: That was Phillips, Senior.

THE WITNESS: Phillips, Sr., yes.

Q.—Now, you told us that some of these bonds were given to you by Phillips at his home. A.—Yes.

Q.—And some at your home? A.—Some at mine.

40 Q.—Where was he living then? A.—Freeport. South Ocean Avenue, I think it was 267 South Ocean Avenue. I can't remember that.

Q.—And where were you living? A.—Garden City, 222 Stewart Avenue, Garden City.

Q.—On how many occasions did he hand bonds over to you in your home? A.—Well, I think the last two batches, — I

Thomas M. Cassidy for plaintiff recalled (cross-examination).

am not quite sure. I think the last two batches he brought over to my place.

Q.—Yes. When you say the last two batches, do you wish us to understand, — A.—The proceeds of the last two sales.

Q.—Of the last two sales? A.—Yes.

Q.—And do you further wish us to understand that seven checks, on dates running from December 13, 1927, to January 20, 1928, indicate that on seven several occasions he gave you securities upon which to realize? A.—Yes.

Q.—So each one of these checks represents a separate transaction? A.—Yes, each one does, yes.

Q.—In other words, you realized upon the securities given to you by Phillips and paid over the proceeds before he gave you another lot of securities? A.—No, I wouldn't say that. I wouldn't say that. He gave me a batch — he gave me a batch to sell, and there was some little tedious work connected with it, because he had clipped the coupons, you see, and they were all mixed up. Now, I had some little work in straightening those coupons out and fastening them on the bounds again.

Q.—You mean that he clipped the coupons in advance? A.—Yes. And there was some little work, as you may well understand, to pin them back on the right bonds, straighten them out and pin them back on the right bonds, which had to be done before I could sell them, and which I had to do.

Q.—Was it the next coupons falling due? A.—He discounted, — not the next ones falling due, but he discounted the year's, he clipped the year's coupons from the bonds, you see, and I had to pin, in a majority of instances, some of them together on the bond again when they were sold. And I think, on account of that, a couple of those batches might have come together.

Q.—Well, is it your recollection that he gave you securities on seven different occasions? A.—I know that he gave them to me on several different occasions.

Q.—I said "seven". A.—I couldn't say that, whether it was six or seven, or what. But he gave them to me, anyway.

Q.—And did you say that all of the securities given you were bonds of the City of New York? A.—They were all City of New York bonds, to the best of my recollection. I did not pay much attention to that. I took them in to Bowman, and said "I want you to sell them."

Q.—Who was Bowman? A.—He was vice president of the Bowery & East River National Bank.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—And where was his place of business? Was it at Broadway and 41st Street? A.—Broadway and 41st Street. And I turned them in to him, asked him to get a quotation and dispose of them. And he marked all the details of them down. I didn't. Some of them were green, some of them were yellow.

Q.—Was anybody with you when you cashed these checks?

A.—No.

10 Q.—Can you explain why on one of the checks you apparently had to be identified? (Indicating). A.—Is that the only one?

Q.—That's the only one that I have seen. A.—Well, I will tell you. Bowman probably in this instance, called one of the employes of the bank and O. K.'d it and told him to go and get the money for it. I sat with him in his office.

20 Q.—That is why I was trying to find out from you if you had other bank accounts elsewhere. A.—No. That's the reason. If you go in, you know, lots of times I go into Bowman and sit talking with him, and he calls Tom, the messenger, and he O. K.'s it and gives it to him, which probably gives Tom the right to get the money. He does that quite often. I didn't know whether that was on only one.

Q.—There only appears to be one. Phillips just brought these bonds to you at your home, or gave them to you in his home?

A.—Yes.

Q.—He didn't tell you where he had taken them from? A. Where he had taken them from?

30 Q.—Yes. A.—No.

Q.—And you don't know? A.—I know where I saw them in the vaults of the bank at Jersey City, on one occasion. I went over there with him, but I don't know, — I think that he had them in his house, because he wasn't traveling to Jersey City, I don't think, at that time. I don't know.

Q.—Now, you have seen these identical bonds? A.—I won't say identical. I saw a lot of bonds in the vault at Jersey City. Coons all look alike to you in mass formation.

40 Q.—When was that? A.—When I saw them in Jersey? I saw them in Jersey in, I don't know whether it was 1926 or 1927; one of those years, 1926 or 1927. May be 1927.

Q.—Do you know how many you saw there? A.—No, I have no idea how many bonds. There were plenty. There were three boxes. I am quite sure, there were three big boxes pretty well filled up.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—What place was this in Jersey City? A.—I don't know the name of the bank.

Q.—Where is it situated? A.—Jersey City, just outside the Tube. You come out of the Tube and you walk up a block, and it is on the left-hand side.

Q.—First National Bank? A.—I think may be it might have been. I couldn't identify the name of it. I think may be it's
10 the First National. I know they have a very good looking vault down there for a Jersey City Bank.

Q.—You had never converted securities before, for Mr. Phillips? A.—No, I didn't.

Q.—This one period, beginning on December 13, 1927, and ending on January 20, 1928, is the sole period in which you converted securities for him? A.—Yes.

Q.—How many times have you been married? A.—Twice.

Q.—Is your first wife still living? A.—I don't know. I
20 think she is. I think she is living. She married again. I think, the last I heard of her, she was living.

Q.—You are Mrs. Phillips's third husband?

MR. COOK: Well, Mr. Commissioner, I object to this evidence. I really can't see the relevancy of it. It has been going on and on and on, and I object to it as illegal and irrelevant.

THE COMMISSIONER: I will allow that question.

MR. COOK: The certificate speaks for itself, and it is
30 an entire waste of time.

THE COMMISSIONER: I grant you an exception, Mr. Cook.

MR. COOK: I dislike objecting, Mr. Commissioner, but it is absolutely essential that this line of examination should cease.

BY MR. HACKETT:

Q.—You were divorced for desertion? A.—I think it was.
40 I think that was the ground.

MR. O'DONNELL: That is irrelevant. We object to that, and ask that it be stricken.

THE COMMISSIONER: I will grant you an exception.

Thomas M. Cassidy for plaintiff recalled (cross-examination).

Q.—Now, in regard to the questions which I asked you some time ago, where are you carrying on your banking business at the present time?

MR. COOK: I object to that as irrelevant, not flowing from the examination in chief, and it has nothing to do with the matters in issue.

10 THE WITNESS: I refused to answer that question a long while ago. That's a dead issue with me. I just want to know my rights on it. I have got some rights. I don't know what they are, but I know I have got some rights. I know that on this examination you can't ask me questions of all kinds. You must be confined to some rules of evidence relative to the case on hand.

BY MR. HACKETT:

20 Q.—Where have you strong boxes at the present time?

MR. COOK: Same objection.

MR. GOUDRAULT: Objected to.

THE WITNESS: That was ruled on yesterday, I think, wasn't it?

MR. GOUDRAULT: There is a new objection to the question.

30 THE COMMISSIONER: Mr. Hackett, I think if you will ask some questions which are tied up with the exhibits, or with Mr. Phillips's estate, why, I might feel more affable than I do for the moment.

MR. HACKETT: I thought that your affability had been so taxed, that you probably would not object to my putting a slight strain on it.

BY MR. HACKETT:

40 Q.—Where did you have strong boxes and bank accounts in the first seven months of 1928? A.—In the Bowery & East River; both of them, both the strong boxes and the bank account.

Q.—Those are the only ones you had? A.—Yes, at that time.

Q.—And if you had bank accounts and strong boxes elsewhere, they have been opened since the death of Phillips? A.—Since the death of Phillips; long after his death.

Thomas M. Cassidy for plaintiff recalled (redirect examination).

Q.—And your racing stable at Jamaica, came into existence after the death of Phillips? A.—No. It was during his lifetime that I went back in the racing business as far as owing horses is concerned. In 1927, I think. I think it was 1926 or 1927. I am quite sure it was 1927.

10 Q.—When were these loans made, to which you made reference yesterday? A.—The first one was made, I would think, offhand I would say probably in November. But that is a matter of record. You can get that from the bank.

Q.—Who signed the note for the loan? A.—I did.

Q.—Did you inform the bank that the bonds were not yours? A.—No. I did not. It's like a \$10. bill, it's anybody's who has it. They are highly negotiable, those bonds.

THE COMMISSIONER: It is nearly one o'clock now. What is your pleasure, Mr. Hackett?

20 MR. HACKETT: Under reserve of the right to question Mr. Cassidy further with regard to the questions which he refused to answer, I declare my cross-examination closed.

THE COMMISSIONER: Do you wish Mr. Cassidy to return this afternoon, or do you wish him excused now until such time—

MR. HACKETT: Well, if he cares to answer the questions, it may obviate the necessity of his coming back.

30 THE WITNESS: Well, I'm going to tell you right now, I am not going to answer, and I am not coming back this afternoon. I can come back tomorrow. I know I have got some rights, but I don't know what they are.

MR. GOUDRAULT: Mr. Cassidy, may I ask you one question?

THE WITNESS: Yes.

40 REDIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—You stated that you went to Montreal on that second trip with John M. Phillips? A.—No. Just Francis and I. Oh yes, with John M. Phillips.

Q.—And you went to the Montreal Safe Deposit Box Company? A.—Yes.

Q.—With whom? A.—With Francis Phillips.

Thomas M. Cassidy for plaintiff recalled (redirect examination).

Q.—Now, I show you a photostatic copy of the register, of the 23rd of January, 1928, from the Montreal Safe Deposit Box Company, wherein the signatures of Dr. T. M. Cassidy and F. Phillips appear. Would you identify that signature of yours there?

10 MR. HACKETT: It seems strange you put that in now, after I have finished cross-examination.

MR. GOUDRAULT: I make application to the Commissioner —

MR. HACKETT: But you had it yesterday; why didn't you put it in?

MR. GOUDRAULT: I just want it confirmed.

MR. HACKETT: But that isn't the way to do it.

20 BY MR. GOUDRAULT:

Q.—Is that your signature? (Indicating)? A.—That is my signature.

Q.—And is that the signature of Francis Phillips (Indicating)? A.—Yes.

Q.—He signed it? A.—Yes, he signed it.

MR. HACKETT: I object to that.

30 THE COMMISSIONER: I grant you an exception.

MR. GOUDRAULT: We offer for evidence, this photostatic copy, as Plaintiff's Exhibit C-211.

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

(Mr. Cook examines photostatic copy of register of Safe Deposit Company.)

BY MR. COOK:

40 Q.—It would seem from this exhibit that Mr. Goudrault has just produced, that on Monday, January 23rd, 1928, you went to the Montreal Safe Deposit Company with Francis Phillips at 11:25 a. m. and left there at 11:36, and your name and the name of Francis Phillips are bracketed together. A.—Yes.

Angelo Paino for plaintiff recalled (direct examination).

(Photostatic copy of Safe Deposit Company Register was thereupon received in evidence and marked Plaintiff's Exhibit C-211, of this date).

BY MR. HACKETT:

10 Q.—Will you take communication of this document, Plaintiff's Exhibit C-211, and state whether the name Dr. T. M. Cassidy is in your own handwriting A.—Yes. It is in my handwriting.

Q.—Is that your ordinary signature? A.—Well, that was my signature then. That is my handwriting. Sometimes I signed it that way, (indicating), and sometimes joined the T. M. together, (indicating).

20 THE COMMISSIONER: Dr. Cassidy, you are directed to be here at 11 o'clock tomorrow morning, September 18, 1931, in case Mr. Hackett wishes to assert any of his rights; if that is agreeable to you.

THE WITNESS: All right with me.

(Witness temporarily excused):

(Recess taken from 1:00 p. m. to 2:00 p. m.)

30 AFTER RECESS. 2:00 p. m.

DEPOSITION OF ANGELO PAINO
(recalled)

ANGELO PAINO was recalled as a witness on behalf of the plaintiff, and having been previously duly sworn, deposeth and saith as follows:

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

Q.—Mr. Paino, do you recollect making any contract for the City of New York for the construction of a sanitary sewer in 1919? A.—I was making some contracts.

Q.—I see. Did you ever hear of the Myrtle Avenue sewer? A.—Yes, sir.

Angelo Paino for plaintiff recalled (direct examination).

Q.—Did you build that sewer? A.—I built the sewer, but the contractor was Porter & DeWitt.

Q.—Will you now look at this contract and state if that is the contract you are referring to, contract bearing No. 51832, awarded on August 4th, 1919, to Porter & DeWitt, for the construction of a sanitary sewer on Myrtle Avenue and 32nd Street, and state if that is the contract which you are now referring to?

10 A.—Yes, this is the contract.

MR. GOUDRAULT: Plaintiff now offers for evidence this contract as Plaintiff's Exhibit C-212.

MR. O'DONNELL: Objected to as irrelevant, illegal, and not the proper way of producing and proving the alleged contract, and in no way being binding on the defendants.

MR. HACKETT: I join in that objection.

20 THE COMMISSIONER: The objection will be noted, and I will allow exceptions to defendants' counsel.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-212 of this date).

BY MR. GOUDRAULT:

Q.—This contract was assigned to you, or to Angelo Paino & Company, of which you were a partner? A.—Angelo Paino & Company, yes.

30 Q.—Will you now look at this assignment from Porter & DeWitt to Angelo Paino & Company, dated the 11th of September, 1919, and state if that is your signature therein appearing? A.—(Examining paper). Yes, sir.

MR. GOUDRAULT: Plaintiff now offers for evidence, as Exhibit C-213, this assignment.

(The said assignment was thereupon received in evidence and marked Plaintiff's Exhibit C-213, of the date).

40 THE COMMISSIONER: I understand, Gentlemen, that witnesses do not need to sign or certify to their testimony, and that is to be good —

MR. HACKETT: The stipulations made for witnesses heard before the adjournment, shall apply.

Angelo Paino for plaintiff recalled (direct examination).

THE COMMISSIONER: All stipulations, particularly that one.

BY MR. GOUDRAULT:

Q.—I notice that on this assignment, Exhibit C-213, your signature has been witnessed by William F. Matthews? A.—
10 Yes, sir.

Q.—Was that Dr. Matthews? A.—Yes.

Q.—You knew him? A.—Yes.

Q.—Did you know him at the time of this assignment? A.
Maybe around that time.

Q.—What was his connection with that assignment, do you know? Did you know that he was associated with Phillips, John M. Phillips? A.—I know he was with John M. Phillips, but I don't know whether he was associated, or partner, or friend.

20 MR. HACKETT: And you know he was the witness?

THE WITNESS: Yes, sir.

Q.—Was Matthews present when you signed that assignment? A.—Well, he must be, because —

Q.—You are not positive? A.—I am not positive, but he must have been present if he took my signature.

Q.—When did you know Phillips? When did you first know John M. Phillips? A.—Oh, about a couple of years before that.
30 1917, 1918, something like that.

Q.—Did you take up —

MR. HACKETT: He gave us all that yesterday.

THE WITNESS: Yes.

Q.—Did you take up with Phillips the question of the pipe? A.—No, sir.

Q.—For this contract? A.—No, sir.

Q.—Did you pay anything for the assignment? A.—No, sir.

40 Q.—Nothing at all? A.—Nothing at all.

Q.—Did you pay for the pipe? A.—We paid for the pipe, but my partner done all the arrangement.

Q.—Your partner did all the arrangement? A.—Yes.

Q.—Do you know to whom the pipe was paid for?

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

Angelo Paino for plaintiff recalled (direct examination).

MR. HACKETT: I join in that objection.

THE COMMISSIONER: I will allow the answer to be made, and I will allow exceptions to defendants' counsel. A.—I think it was paid to John M. Phillips. I am not sure.

10 Q.—Do you know when the pipe was paid for? A.—During the construction.

Q.—Will you look at a note dated October 19, 1919, for \$12,500, signed by Matthews, to the Order of Angelo Paino & Company, and state if you know anything about this note?

MR. O'DONNELL: We object to that as irrelevant, on behalf of the Phillips Estate.

MR. HACKETT: I join in that objection, on behalf of the Crown Trust Company.

20 THE COMMISSIONER: I will allow the answer to be given, and grant exceptions to defendants' counsel. A.—I think the best of my recollection is this: That Mr. Matthews, Dr. Matthews, wanted to borrow some money, and he gave a note, and the company gave him money, gave check to Matthews, and later on he paid, and they deducted from the pipe. Something like that, to the best of my knowledge.

BY MR. GOUDRAULT:

30 Q.—How do you know? A.—That is the best of my knowledge.

MR. HACKETT: You are not sure?

A.—I am not sure.

Q.—Now, we will try to have you make sure, as much as we can.

MR. GOUDRAULT: Plaintiffs produce this note, as Plaintiff's Exhibit C-214. We offer this for evidence.

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

MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections are noted, and I grant exceptions to defendants' counsel.

(The said note was thereupon received in evidence and marked Plaintiff's Exhibit C-214, of this date.)

Angelo Paino for plaintiff recalled (direct examination).

Q.—Where was the pipe, the precast pipe, to be used for the construction of that sewer, Mr. Paino? A.—Where it was?

Q.—Where it was when you took the assignment? A.—It was within a block from the job, and alongside the job.

Q.—Alongside of the job. Now, did I understand you to say — your company, Angelo Paino & Company, have anything to do with Matthews?
10

MR. O'DONNELL: I object to that as irrelevant.

MR. HACKETT: I join in that objection.

THE COMMISSIONER: I will allow the answer to be given, and grant exceptions to defendants' counsel.

A.—The point is this, Matthews came down with Phillips to my company, and this fellow asked \$12,500., and we didn't give it to him.
20

MR. COOK: Whom do you mean by "this fellow"?

THE WITNESS: Dr. Matthews. They asked for \$12,500, and the company won't give it to him, except he give a note, and he give a note to the company, and the company give him a check for \$12,500.

MR. HACKETT: And he paid it back eventually?

THE WITNESS: He paid back eventually. That is my
30 recollection, he paid back eventually.

BY MR. GOUDRAULT:

Q.—Is that the same Matthews that witnessed your signature on the assignment? A.—Yes, sir.

MR. O'DONNELL: Same objection.

MR. HACKETT: I join in the objection.

THE COMMISSIONER: The objections will be noted,
40 and I grant exceptions to defendants' counsel.

Q.—Did you have anything to do with him on that assignment? A.—No, not that I know. If this case was only a year ago or two years ago, and if you go to the Meyer Investigation, at that time I remember more, and I could answer the question

Angelo Paino for plaintiff recalled (direct examination).

right. But 1919 to 1931 is pretty long time to remember, and that is the best of my knowledge.

Q.—Are you in a position to state that it was in payment for pipe? A.—I can't answer.

Q.—I now show you a photostatic copy of a piece of paper. You just look at it, and I will put you a question.

10 MR. HACKETT: Just let me look at it.

(Mr. Hackett examines paper referred to).

Q.—Was that the pipe that you used on that particular job? A.—Yes, sir.

Q.—And you paid Phillips the prices therein mentioned?

MR. HACKETT: Just a second. I make an objection to a photostatic copy of an original which has not been produced.

20 MR. O'DONNELL: And we also object to that as not being the best evidence of any such payment.

THE COMMISSIONER: I will grant defendant's counsel exceptions.

BY MR. GOUDRAULT: Plaintiff now offers for evidence, this photostatic copy of receipt from John M. Phillips, as Plaintiff's Exhibit C-215.

30 MR. COOK: Mr. Goudrault, you don't offer that, surely, as the equivalent of an original, do you, nor of the document which it purports to be?

MR. GOUDRAULT: No. I will try to get the original.

MR. COOK: All right. Never mind.

(The said photostatic copy of receipt was thereupon received in evidence and marked Plaintiff's Exhibit C-215, of this date.)

40 BY MR. GOUDRAULT:

Q.—As far as you can see, this is a photostatic copy of receipt, is it? A.—Yes, as far as I can see.

MR. O'DONNELL: Objected to, as the document speaks for itself.

MR. HACKETT: I join in my objection.

Angelo Paino for plaintiff recalled (direct examination).

THE COMMISSIONER: The objections will be noted, and I will grant exceptions to defendants' counsel.

Q.—Have you seen the original of that, Mr. Paino? A.—This is a photostatic copy.

Q.—I see. Now, that was in payment of pipes? A.—Yes, sir.

10 Q.—That you made to Phillips? A.—Yes, sir.

Q.—That your firm made to Phillips? A.—Yes, sir.

Q.—Did you see the original of that? A.—The original, I don't remember. There must have been an original, some time.

Q.—What's your answer? A.—There must be the original some time.

Q.—Have you got that original? A.—No, sir.

Q.—Do you know where it is? A.—No, sir.

20 Q.—It belonged to you, it was the property of Angelo Paino & Company? A.—No, sir.

Q.—Now, do you recollect the second job that you might have made in Queens, Mr. Paino? I am always speaking of the construction of sanitary sewers. Do you remember? A.—There were so many jobs, I don't remember.

Q.—Did you ever hear of the Maurice Avenue job? A.—Yes.

Q.—That was also known under the name of — A.—Angelo Paino.

30 Q.—I mean, was that Maurice Avenue job also known under the name of Corona? A.—Corona, yes.

Q.—Did you get that by assignment, or direct from the City? A.—Direct.

Q.—Now, will you look at this contract, bearing No. 53907, awarded June 1, 1920, to Angelo Paino by the City of New York, for the construction of a sewer in Corona Avenue, and state if that is the contract you are referring to? A.—Yes, sir.

MR. COOK: Has that been produced already?

40 MR. GOUDRAULT: No, it is being produced now. We now offer for evidence, this contract, as Plaintiff's Exhibit No. 216.

MR. O'DONNELL: Objected to as irrelevant and illegal and not the proper way of producing and proving the alleged contract, and in no way binding on the defendants.

MR. HACKETT: I join in that objection.

Angelo Paino for plaintiff recalled (direct examination).

THE COMMISSIONER: The objection will be noted, and I grant objection to defendants' counsel.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-216, of this date).

BY MR. GOUDRAULT:

10 Q.—You recognize your signature in that contract, Mr. Paino? A.—Yes, sir.

Q.—That is it there (indicating)? A.—Yes, sir.

Q.—Now, do you recollect the size of the pipe that was being used for that particular job? A.—Eight-foot. But the most of that job was all monolithic concrete sewer.

Q.—That would be monolithic? A.—Monolithic.

Q.—But there was a contract that called for precast pipe? A.—A very small portion.

20 Q.—I see. The size you say was eight feet? A.—8 feet.

Q.—Do you remember the price which you paid?

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

MR. HACKETT: I join in that objection.

THE COMMISSIONER: I will allow the answer to be given, and grant exceptions to defendants' counsel.

30 A.—My best recollection, I don't know, between \$35 and \$40. I forget it.

Q.—Well, now, that was in 1920? A.—Yes, sir.

Q.—Do you remember the third next best job that you did in Queens County? Do you remember the 76th Street job?

A.—76th Street?

Q.—Yes. A.—Yes.

Q.—(Continuing) Being made by your company? A.—Yes.

Q.—There was one or two contracts? A.—Two.

40 Q.—Will you look at contract No. 58232, awarded to Angelo Paino by the City of New York on August 22, 1921, for the construction of sewers in 76th Street, and state if that is the contract you are referring to? A.—Yes, sir.

Q.—And that is your signature appearing on this contract (indicating)? A.—Yes, sir.

Angelo Paino for plaintiff recalled (direct examination).

MR. O'DONNELL: Objected to as irrelevant and illegal, and not the proper way of producing and proving the alleged contract, and in no way binding on the defendants.

MR. HACKETT: I join in that objection.

10 THE COMMISSIONER: The objections will be noted, and I grant objections to defendants' counsel.

Q.—That is your signature? A.—Yes, sir.

MR. GOUDRAULT: We now offer for evidence this contract, as Plaintiff's Exhibit C-217.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-217, of this date).

BY MR. GOUDRAULT:

20 Q.—Will you now look at this contract bearing No. 58,251, awarded to Angelo Paino, by the City of New York, on August 18th, 1921, also for the construction on 76th Street.

MR. O'DONNELL: Same objection.

MR. HACKETT: I join in the objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

30 Q.—(Continuing) And state if that is the contract executed by your company? A.—Yes.

Q.—And do you recognize your signature? A.—Yes.

MR. GOUDRAULT: We now offer for evidence, this contract, as Plaintiff's Exhibit 218.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-218 of this date).

40 Q.—Do you remember making any arrangements with Flillips for the pipe that was to be used on those contracts? A. On these last two contracts?

Q.—Yes. A.—I don't think there was any pipe. I don't recollect there was any pipe. If you will let me see the contract. I will see if there was any pipe on that contract.

(Witness examines contract).

Angelo Paino for plaintiff recalled (direct examination).

Q.—There was pipe? A.—Yes.

Q.—Do you remember asking Phillips for quotations? A. Yes.

MR. O'DONNELL: We object to any evidence as to conversations between the witness and the deceased Phillips.

10 MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Q.—Before or after you got the contracts? A.—Always before.

Q.—Do you remember how much you paid for the pipe, approximately? A.—No, sir.

Q.—They were small jobs, weren't they? A.—Yes, sir.

20 Q.—The sizes might help you recollect? A.—2 foot 3, and 2 foot.

Q.—That's right. Then, do you remember the prices you paid? A.—No.

Q.—Now, do you remember another job, quite close to that same date? That was in 1921. Did you ever hear of the Weiss Avenue job? A.—Yes.

Q.—Did you do that contract? A.—Yes, sir.

30 Q.—Will you look at Contract No. 65,431, awarded to Angelo Paino on the 18th of April, 1923, and state if that is the contract you are referring to for the construction of a sewer on Weiss Avenue? A.—Yes, sir.

MR. O'DONNELL: Objected to as irrelevant and illegal and not the proper way of producing and proving the alleged contract, and in no way binding on the defendants.

MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendant's counsel.

40 Q.—And it is your signature therein appearing? (Indicating). A.—Yes, sir.

MR. GOUDRAULT: We now offer for evidence, as Plaintiff's Exhibit C-219, this contract.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-219, of this date).

Angelo Paino for plaintiff recalled (direct examination).

Q.—The date of that contract is 1923, April, 1923. Do you recollect getting any jobs from the City in the fall of 1921, which is the date of the last contract, the 76th Street contract, and this Weiss Avenue contract? A.—I don't remember sure, but I had a lot of work.

Q.—But I mean in sewers. A.—Sewers and water, and so forth.

10 Q.—Are you positive about that? A.—Yes, sir.

Q.—Between 1921 and 1923? A.—Yes, sir. I got the biggest contract of my life between 1921 and 1923. Of course, a water job.

Q.—But no sewers? A.—Small sewers.

Q.—But no regular contract for sewers? A.—Yes.

Q.—Do you remember the year? A.—1922, in the Borough of Brooklyn.

20 Q.—But I am speaking of the County of Queens. A.—None.

Q.—None? A.—No, I don't think so.

Q.—Did you see Phillips as regards pipe for the Weiss Avenue contract, the pipe to be used in it? A.—Yes, sir.

Q.—Did you see him before you quoted? A.—I don't recollect now; I don't remember.

Q.—And you put in your bid, didn't you? A.—Oh, yes.

Q.—You were the lowest bidder? A.—Yes, sir.

Q.—Did you get a quotation from Phillips on that pipe for the Weiss Avenue? A.—I don't remember.

30 Q.—Do you know that the pipe that you used for Weiss Avenue came from Phillips? A.—Yes, sir.

Q.—Are you positive of that? A.—Yes, sir.

Q.—Did you ever build any pipe yourself in Queens County? A.—Yes, sir.

Q.—What kind of pipe? A.—Precast pipe.

Q.—Had it any special name besides that? Standard precast pipe? A.—Federal.

40 Q.—Federal. Do you remember on what occasion you started to build the Federal pipe? A.—What do you mean?

Q.—Well, you say that in the Weiss Avenue you secured your pipe from Phillips?

MR. HACKETT: He wants you to say that Phillips charged you too much, so you made some yourself.

MR. GOUDRAULT: It is the very contrary. If you did not interrupt, Mr. Paino would answer.

Angelo Paino for plaintiff recalled (direct examination).

THE WITNESS: I don't know what you mean.

Q.—Well, I will put the question quite clearly. A.—I don't want to answer something I don't understand.

Q.—I see. At a certain time you built your own pipe, is that right? A.—Yes, sir.

Q.—Do you remember for what contract? A.—Oh, many
10 contracts, Queens Borough.

Q.—But the first one, do you remember? A.—I couldn't tell you the first one.

Q.—Could it be for the Weiss Avenue? A.—May be it was. I am not quite sure. May be it was for that.

Q.—How did you come to build your own pipe?

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

MR. HACKETT: I join in that objection.

20 THE COMMISSIONER: I will allow the answer to be given, and I grant exceptions to defendants' counsel.

A.—My company did. I don't know. I am not the only man who owned the concern.

Q.—I understand that. Try to recollect. Did you, as contractor, or as a member of the firm of Angelo Paino & Company, or Paino Brothers, at a certain time build your own pipe? A.—
Yes, sir.

Q.—And you are not positive, but it may be it was for
30 this Weiss Avenue contract? A.—Yes. For that Weiss Avenue contract, also on a lot of contracts after that.

Q.—Then if it was for the Weiss Avenue contract, you did not get your precast pipe, then, from Phillips? A.—I got it from Phillips.

Q.—The price or the quotation? A.—I got the pipe from
40 Phillips, but I started building the pipe myself, and the best of my recollection, when I started to build pipe, I got the pipe from Phillips practically for nothing on that contract. I don't know what the old price was.

MR. O'DONNELL: We object to any verbal evidence as to price, as not being the best evidence.

MR. HACKETT: I join in that objection.

THE COMMISSIONER: I will allow the answer to stand, and grant exceptions to defendants' counsel.

Angelo Paino for plaintiff recalled (direct examination).

BY MR. GOUDRAULT:

Q.—Was it Standard Federal Concrete Pipe that you built?

A.—Yes, sir.

Q.—How much did you build? A.—Not much at that time.

Q.—Did you build any for the Weiss Avenue contract?

A.—I built some, but there was none incorporated on the job.

10

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

MR. HACKETT: I join in the objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

BY MR. GOUDRAULT:

Q.—Why? A.—Because I got the pipe from Phillips cheaper than I could manufacture. That is the answer.

20

Q.—You got a price from Phillips? A.—Cheaper than I could have manufactured myself.

Q.—I see. So you got the pipe from Phillips? A.—Yes, sir.

Q.—Before you got that price which was cheaper than you could manufacture it yourself, did you have any other quotations or prices from Phillips for the job? A.—I think so. I don't remember sure, now. I think I might have.

Q.—Was that price, that quotation for that job, that first quotation, higher than the second quotation?

30

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

MR. HACKETT: I join in that objection.

THE COMMISSIONER: I will allow the answer to be made, and grant exceptions to defendants' counsel. A.—I don't remember. May be it was.

Q.—You mean higher? A.—Yes.

Q.—And then you started to build your own pipe? A.—

40

Yes.

Q.—And then what happened after that? A.—Then I got it from Phillips, because I couldn't build the pipe for the price it was quoted to me.

Q.—Was the pipe that you built but did not use on the Weiss Avenue job, was it alongside the ditch; was it built alongside the ditch? A.—No. A little further.

Angelo Paino for plaintiff recalled (direct examination).

Q.—But it was alongside the ditch; it was not in the ditch?

A.—No. Within a quarter of a mile or so.

Q.—I understood you to say that you had two quotations from Phillips for pipe for Weiss Avenue. A.—I may have, I don't know.

10 Q.—Now, will you look at this letter or contract dated August 9th, 1923, apparently signed by John M. Phillips and yourself, and state if you ever saw this before? A.—Yes, sir.

Q.—That is your signature? A.—Yes, sir.

Q.—Is that John M. Phillips' signature? A.—Yes, sir.

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

MR. HACKETT: I join in that objection.

20 THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

MR. GOUDRAULT: We now offer for evidence, as Plaintiff's Exhibit C-220, this contract between Angelo Paino and John M. Phillips, dated August 9th, 1923, for precast pipe to be used on the Weiss Avenue contract.

THE WITNESS: And that is why I got it, because I could not build for that price.

Q.—You considered this was a cheap price? A.—Yes, sir.

30 (The contract referred to was thereupon received in evidence and marked Plaintiff's Exhibit C-220 of this date).

Q.—Now, coming back to the other quotations that you had from Phillips before, for the Weiss Avenue job,— A.—Higher than that.

Q.—Much higher? A.—I don't know much higher, I don't know how much higher.

Q.—What is that? A.—Much higher, but I don't know how much higher.

40 Q.—Much higher, but you don't know how much higher? A.—Yes.

Q.—Now, there were some other contracts that you made around that same time, 1923. That is dated 1923. A.—Yes.

Q.—Do you remember the Jamaica Avenue contract? A.—Yes.

Q.—The Metropolitan Avenue contract? A.—Yes, sir.

Angelo Paino for plaintiff recalled (direct examination).

Q.—And the Hollis Drain? A.—Yes, sir.

Q.—Those three contracts were direct to Angelo Paino from the City? A.—Yes.

10 Q.—Will you now look at this contract bearing No. 65411, dated April 18th, 1923, awarded on that date to Angelo Paino, for the construction of a sewer on Metropolitan Avenue, and state if that is the contract you are referring to? A.—Yes, sir.

MR. O'DONNELL: Objected to as irrelevant and illegal, and not the proper way of producing and proving the alleged contracts, and in no way binding on the defendants.

MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

20 Q.—And it is your signature which appears here in this contract (indicating). Right here, that is your signature? A.—Yes, sir.

Q.—And you did build that sewer? A.—Yes, sir.

MR. GOUDRAULT: We now offer for evidence, this contract, as Plaintiff's Exhibit C-221.

(The said contract was received in evidence and marked Plaintiff's Exhibit C-221, of this date).

30 Q.—Will you now look at this contract, No. 85,621, which bears the same date as the previous contract, April 18, 1923, also awarded to Angelo Paino Company, for the construction of a sewer in Jamaica Avenue, and state if you also did that work for the City of New York? A.—Yes, sir.

MR. O'DONNELL: Objected to as irrelevant and illegal, and not the proper way of producing and proving the alleged contract, and in no way binding upon the defendants.

MR. HACKETT: I join in that objection.

40 THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Q.—And it is your signature there appearing in this contract? A.—Yes, sir.

MR. GOUDRAULT: We now offer for evidence, as Plaintiff's Exhibit C-222, this contract.

Angelo Paino for plaintiff recalled (direct examination).

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-222, of this date).

BY MR. GOUDRAULT:

Q.—And you say that there was a third contract, the Hollis Drain contract? A.—This is the Hollis one (indicating).

10 Q.—Jamaica Avenue or Hollis Drain? A.—Yes.

Q.—That is the same contract? A.—No. This contract (indicating).

Q.—Did you have a talk with Phillips to get quotations for precast pipe to be used in these particular contracts?

MR. O'DONNELL: We object to any evidence as to conversations between the witness and Phillips.

MR. HACKETT: I join in the objection.

20 THE COMMISSIONER: I will allow the answers to be made, and I grant exceptions to defendants' counsel. A.—That is in the same time as Weiss Avenue contract, that is the contract, all three together.

Q.—I see. Did you have quotations from Phillips for the three? A.—I don't remember. That is the same time, the Weiss Avenue contract. Them three contracts was together, same day, and same letting, and same time.

30 Q.—Did you use precast pipe in the three of them? A.—Yes.

Q.—Phillips' pipe? A.—Yes, sir.

Q.—Then you must have had quotations. Would that quotation there apply to the three contracts? A.—Yes, sir. There was three contracts at the same time.

Q.—I see. So he gave you that price for these three jobs? A.—Yes, sir.

Q.—Jamaica Avenue, Metropolitan Avenue and Weiss Avenue jobs. A.—That's right.

40 Q.—The quotation applied to the three jobs? A.—That's right.

Q.—Now, do you then remember the gross amount of contracts that you had, Mr. Paino, for the Borough of Queens from that date of these contracts, from 1923, after April, 1923, until 1928? I say, the gross amount. A.—The gross amount, three million seven hundred thousand to three million eight hundred thousand. That's roughly.

Angelo Paino for plaintiff recalled (direct examination).

MR. COOK: You mean the gross number, not the amount.

Q.—The full amount paid by the City for the contracts?

A.—Yes, about.

Q.—Would that include the monolithic? A.—That includes the monolithic.

10 Q.—Now, could you tell us as approximately as possible, leaving out the monolithic contract, what would be the total amount of the contract that you secured from the Borough of Queens, from 1923 to 1928?

MR. O'DONNELL: We object to any verbal evidence as to this, as not being the best evidence.

MR. HACKETT: I join in that objection.

20 THE COMMISSIONER: I will allow the answer to be made, and grant exceptions to defendants' counsel.

BY MR. GOUDRAULT:

Q.—As approximately as possible. A.—I don't know what you mean.

Q.—Deduct from the three million and some hundred thousand dollars. A.—Why don't you put the question how much I paid to Phillips for pipe, and I'll tell you right away.

30 Q.—We will come to that later on. A.—I don't know. Maybe two million, or may be two million and a half. I don't know. My answer could not be an intelligent answer.

Q.—That is why I am asking you to give it as approximately as possible. A.—Maybe two million and a half.

Q.—For sanitary sewers? A.—Maybe two million and a half, maybe three; I don't know. If you ask me the question how much pipe I paid for between 1923 and 1927, I will give it to you.

Q.—You mean how much money you paid to Phillips? A.—Yes.

Q.—How much? A.—About \$900,000.

40 MR. O'DONNELL: We object to any verbal evidence of payment, as not being the best evidence.

MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Angelo Paine for plaintiff recalled (direct examination).

BY MR. GOUDRAULT:

Q.—Now, those sanitary sewers, would you remember the number of them from 1923 — of the small jobs — until 1928?

A.—Remember what?

Q.—The number of sanitary sewers, B. type? A.—B type. I remember some—

10 Q.—As close as possible. A.—Farmers Boulevard, 150th Street, 124th Street, Sutphin Boulevard, Tuckerton Street.

Q.—That's five. A.—And I don't know whether the Hays Avenue was before 1923. Hays Avenue, and I think Broadway.

Q.—That is after 1923. A.—Broadway makes seven. Maybe some more.

Q.—Those are all sanitary? A.—Yes, sir, all sanitary.

Q.—Now, in all these contracts, what kind of precast pipe did you use? I mean, where did you get it from? A.—From John M. Phillips.

20 Q.—From anybody else? A.—No, sir. John M. Phillips.

Q.—Did you build any precast pipe? A.—Not on those particular jobs. After that, yes.

Q.—You started your building at the Weiss Avenue job, is that it? A.—And then continued again.

Q.—When? A.—Oh, in 1927, I think, or 1928.

Q.—Phillips was out of Queens? A.—Maybe. I don't know. Maybe he is living yet, I don't know. I heard the rumors.

Q.—Now, did you have any tests made of your pipe? A.—

30 What do you mean?

Q.—Of the Federal Pipe that you built? A.—Yes, sure.

Q.—You did? A.—Yes.

Q.—One or two? A.—Oh, many. More than one or two.

Q.—Do you remember where the test was made — do you remember the first test? A.—I don't know. I think so, yes. I think so, was making in my yard, I think, the first test.

MR. O'DONNELL: You did not make the test?

THE WITNESS: No.

40 MR. O'DONNELL: Then we object to any verbal evidence by this witness, as being not the best evidence.

MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Angelo Paino for plaintiff recalled (direct examination).

BY MR. GOUDRAULT:

Q.—Did you have the test made? A.—Yes, sir.

Q.—The first one, you don't remember on what job it was?

A.—No.

Q.—Who made it? A.—Well, we had an official from the Borough of Queens.

10 Q.—Do you know Dr. Butterfield? A.—Yes, sir.

Q.—Did he have anything to do with the tests? A.—No, sir.

Q.—Was any test made on the Weiss Avenue job? A.—No, sir.

Q.—I mean to say on Weiss Avenue, where you built? A.—No.

20 Q.—You told us a minute ago that you first built that Standard Federal concrete pipe, precast pipe, for the Weiss Avenue job, but that it was not put in that particular job, it was built alongside there. Is that right? A.—Yes.

Q.—Would that be the spot where one test was made? A.—They only just started building the pipe, they only built maybe 50 feet, and when I started building pipe, this gentleman come to me and he offered me that low price.

MR. O'DONNELL: Same objection as to any conversation between this witness and Phillips.

MR. HACKETT: I join in that objection.

30 THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

BY MR. GOUDRAULT:

Q.—Now, we will come back to the tests. Tests were made? A.—No, sir, not at that time.

Q.—When were they made, do you know? A.—After that. In 1927.

Q.—No tests were ever made before that? A.—No, sir.

40 Q.—Do you know a man by the name of Leidy? A.—Leidy, yes.

Q.—Murphy, or Murtha? A.—Murtha, I think.

Q.—And Ryan? A.—Yes, sir.

Q.—Who is Ryan? A.—Ryan is the ex-president of the Borough of Queens.

Q.—Well, now, who was the Borough President then? A.—Maurice E. Connolly.

Angelo Paine for plaintiff recalled (direct examination).

Q.—Now, do you remember the first test, — what was the result of the first test? A.—No test was made at that time.

Q.—I know, I don't speak of that time. But you said tests were made. A.—In 1927.

Q.—None before? A.—None before.

Q.—Do you remember taking the gentlemen Leidy, Murtha and Ryan, to luncheon one day? A.—Not only one day; many times.

Q.—Who were they, those fellows? A.—Those fellows, one was the Borough President, one was the Secretary to the Borough President, and I don't know Murtha exactly; I don't know his capacity.

Q.—And Ryan was your bondsman, was he? A.—Yes, sir.

Q.—I see. You said you took them many times to lunch, but do you remember one special luncheon? A.—Yes, sir.

Q.—What is the special luncheon you remember? A.—They were invited to come down there after I made that 50 feet of pipe, and see if they could get through my test.

Q.—You remember that particular time? A.—Yes, sir.

Q.—You don't remember the spot where that test was made? A.—No test was made.

Q.—No test was made? A.—No, sir.

Q.—Well, in what consisted a test when a test was made? A.—The test consisted of bringing pipe to the laboratory, which had a machine to determine the strength of the pipe, and the pipe should be sent to the laboratory for test.

30 MR. COOK: Is this Phillips' pipe?

THE WITNESS: No. He is talking about my pipe now, when I built the Weiss Avenue contract.

MR. COOK: Well, we are not interested in that, Mr. Commissioner.

THE COMMISSIONER: I will allow you an exception.

BY MR. GOUDRAULT:

40 Q.—So once the test was made, did you have a report?

MR. O'DONNELL: He didn't have any test made, he said.

A.—Did not.

MR. COOK: Mr. Goudrault, he says it was not Phillips' pipe at all.

Angelo Paino for plaintiff recalled (direct examination).

MR. GOUDRAULT: Tests were made of his own Federal pipe.

MR. COOK: We are not interested in his Federal pipe.

THE WITNESS: No test was made on the Weiss Avenue. I had a man come and look at the pipe.

10 Q.—What is his name? A.—You just mentioned those three names.

Q.—Dr. Butterfield? A.—Dr. Butterfield and Ryan, they had nothing to do with the test.

Q.—Did Dr. Butterfield have anything to do with the test? A.—Nothing to do with the test.

Q.—I see. And that was on the Weiss Avenue job? A.—On the Weiss Avenue job.

Q.—Who made the test, then?

20 MR. O'DONNELL: There was no test made.

A.—There was no test made. The time I made the test on my part was in 1927 or the early part of 1928, in that time.

Q.—Did they inspect that pipe of yours on Weiss Avenue, these gentlemen with whom you had lunch? A.—They come out and see the pipe.

Q.—They came out to see the pipe? A.—Yes, sir.

MR. COOK: After lunch?

30 Q.—Before lunch, wasn't it? A.—I think so.

Q.—When you got those quotations from Phillips to apply to those three jobs, did you have any tests made upon that date? I will give you the date in a minute. A.—It is for what?

Q.—For the Federal pipe. A.—I said no. The Federal concrete pipe was tested in 1927 for the Borough of Queens.

Q.—I know, but I mean to say you said a minute ago that the pipe was seen by Dr. Butterfield? A.—Yes.

40 Q.—Who was Dr. Butterfield? A.—He was somebody in the Borough of Queens.

Q.—Did he belong to the office of the President? A.—Yes.

Q.—Or to the laboratory? A.—Laboratory, yes, sir.

Q.—So they inspected the pipe there, anyway, on Weiss Avenue? A.—They seen the pipe, anyway. I dont know whether they inspected it.

Q.—Did you ever hear from those gentlemen after that inspection? A.—No, sir.

Angelo Paine for plaintiff recalled (direct examination).

Q.—Now, you had another test made by some professor of a university? A.—Yes, sir.

Q.—Columbia University? A.—Yes, sir.

Q.—You got those quotations from Phillips on August 9, 1923? A.—Yes.

Q.—Weiss Avenue and Jamaica Avenue and Metropolitan Avenue? A.—That's right.

10 Q.—Do you remember if the inspection on Weiss Avenue took place around that time? A.—There was no inspection made, only them fellows come and see the pipe. They got no authority, no right, who I take on the job to see the pipe that passed inspection. They got no rights.

Q.—They were there for inspection? A.—They invited me to show my pipe where I was building it.

Q.—And you showed the pipe? A.—That's all.

Q.—Would it be before you got this quotation, or after?

20 A.—Oh, I don't know. It must be before that quotation.

MR. O'DONNELL: Do you remember?

THE WITNESS: No, I don't remember.

MR. O'DONNELL: All right.

MR. GOUDRAULT: You can cross-examine this witness later. He is my witness now and I object, and I ask that that question and answer be stricken out. You are interrupting me now.

30 THE COMMISSIONER: I will allow it to stand, but I will ask you now please not to have the witness interrupted, except when a preliminary question is asked, during Mr. Goudrault's direct examination, or any of the other counsel's direct examination.

BY MR. GOUDRAULT:

40 Q.—But you remember stating that it must have been before that quotation? A.—I don't know, I say it must have been. I don't know. Of course, I can't remember things taking place before and after, and things like that.

Q.—Now, did you get another contract for the Queens County, Borough of Queens, shortly after that? A.—Short after that?

Q.—Yes, a few months after. A.—I don't remember.

Angelo Paino for plaintiff recalled (direct examination).

Q.—Do you remember a job done by you on Broadway?

A.—That was two years after, or a year after. No months.

Q.—Well, we will give you the date in a minute. Now, will you look at this contract, which was filed yesterday, as Plaintiff's Exhibit No. 204, for the construction of a sewer on Broadway, and awarded to you, Angelo Paino, and you see that the date there is November 3, 1924? A.—Yes.

10 Q.—Now, this Weiss Avenue contract was in the spring of 1923, it was awarded on the 18th of April, 1923, so was the Metropolitan and the Hollis and Jamaica Avenue. And then no other contracts were awarded to you except this in 1924, the Broadway? A.—No, sir. There was other contracts before that.

Q.—Before that? A.—Yes.

Q.—Could you tell us what?

20 MR. HACKETT: Just a minute. I think if Mr. Goudrault will turn to the list of exhibits which was prepared, he will find a complete statement of all contracts awarded, and that will possibly save time.

MR. O'DONNELL: Exhibit C-1.

MR. HACKETT: And it will obviate the necessity of further testing the memory of Mr. Paino.

THE COMMISSIONER: It is a large photostat.

MR. HACKETT: The first one.

30 THE COMMISSIONER: It is a composite exhibit.

(Witness examines Exhibit C-1).

BY MR. GOUDRAULT:

40 Q.—Mr. Paino, by looking at Exhibit C-1, which is a tabulation of all contracts awarded in the Borough of Queens from a certain date to a certain date, will you state what is the next contract you did get after the ones we referred to, which were for the Weiss Avenue, Metropolitan Avenue and Jamaica Avenue? Which is the next contract that you did secure? A.—Polk Avenue.

Q.—And that was contract signed November 10, 1924, is that right? A.—I think so.

Q.—It does appear. That is the one. And then the next one would be the Broadway contract. A.—Yes, sir.

Angelo Paino for plaintiff recalled (direct examination).

Q.—Which was awarded on November 3, 1924. The Polk Avenue contract was awarded to you, — let me get this right, Mr. Paino. The Jamaica Avenue, Metropolitan Avenue and Weiss Avenue were awarded to you April 18th, 1923. A.—I think so.

Q.—And the next contract that you secured from the Borough of Queens, or that you built in Queens, was, according to this C-1, Polk Avenue. A.—Yes.

10 Q.—And the date that the contract was signed— A.—1924.

Q.—November 10, 1924? A.—Yes.

Q.—But bids were opened on September 10, 1924, is that right? A.—Yes, sir.

Q.—And then you proceeded and you secured the Broadway contract? A.—Yes.

Q.—There are no other contracts that you got between those two? A.—No.

20 Q.—Between the Metropolitan Avenue and the Polk Avenue? A.—No.

Q.—And I understand that in the Polk Avenue contract, the Broadway contract, and the other five contracts that you mentioned, you only used Phillips' precast pipe in those seven contracts, is that right? A.—Yes.

Q.—Now, will you look at this contract, apparently signed by John M. Phillips and yourself, and state if that is your signature therein appearing? A.—Yes, sir.

Q.—That of Mr. Phillips also? A.—Yes, sir.

30 MR. O'DONNELL: Objected to as being not the best evidence of Mr. Phillips' signature.

MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Q.—This is a contract for pipe to be used in the construction of a sewer on Broadway? A.—Yes, sir.

40 Q.—That is the Broadway contract that we have been speaking of? A.—Yes, sir.

MR. GOUDRAULT: We now offer for evidence, as Plaintiff's Exhibit C-223, this contract.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-223, of this date.)

Angelo Paino for plaintiff recalled (direct examination).

BY MR. GOUDRAULT:

Q.—Did you buy your pipe from Phillips for that job?

A.—Yes, sir.

MR. O'DONNELL: Objected to as not the best evidence of payments to or purchases from Phillips.

10 MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Q.—Did you pay him for it? A.—Yes, sir.

Q.—Did you use all that pipe? A.—Yes, sure. About a few feet one way or the other.

20 Q.—I notice here on Exhibit C-220, which is the contract between you and Phillips for the pipe to be used in the Weiss Avenue, Jamaica Avenue and Metropolitan Avenue contract, that he charges you for the 36-inch pipe, \$4.25, is that right? A.—Yes, sir.

Q.—Now, I notice in Exhibit C-223, the contract for the Broadway job, that he charges \$10 per lineal foot? A.—That is why I could not use my pipe. That was cheaper than I could make it for.

Q.—Was the price on Exhibit C-223 cheap?

30 MR. O'DONNELL: That is a conclusion, and we object to it. The documents speak for themselves, and can not be added to.

MR. HACKETT: I join in that exception.

MR. GOUDRAULT: Question withdrawn.

Q.—Do you recollect, Mr. Paino, at any time from the Broadway contract on, and those seven contracts that you spoke of, if you ever paid these prices that you paid for the Weiss Avenue, Jamaica Avenue and Metropolitan Avenue jobs? A.—Never.

40 MR. O'DONNELL: Objected to as irrelevant and illegal, and not the best evidence of any such payment.

MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Angelo Paino for plaintiff recalled (direct examination).

BY MR. GOUDRAULT:

Q.—When you entered into this contract, Exhibit C-223, for the Broadway job, Mr. Paino, Phillips quoted you those prices, and you accepted them? A.—Yes, sir.

MR. O'DONNELL: We object to any conversation between
10 Phillips and the witness.

MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exception to defendants' counsel.

Q.—Did you ask prices from anybody else for that particular job? A.—I don't remember.

Q.—Did you speak to Phillips about the prices that he had charged you for the Weiss Avenue, Jamaica Avenue and Metropolitan Avenue jobs, when he quoted you these prices? A.—No.
20

MR. O'DONNELL: Same objection.

MR. HACKETT: I join in the objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Q.—You did not? A.—No.

Q.—You were satisfied to pay these prices? A.—Yes.

Q.—Do you remember making the job in 150th Street?
30 A.—Yes.

Q.—Whom did you secure the pipe from? A.—John M. Phillips.

Q.—Will you now look at this paper, and tell us what it is? A.—I think that is a contract.

Q.—You recognize your signature? A.—Yes, sir.

Q.—Paino Brothers, per yourself? A.—Yes, sir.

Q.—That 150th Street contract was awarded to your company, Paino Brothers? A.—Yes, sir.

Q.—And you were a partner? A.—Yes, sir.
40

MR. GOUDRAULT: We now offer for evidence, this contract between Paino Brothers and John M. Phillips, for pipe to be used in 150th Street job, dated February 26, 1925, as Plaintiff's Exhibit C-224.

MR. O'DONNELL: Objected to as not the best evidence of any purchases or payments.

Angelo Paino for plaintiff recalled (direct examination).

MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to Defendants' Counsel.

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-224, of this date).

10 Q.—That pipe was bought and used by yourself, from Phillips? A.—Yes.

Q.—That pipe was used by your company in constructing that sewer? A.—Yes, sir.

Q.—Did you get quotations from anybody else?

MR. O'DONNELL: Objected to as irrelevant.

MR. HACKETT: I join in that objection.

20 THE COMMISSIONER: I will allow the answer to be made and grant exceptions to defendants' counsel.

A.—I don't remember.

Q.—Do you remember how many feet of pipe was used in the 150th Street job? A.—No.

Q.—Round figures? A.—Seven or eight thousand feet, nine thousand, eight thousand. You got them right there. I think it is six or seven thousand.

30 Q.—Six thousand three hundred and twenty. Did you have your quotation from Phillips before you signed your contract? A.—Yes, sir.

Q.—I see in this Exhibit C-224, that there is a bill attached there, isn't there? A.—Yes, sir.

Q.—And it shows that you paid for pipe to be used on that contract, \$240,464, is that right? A.—Yes, sir.

MR. O'DONNELL: Where does it show that?

(Mr. Goudrault indicates).

40 MR. O'DONNELL: Is that signed by anybody?

MR. GOUDRAULT: You can cross-examine him.

MR. O'DONNELL: I object to that as not being the best evidence of payment.

MR. HACKETT: I join in that objection.

Angelo Paine for plaintiff recalled (direct examination).

THE COMMISSIONER: The objections will be noted and I grant exceptions to defendants' counsel.

BY MR. GOUDRAULT:

Q.—I see here that you have on that bill attached, some notations of the amount being paid by checks. A.—Yes, sir.

10 Q.—Those were checks of your company? A.—Yes, sir.

Q.—Have you those checks now? A.—No, sir.

Q.—Where are they? A.—Attorney General.

Q.—Do you know anything about Farmers Boulevard?

A.—Yes.

Q.—Did you get quotations there? A.—Yes, sir.

Q.—From Phillips? A.—Yes, sir.

Q.—And did you have a contract with Phillips for that pipe?

20 MR. O'DONNELL: We object to any verbal evidence of that contract.

MR. HACKETT: I join in that objection.

THE COMMISSIONER: I will allow the answer to be made, and grant exceptions to defendants' counsel.

A.—Yes, sir.

Q.—Farmers' Boulevard? A.—Yes, sir.

MR. HACKETT: Exhibit C-206.

30 Q.—Did you receive quotations from Phillips for that pipe?

A.—Yes.

Q.—Will you look at contract or letter signed by John M. Phillips, dated August 1, 1925, and state if that is the quotation you had for precast pipe to be used in Farmers Boulevard?

MR. O'DONNELL: Objected to as not the best evidence of Phillips' signature.

MR. HACKETT: I join in the objection.

40 THE COMMISSIONER: I will allow the answer to be made, and grant exceptions to defendants' counsel.

A.—Yes, sir.

MR. GOUDRAULT: We now offer for evidence, as Plaintiff's Exhibit C-225, contract or letter signed by John M. Phillips, dated August 1, 1925.

Angelo Paino for plaintiff recalled (direct examination).

(The said letter was thereupon received in evidence and marked Plaintiff's Exhibit C-225, of this date).

Q.—That is signed by Phillips? A.—Yes, sir.

MR. O'DONNELL: Objected to as not the best evidence of Phillips' signature.

10 MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

BY MR. GOUDRAULT:

Q.—And not by yourself? A.—No, sir.

Q.—I see. It was for a lump sum of \$225,000? A.—Yes, sir.

20 Q.—I understand you also built the Hayes Avenue sewer, which was filed yesterday by you? A.—Yes, sir.

Q.—And you also received from Phillips, quotations there? A.—Yes, sir.

Q.—Will you now look at what purports to be a contract between yourself and Mr. John M. Phillips, for pipe to be used in the construction of sewer in Hayes Avenue, and state if that is your signature and that of Phillips? A.—Yes, sir.

MR. O'DONNELL: Same objection.

30 MR. HACKETT: I join in the objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

BY MR. GOUDRAULT:

Q.—And to that is a bill attached, showing the payments for the precast pipe used in Hayes Avenue, and state if you also know this bill; have you seen it before?

40 MR. O'DONNELL: Objected to as not the best evidence of payment, and not binding on the defendants.

MR. HACKETT: I join in the objection.

THE COMMISSIONER: I will allow the answer to be made and grant exceptions to defendants' counsel.

A.—Yes, that is my signature.

Angelo Paino for plaintiff recalled (direct examination).

MR. GOUDRAULT: We now offer for evidence, this contract as Plaintiff's Exhibit C-226, which appears to be dated October 20, 1926, together with the bill, which we offer for evidence as Exhibit C-226-A.

(The contract referred to was thereupon received in evidence as Plaintiff's Exhibit C-226, and

10 The said bill attached thereto, was received in evidence and marked Plaintiff's Exhibit C-226-A, of this date).

Q.—Do you remember this bill? A.—I never seen any bill. The bookkeeper took them.

MR. O'DONNELL: You never saw any of the bills?

THE WITNESS: No, sir. I am outside.

20 BY MR. GOUDRAULT:

Q.—Do you know personally if this pipe was paid for to Phillips? A.—Yes, sir.

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

MR. HACKETT: I join in that objection.

30 THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Q.—Now, do you remember making a job on 124th Street? A.—Yes, sir.

Q.—In the Borough of Queens? A.—Yes, sir.

Q.—You also got quotations on pipe from Phillips for that particular job? A.—Yes, sir.

MR. O'DONNELL: We object to any verbal evidence of quotations for Phillips.

40 MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted and I grant exceptions to defendants' counsel.

Q.—That contract was filed yesterday. It bears No. 83,769, is that right, Mr. Paino? A.—Yes, sir.

Q.—You did the job there? A.—Yes, sir.

Q.—You secured your pipe from Phillips? A.—Yes, sir.

Angelo Paino for plaintiff recalled (direct examination).

Q.—Will you look at this paper, which purports to be a contract for pipe for that particular job on 124th Street, and state if that is your signature (indicating)? A.—Yes, sir.

Q.—Is it also John M. Phillips' signature? (Indicating) A.—Yes, sir.

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

MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Q.—This is dated April 23, 1927? A.—Yes, sir.

MR. GOUDRAULT: We now offer this in evidence as Plaintiff's Exhibit C-227.

20 (The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-227, of this date).

Q.—Was this contract also duly executed by Phillips? A.—Yes, sir.

MR. O'DONNELL: We object to any verbal evidence of that contract.

MR. HACKETT: I join in that objection.

30 THE COMMISSIONER: The objections will be noted and I grant exceptions to defendants' counsel.

Q.—And did your company and yourself pay the \$150,000. for pipe to Phillips? A.—Yes, sir.

Q.—You remember the 150th Street job, do you? A.—Yes, sir.

Q.—That was awarded to you? A.—Paino Brothers.

Q.—Paino Brothers? A.—Yes, sir.

Q.—Of which you were a partner? A.—Yes, sir.

40 Q.—Do you remember if the bids were rejected and then re-advertising took place, or do you not? A.—I don't think so.

Q.—You don't think so? A.—No.

Q.—Is it possible? A.—No.

MR. O'DONNELL: Don't try to contradict your own witness.

Angelo Paino for plaintiff recalled (direct examination).

MR. GOUDRAULT: I am just trying him out for the sake of truth.

BY MR. GOUDRAULT:

Q.—Did you ever carry a big amount of money in your pocket? A.—Sure.

10 Q.—Treasury bills of the United States? A.—Yes, sir.

Q.—And bank notes? A.—Yes, sir.

Q.—As much as \$10,000? A.—More than that.

Q.—You don't remember if there was more than one bid for that 150th Avenue job, do you? A.—No.

Q.—The records would tell, would they? A.—The records would tell; but I don't think so.

Q.—Do you know the summary of proposals? That would tell? A.—Oh, yes, that would tell.

20 Q.—You have seen some of these before? I am now showing you summary of bids. A.—I don't know about that.

Q.—This Broadway Boulevard sewer was constructed by you, Mr. Paino? A.—Yes.

Q.—And the pipe therein used was Phillips' precast pipe? A.—Yes.

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

MR. HACKETT: I join in the objection.

30 THE COMMISSIONER: The objections will be noted and I grant exceptions to defendants' counsel.

Q.—Now, were you paid by the City of New York? A.—Yes, sir.

MR. O'DONNELL: Objected to as irrelevant and not binding on the defendants.

MR. HACKETT: I join in that objection.

40 THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Q.—For this Broadway contract, Exhibit C-204, you were paid? A.—Yes.

Q.—Now, did you pay Phillips for the pipe? A.—Yes.

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

Angelo Paino for plaintiff recalled (direct examination).

MR. HACKETT: I join in that objection.

THE COMMISSIONER: The objections will be noted, and I grant exceptions to defendants' counsel.

Q.—Did you get your cancelled checks? A.—Sure. The Attorney General got them.

10 Q.—Now, Broadway Boulevard sewer was constructed in 1924? A.—Yes.

Q.—You have not your cancelled checks, the originals of them you have not? A.—The Attorney General got all the originals.

Q.—You are not sure as to that? A.—Absolutely that.

Q.—May not they be lost? A.—No, sir. I got a receipt.

Q.—Have you got your receipt? A.—Yes, sir.

20 Q.—I see here something like checks to John M. Phillips, all payable to John M. Phillips, signed by your good self, Angelo Paino. The checks amount to nearly a million dollars, for pre-cast pipe. And you have not got the original cancelled checks for these? A.—No.

Q.—Now, looking at these checks, will you be in a position to state if the payment applies to the pipe used in that Broadway Boulevard? A.—Yes.

Q.—You could? A.—Yes.

30 MR. HACKETT: I object, Mr. Commissioner, to the production of a series of pictures which we are told are photo-static copies of original documents, the existence of which we have to take for granted.

MR. O'DONNELL: We join in that objection.

THE COMMISSIONER: I will allow them in evidence, and grant you an exception. And will you please be good enough, Mr. Goudrault, to tie them up further.

MR. O'DONNELL: We object to any verbal evidence with respect to the checks.

40 MR. HACKETT: Mr. Paino, are you in a position to say which of the alleged payments were made on each job?

THE WITNESS: No,—

THE COMMISSIONER: Now, Mr. Paino, don't answer. Mr. Goudrault, show him the exhibits, and give the witness a chance to answer.

Angelo Paino for plaintiff recalled (direct examination).

THE WITNESS: Commissioner, I said that before, I could tell you about \$850,000. or \$900,000, I pay for precast. But not each job, I can't remember that. Impossible. I stated that even before. Of course, if you put me a question, I might answer yes, that is why sometimes I want to know what the question means.

10 BY MR. GOUDRAULT:

Q.—But did I understand you to say, Mr. Paino, that you might from these photostatic checks, be in a position to state that you did pay Phillips about \$150,000, and you could tell them to one particular job? A.—I can't.

Q.—You can't? A.—No, I can't.

THE COMMISSIONER: Mr. Goudrault, then do you want to offer these for identification?

20 MR. COOK: Under reserve of our objections.

THE COMMISSIONER: Yes.

MR. GOUDRAULT: We do wish to offer for evidence, these checks.

MR. O'DONNELL: Not checks, — photostats.

THE COMMISSIONER: Photostatic copies.

30 MR. GOUDRAULT: Photostatic copies I mean, of checks.
We will put them in as a whole.

MR. HACKETT: Put them all in together.

MR. O'DONNELL: Yes, put them all in together.

BY MR. GOUDRAULT:

Q.—Is it all for pipe? A.—Yes.

40 MR. GOUDRAULT: We produce this series of 34 photostatic copies of checks, as Plaintiff's Exhibit C-228.

MR. COOK: I object, Mr. Commissioner, to the photostatic copies of these 34 checks, first on the ground that it is not the best proof of the existence of the checks in question, or of the alleged payments of the moneys; and secondly, because the witness himself has just stated that it is quite impossible for him to identify these checks, or to make any statement in regard to

Angelo Paino for plaintiff recalled (direct examination).

them; consequently, I ask that they be not received in evidence or placed in the record.

MR. O'DONNELL: And we object to any verbal evidence as to the checks.

MR. HACKETT: I join in those objections.

10 THE COMMISSIONER: They will be received in evidence and placed in the record, and an exception and reservation granted to defendant's counsel.

(The said 34 photostat copies of checks were thereupon received in evidence and each marked Plaintiff's Exhibit C-228, of this date).

BY MR. GOUDRAULT:

20 Q.—Now, will you look at these exhibits, which are photostatic copies of 34 checks, and state whether you can therein identify your signature, Mr. Paino?

MR. COOK: Mr. Paino, before answering, be sure it is your signature, and not a photographic copy of it.

MR. GOUDRAULT: The question is not if it is your signature, but if it is a photostatic copy of your signature.

MR. O'DONNELL: How does he know?

30 MR. GOUDRAULT: Let him answer.

THE WITNESS: (Answering) That is my signature, photostatic, (indicating). (Witness examines all the photostatic copies of checks). Yes, sir, those are mine, my signature, photostatic copies.

Q.—Now, Mr. Paino, you have filed yesterday a series of contracts; I mean you have produced yesterday a series of contracts that you executed for the City of New York? A.—Yes.

40 Q.—In the Borough of Queens? A.—Yes.

Q.—Bearing C-204, C-205, C-206, C-207, C-208, C-209 and C-210. And you have stated also that you had executed the job and you were paid by the City for each one of those contracts? A.—Yes, sir.

Q.—All pipe used there was precast pipe that you bought from Phillips? A.—Yes, sir.

Angelo Paino for plaintiff recalled (cross-examination).

Q.—The quantities that appear there were used by you?

A.—Yes, sir.

Q.—And you paid by checks to Phillips for all the pipe that you bought from him, for all these contracts? A.—Yes, sir.

MR. COOK: What is the answer? You did?

10 THE WITNESS: Yes, sir. By what do you mean, by check?

MR. GOUDRAULT: Yes. And you owe Phillips no money?

THE WITNESS: No. And I paid cash, too.

MR. O'DONNELL: Objected to as not being the best evidence of any such contracts or payments.
20

MR. HACKETT: I join in the objection.

THE COMMISSIONER: I will allow you an exception.

BY MR. GOUDRAULT:

Q.—Those checks that have been produced as Plaintiff's Exhibit C-228, those 34 checks, are exact photostat copies, to the best of your knowledge, of the checks that you signed, to Phillips?
30 A.—That is my best knowledge, yes.

Q.—And that was only for pipe? A.—Yes, sir.

Q.—Precast pipe used in the Borough of Queens? A.—Yes, sir.

MR. GOUDRAULT: I thank you. Now he is your witness.

CROSS-EXAMINATION BY MR. HACKETT:

Q.—All of this work, Mr. Paino was carried out in the Borough of Queens? A.—Yes, sir.
40

Q.—And the Borough of Queens offered great difficulty to a contractor doing excavation, did it not? A.—Yes, sir.

Q.—It was extremely wet, and the soil was shifty, and a contractor had to take great precautions? A.—Yes, sir.

Angelo Paino for plaintiff recalled (cross-examination).

Q.—And likewise the pipe which was used in the construction of sewers was submitted to all the strains and stresses of a shifting sub-soil, wasn't it? A.—I think they had to use a special cement too, and use more strength on account of the soil and the water pressure through the Jamaica system sewer; we had to use extra force and extra cement.

10 Q.—Yes. And in some places the strains and stresses were greater than in other places? A.—Oh, yes.

Q.—Which might account for a variance in the price of the pipe? A.—Yes, sir.

Q.—As a matter of fact, Phillips was the only man who was making pipe which could be used in that job at the time? A.—Yes, sir.

Q.—And you have been engaged in this particular kind of work, and are a specialist in it? A.—Yes, sir.

Q.—Made it your life work? A.—That's right, yes, sir.

20 Q.—You continued to get jobs after you began to make pipe yourself? A.—Yes, sir.

Q.—You got several million dollars worth of work after you were manufacturing the pipe for your own use? A.—I wouldn't say that. I got some jobs.

Q.—Some jobs. You were not excluded from bidding after you made the pipe yourself? A.—No, sir.

Q.—And you continued until the death of Phillips? A.—Yes.

30 MR. HACKETT: That is all.

(The witness Petraceca was directed by the Commissioner to be present at 11:00 o'clock, September 18, 1931).

BY MR. HACKETT:

Q.—You told us that in one contract you lost \$42,000? A.—Yes.

40 Q.—That is 150th Avenue? A.—150th Avenue. And another contract, Hayes Avenue, I lost money.

MR. O'DONNELL: You were too low?

THE WITNESS: Yes, sir. Hayes Avenue and 150th Ave.

Q.—You had quarrels with Phillips, and still continued to get jobs, didn't you? A.—Yes, plenty of quarrels.

Angelo Paino for plaintiff recalled (cross-examination).

Q.—He didn't prevent you from getting jobs over there?

A.—No, sir.

Q.—You got more jobs after you fought with him than you did before? A.—Sure.

MR. HACKETT: That is all, Mr. Commissioner.

10 THE COMMISSIONER: Mr. Goudrault, do you wish to interrogate the witness further? Because otherwise, he will be excused.

MR. GOUDRAULT: No further questions.

THE COMMISSIONER: Mr. Angelo Paino, you are excused.

20

(Whereupon, at 4:15 o'clock p. m. an adjournment was taken to tomorrow, Wednesday, September 16, 1931, at 11:00 o'clock a. m.)

30

40

10 Depositions of witnesses, sworn and examined on the 16th day of September in the year of Our Lord one Thousand and Nine Hundred and Thirty-one, at eleven o'clock in the forenoon, in the office of DeCoursey Fales, 40 Wall Street, in the County of New York, State of New York, United States of America, by virtue of the commission issued out of His Majesty's said Superior Court, to us DeCoursey Fales, a lawyer, of 40 Wall Street, City and State of New York, directed for the examination of witnesses in a cause therein pending between The People of the State of New York, Plaintiff, and Heirs of the late John M. Phillips, et al., Defendants:—I, the commissioner acting under the said commission, and also the clerk by me employed in taking, writing down, transcribing and engrossing the said depositions, having first duly taken the oaths annexed to the said commission, according to the tenor and effect thereof and as thereby directed heard the following depositions:

20

DEPOSITION OF THOMAS M. CASSIDY
(recalled).

THOMAS M. CASSIDY, having been previously duly sworn, was recalled as a witness on behalf of the plaintiff:

30 MR. COOK: Mr. Commissioner, Dr. Cassidy is here in case any further questions should be desired to be placed to him. But my friend, Mr. Hackett, tells me he does not wish to examine Dr. Cassidy further, so I ask that he be excused, in view of the fact that he has other engagements that he wishes to attend to.

MR. HACKETT: What I said was, that I would not apply to the Court for an order to compel him to answer.

THE COMMISSIONER: Well, the upshot of it is—

MR. HACKETT: That he is dismissed.

40 THE COMMISSIONER: He is dismissed.

MR. HACKETT: Yes.

MR. COOK: What I said was substantially correct.

THE COMMISSIONER: We will not require your presence further, Mr. Cassidy, and you are excused.

THE WITNESS: Thank you very much.

Carmine Petracca for plaintiff (direct examination).

DEPOSITION OF CARMINE PETRACCA.

CARMINE PETRACCA, age 44; residence, 187-47 Wyoming Avenue, Hollis, Long Island; occupation, contractor; 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.—Now, Mr. Petracca, what is your occupation? A.—Contractor.

Q.—How long have you been a contractor? A.—Since 1914, 1915; 1914.

Q.—You are still a contractor? A.—Yes.

Q.—Have you had any occasion as a contractor, to do the construction of any sanitary sewer in the Borough of Queens? A.—Yes.

Q.—Do you remember of any? A.—Well, I remember a couple, yes. I can't remember so far back, I remember I done one job on Farmers Boulevard.

Q.—Do you remember the year? A.—I think it was around 1926.

Q.—Did you have that job direct from the City, or did you have it by assignment? A.—I got it by an assignment.

Q.—From whom? A.—Highway Improvement.

Q.—Will you look at this exhibit, C-116, and state if this is your signature therein appearing? A.—Yes.

Q.—So that is an assignment from the Riverdale Construction Company? A.—Oh, Riverdale. I forgot that.

Q.—And that is your signature, and that is the assignment that you speak of? A.—Yes. I thought it was the Highway Improvement.

Q.—It states here the Riverdale Construction Company. Is that right? Read it from the exhibit itself. (Indicating.) A.—Whatever it says in there. Then I am wrong with the name. I got mixed up with the name.

Q.—Now, will you note there, who took the acknowledgment of your signature, on C-116? A.—I don't remember if it was just Reilly. It ought to be right there, Reilly, or somebody else.

Q.—What is the name I am indicating here? A.—Pete Campbell.

Q.—Do you know Pete Campbell? A.—Yes, sure.

Carmine Petracca for plaintiff (direct examination).

Q.—Is he the one that took the acknowledgment of that signature? A.—Yes.

Q.—Do you know where this assignment was signed by you? A.—It was signed on one of my jobs. They brought it over. Andy Zorn brought it over to me.

10 Q.—Andy Zorn brought it over to you? A.—Yes. I think it was on Metropolitan Avenue.

Q.—That assignment is dated the 30th of July, 1926. I see here on the second page that it bears the approval of the Borough President, Maurice E. Connolly. A.—Generally, yes, as a rule, when we take an assignment the Borough President has to approve.

Q.—Did you have anything to do to secure Mr. Connolly's approval there? A.—No.

Q.—Did you do anything there? A.—No.

20 Q.—Did you pay anything for that assignment? A.—Nothing for the assignment. I paid for the job.

Q.—To whom? A.—To Andy Zorn.

Q.—Who was Andy Zorn at the time? A.—Well, he was working for Jack.

Q.—For Jack. Jack who? A.—Jack Phillips, or if he was for himself. He was the one that I asked him about the job. I said "Andy, I know they are giving up a couple of other jobs", I said, "I have no job now." I asked can I get a job from those people.

30 Q.—Whom do you mean by "those people"? A.—The Riverdale. They were going to sublet it.

Q.—So you did get this job through Andy Zorn? A.—Yes, through Andy.

Q.—Now, you stated a minute ago that this assignment was signed most likely on one of your jobs by you. It was brought to you? A.—Yes, on another job I was working on. I don't remember the street now. I know it was around Ridgewood.

Q.—Are you sure as to that, or could it have been somewhere else? A.—I don't remember now.

40 Q.—I see. Do you know a place on Long Island, Jackson Avenue? A.—Oh, sure.

Q.—Do you remember the number? A.—48, I think it was. Phillips, — I don't remember.

Q.—48 Jackson Avenue? A.—Something like that.

Q.—I see. It could be 49 Jackson Avenue? A.—Or 49.

MR. HACKETT: Or 50.

Carmine Petracca for plaintiff (direct examination).

THE WITNESS: Or 50.

MR. O'DONNELL: Or 612.

Q.—Have you ever been at 49 Jackson Avenue, Long Island? A.—Sure.

10 Q.—Often? A.—Well, every time a job come out we used to go and get a price for pipe.

Q.—I see. And that is where you met Jack Phillips? A.—Sure. I know Phillips before he ever had been in that Jackson Avenue office, when he was salesman for the Lockjoint Pipe Company.

Q.—I see. Whom else did you have occasion to see when you went to 49 Jackson Avenue? A.—Phillips or Campbell.

Q.—What was Campbell doing there? A.—That I don't know.

20 Q.—You don't know if you ever met Andy Zorn there? A.—Yes.

Q.—Often? A.—Sometimes, yes.

Q.—Did he have an office there, too? A.—If I am not mistaken, he had a bonding office there.

Q.—What kind of an office was that at 49 Jackson Avenue? Can you describe it? A.—It was a store.

Q.—Did you go there often? A.—Why, certainly.

30 Q.—Then describe it briefly. A.—It was a first floor there, it was a window office front, and there was a sign there, National Surety Company Bonding Office, I guess it was, if I am not mistaken.

Q.—Phillips had his name there on the door, or on the windows? A.—I don't think so. I am not sure, no.

Q.—Did Campbell? A.—I am not sure for that.

Q.—Did Zorn have an office there, or desk space, or anything else? A.—I couldn't tell you. There were plenty of desks in the office. I don't know to whom they belonged.

Q.—Now, Peter Campbell took the acknowledgment of your signature here (indicating)? A.—Yes.

40 Q.—Would it be possible that it was at his office that this was executed, — 49 Jackson Avenue?

MR. COOK: He has already stated that it was executed on the job. You are endeavoring to contradict your own witness.

MR. GOUDRAULT: I am just trying to refresh his memory.

Carmine Petracca for plaintiff (direct examination).

THE WITNESS: I couldn't tell you if it was his office, because I didn't go into details to ask him if it was his office.

Q.—That is not what I am asking you. I am asking you if it was at all possible that you might have signed this assignment from the Riverdale, at Campbell's office on Jackson Avenue. A.—I couldn't tell you, it is so long back.

10 Q.—You don't remember? A.—No.

Q.—By whom was the document brought to you? A.—That was brought by Andy. I told you before.

Q.—Andy Zorn? A.—Yes.

Q.—Was Peter Campbell with him when it was brought? A.—I don't remember if he was there or not. He must have been, if I signed it there.

Q.—And you paid Zorn? A.—Yes.

Q.—Did you give him cash, or what? A.—No. I gave him a note.

20 Q.—Do you remember how much? A.—\$20,000 and something.

Q.—Would you look at this note,—

MR. COOK: Mr. Commissioner, I object to this evidence as entirely irrelevant and illegal. The transactions between this gentleman and Mr. Zorn have nothing to do with the claim of the State of New York against the heirs of the late Mr. Phillips.

30 MR. GOUDRAULT: Mr. Commissioner, there is a charge in the declaration fully explaining in detail, wherein it is stated that the defendants, Phillips and others, have conspired with others for the purpose of defrauding the State of New York, the plaintiffs, of huge sums of money, and we are trying to put in evidence all the evidence relating to this fraud.

MR. COOK: Mr. Goudrault, please point out where it is, because we don't know.

MR. GOUDRAULT: Well, it is alleged in your declaration.

40 MR. COOK: It is not in our declaration at all. I don't know what you are referring to.

MR. HACKETT: Just a moment. I object to further evidence, inasmuch as it is irrelevant to the issues as joined. The persons alleged to have conspired, in paragraph 9 of the declara-

Carmine Petracca for plaintiff (direct examination).

tion, are John M. Phillips, Maurice E. Connolly, and Frederick C. Seely.

MR. GOUDRAULT: And with divers other persons, and other persons,—paragraph 9 of the declaration. So I think it is perfectly legal evidence.

10 MR. HACKETT: “And other persons to plaintiff unknown”, and you did know Zorn, because he is one of the people to whom you make reference in your application for the commission.

THE COMMISSIONER: I will allow the answer, subject to your objection, and grant you an exception. It is noted in my commission, in reference to the examination of Carmine Petracca, that I am to take evidence in relation to conversations, in relation to transactions by and with and between said Petracca, Peter B. Campbell, John M. Phillips, Maurice E. Connolly, Andrew Zorn,
20 or any of them, and particularly as to the sizes of pipes and prices paid to Phillips for such pipe, and to certain contracts.

MR. GOUDRAULT: Is the question allowed?

THE COMMISSIONER: The question is allowed.

MR. GOUDRAULT: Under reserve of their objections. What is the last question, Mr. Schultz?

(Question read by the Clerk).

30 BY MR. GOUDRAULT:

Q.—Will you look at this note dated Long Island City, August 12, 1926, “On demand after date I promise to pay to the order of Andrew Zorn, \$22,553, at 507 First Avenue, Long Island City, New York, value received”, and signed “Carmine”, and one part of the exhibit is torn? A.—Yes.

40 Q.—And will you state if that is the note that you have been referring to, the payment that you have been referring to by way of a note to Zorn for the assignment given to you, Mr. Petracca, or to your firm, for the construction of that sewer on Farmers Boulevard, from the Riverdale Construction Company? A.—Yes, sir.

Q.—You identify your first name “Carmine” on it? A.—Yes.

Q.—Why is it that this part of the note has been torn? A.—Why, I didn’t give him the full amount of this money, see,

Carmine Petracca for plaintiff (direct examination).

and then I give him a part in check, and then I have to give him this other one, and this note was not in my possession, my partner had it, so I took half of my name out.

Q.—When you say this other note as balance of the first note, you refer to Exhibit C-164-B, is that it? A.—Yes.

Q.—So this note was paid by the firm of Petracca and Peterson? A.—Right.

10 Q.—You were a partner in that firm, weren't you? A.—Yes.

Q.—I now show you four checks, which have been produced by your partner, Mr. Peterson, as Plaintiff's Exhibits C-164-A, C-164-B, C-164-C, C-164-D, inclusive, and all these checks were payable to Andrew Zorn, and state if it is in part payment of this note.

MR. COOK: Same objection.

20 Q.—(Continuing) For \$22,553. A.—Yes.

Q.—I now show you another check, apparently signed by Carmine Petracca, dated September 2, 1927, for \$5553, to Andrew Zorn. Will you state if this is your signature? (Indicating) A.—Yes, sir.

Q.—And that is a check given by you to Andrew Zorn? A.—Who endorsed it on the back? Andrew Zorn, ain't it?

Q.—Yes. A.—Yes.

30 MR. GOUDRAULT: We now offer for evidence, this check for \$5553 to Andrew Zorn, signed by Carmine Petracca, the witness, dated September 2, 1927, as Plaintiff's Exhibit C-229.

MR. O'DONNELL: Same objection.

(The said check was thereupon received in evidence and marked Plaintiff's Exhibit C-229, of this date).

Q.—Did this last check, Plaintiff's Exhibit C-229, complete the payment of that note of \$22,553 to Zorn? A.—Yes.

Q.—That was in full payment? A.—Yes.

40 Q.—How did you come to figure that amount of \$22,553? A.—Well, when we sublet any work from anybody, we give them our own figures. If I run short of work, and I know a fellow has got a job, too many jobs, I go over and say "Could you give me a job? I am not doing anything with my machinery". Naturally, if a fellow has got a decent job, he will say "Well, what would you do it for? Here is the plan; figure it out." So you say "I want so much".

Carmine Petracca for plaintiff (direct examination).

Q.—On this particular job, did you do the figuring? A.—Certainly.

Q.—How is it that you came to pay to Andrew Zorn? A.—Andrew Zorn, he is the one I went over to see for the job.

Q.—Did you pay this as a commission? A.—I don't know how you take it? I can't say if it was for commission. My figures show the difference, and I had to make the difference.

10

MR. O'DONNELL: He is the man who got the job for you?

THE WITNESS: Yes.

Q.—You did the figuring, you said? A.—Naturally.

Q.—Before figuring, what did you do about the pipe, pre-cast pipe, that you had to use? A.—I had to get the price for the pipe before I could do any figuring.

Q.—Whom did you get it from? A.—From Phillips.

20

Q.—How much did he charge you for the pipe for that job?

MR. O'DONNELL: Objected to as being not the best evidence of the contract between the witness and Phillips. A.—I couldn't remember the price of the pipe now just exactly, no, because I had all my papers when I went over to the Judge.

Q.—You have not got them? A.—No. They did not return all them papers.

Q.—What were they, just notes? A.—No. It was a regular contract.

30

Q.—You had a regular contract with Phillips for pipe? A.—Yes.

Q.—Do you remember testifying as to this before? A.—Why, certainly.

MR. COOK: You had a regular contract with Phillips?

THE WITNESS: I had a regular contract with him myself, direct, and then I pulled in Peterson for the job, for a partner, because I couldn't handle it myself. I am not one of the big contractors, I am a little one.

40

BY MR. GOUDRAULT:

Q.—I now show you Plaintiff's Exhibit C-107, which is the contract for the construction of a sewer on Farmers Boulevard, awarded to the Riverdale Construction Company, and will you state if that is the contract which was assigned to you?

Carminc Petracca for plaintiff (direct examination).

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

A.—The assignment is the one I can recognize, because that contract don't go to me, that goes to the Riverdale. I didn't sign the contract with the City of New York. I took an assignment.

10 Q.—Will you now look at the assignment from the Riverdale Construction Company to yourself, Exhibit C-116, and state if the number of the contract that was being assigned to you is there instead.

MR. O'DONNELL: The document speaks for itself. A.—This is the contract number (indicating).

Q.—What is the contract number? A.—80342.

20 Q.—Now, will you look at this Plaintiff's Exhibit C-107, awarded to the Riverdale Construction Company for the construction of sewer on Farmers Boulevard, and state if that is the assignment that was executed by you?

MR. O'DONNELL: We object to any verbal evidence as to that document. It speaks for itself.

Q.—The number on this contract C-107, is the same as the number that appears on that assignment, isn't it? A.—That's the same number. This is on the contract; it is on this piece of paper. (Indicating).

30 Q.—Well, that is a contract, and this is an assignment. A.—80342.

Q.—What I want to know from you, Mr. Petracca, is if this assignment is for this job; if the assignment C-116 is for the job C-107? A.—I can't say if it is, because it is the same described, but I don't know if it is the same contract, myself. I didn't sign this: how could I prove it? Here is the same number here. What do I know who put that number down? Somebody else has to prove it.

40 Q.—It has already been proven. My question is not that. I am just asking you if you executed this assignment. I mean this assignment. A.—I answered that. I said that is the same number, but I don't know if it is the same contract.

THE COMMISSIONER: I don't think you answered the question, Mr. Petracca.

Carmine Petracca for plaintiff (direct examination).

THE WITNESS: I executed this assignment, yes, but I can't say the contract.

Q.—Anyway, you executed this job? A.—This was my assignment, yes.

Q.—Now, assuming that this C-107 is the job that you did, the number of pipe, the dimensions of the pipe, appear in the contract, Mr. Petracca?

MR. O'DONNELL: Same objection. The document speaks for itself.

A.—Well, I aint got it in my mind. I don't remember any more the number of feet of pipe. I don't even remember the size of the pipe we put in.

Q.—I see. Then look at that contract and see if you can find the pipe?

MR. HACKETT: I will object to any further testimony concerning the contract which is unidentified. The witness has made his position quite clear.

MR. COOK: I join in that objection.

Q.—Now, let me put this clearer to you. Take your time. Look at Exhibit C-116, and state what it is.

MR. O'DONNELL: That's a question of law.

THE WITNESS: What do you mean, C-116?

Q.—Just state what the document is. You don't have to look at anything else. What is it? A.—(Examining paper). This is my assignment. That's all right.

Q.—That is assignment of what job? A.—Of the Farmers Boulevard.

Q.—Farmers Boulevard. Now, will you look at Exhibit C-107, which is the contract for the construction of that sanitary sewer on Farmers Boulevard, and state if your signature appears in the contract? A.—Yes, sir, this is my signature (indicating).

Q.—So that was the contract you executed for the City, for the construction of that sewer? A.—I don't remember if I had executed it with the City. That is something new to me.

Q.—Anyway, the paper speaks for itself. You signed that; that is your signature? A.—I signed it, yes.

Carmine Petracca for plaintiff (direct examination).

Q.—Now, in this contract appears the pipe that was to be used for the construction of that particular sewer? A.—Yes, sir.

Q.—Will you look at it and see if you can refresh your memory as to the size of the pipe, and the amount of pipe that was to be used? A.—I couldn't tell you very close, because generally when we take a contract with the City, after you get
10 through with the job, they don't correspond with your job.

Q.—There is a slight difference or a large difference? A.—Sometimes it is different.

Q.—Approximately how many feet entered into that contract? You are a contractor, you must know. A.—The only thing you can tell how much went in, if you got a pink slip, that we get from the City.

Q.—That is the exact number of feet. I am asking you to give me an approximate figure. A.—That is the approximate
20 figure.

Q.—Would that help you to state how much you paid to Phillips for that particular pipe? A.—I don't remember that, no. You must have those checks which I paid for.

Q.—Now, you said that you spoke to Phillips about the price of pipe? A.—Yes, sir.

Q.—Did you speak to Andy Zorn about it? A.—No.

Q.—Are you sure of that? A.—Positive.

Q.—Do you remember testifying before,—

MR. O'DONNELL: Wait a minute. Are you going to
30 contradict your own witness?

Q.—Do you remember testifying before today on the same subject, on the same question? A.—I think I was. That's five or six years ago. People can't keep everything in their head, you know.

Q.—You are not sure, but could you have spoken to Andrew Zorn about the pipe? A.—Well, if I did,—

MR. HACKETT: Just a second, please. I object.

MR. GOUDRAULT: Question withdrawn.
40

Q.—Just in order to refresh your memory, Mr. Petracca, I will now read the question that was put to you at the time—

MR. HACKETT: I object, Mr. Commissioner, to this method of dealing with his own witness, and I submit that it is not competent for counsel to read to his own witness, who is not

Carminé Petracca for plaintiff (direct examination).

hostile, an excerpt from a previous examination, in another case, under different circumstances.

MR. GOUDRAULT: Well, Mr. Commissioner, my sole purpose is not to contradict the witness, because the witness is not hostile, but it is just for the purpose of refreshing his memory. That is the only reason.

10 THE COMMISSIONER: Well, show him the book, let him examine the book, and then ask him.

MR. GOUDRAULT: I won't show him the book, — I asked him if he had previously testified to this, and he said he does remember, but he does not remember what he testified.

Q.—Do you remember what you testified previous to this?
A.—No. That was so much time, how could I remember? I don't think anybody else could remember very much about it.

20 Q.—Would it help your memory if I read to you the question that was put to you at the time? A.—Well, I couldn't be sure. I can not remember if you read it to me. I don't know what you read, and I don't know whether I did say or not.

Q.—But would that help you refresh your memory? A.—Well, no, not quite. I won't say yes to that.

MR. COOK: You wouldn't say yes to that?

30 THE WITNESS: If I can't remember myself correct, I can't prove what he reads to me.

MR. GOUDRAULT: Mr. Commissioner, it is no use asking the witness if he says that even if I read it to him he can not refresh his memory.

THE COMMISSIONER: It would seem so, Mr. Goudrault.

MR. GOUDRAULT: All right, we will go on with something else.

40 Q.—Now, do you remember doing some other job in Queens Borough? A.—Yes. I done quite a few.

Q.—Do you remember the Ormond Street job? A.—Ormond, yes, sir.

Q.—Will you now look at a contract between the City of New York and Carminé Petracca, bearing No. 54,124, for the construction of a sanitary sewer in Ormond (27th) Street, award-

Carmine Petracca for plaintiff (direct examination).

ed on June 25, 1920, and state if that is the contract that you are referring to?

MR. COOK: What is that exhibit please, Mr. Goudrault?

A.—It will be C-230.

10 MR. COOK: It is a new one?

MR. GOUDRAULT: Yes.

MR. COOK: Will you let me see it before you put it in?

MR. GOUDRAULT: All right.

THE WITNESS: (Answering) Yes.

MR. COOK: One moment. Let me see the contract.

20 (Contract examined by Mr. Cook).

BY MR. GOUDRAULT:

Q.—Is this your signature there appearing on page 37 of the contract? A.—Yes.

MR. HACKETT: What date did you put down, Mr. Goudrault?

MR. GOUDRAULT: The date of awards.

30 MR. HACKETT: Date of awards, or date of contract?

MR. GOUDRAULT: I put the date of award in those I produced yesterday.

MR. HACKETT: What article of your declaration covers this?

MR. COOK: We would like to get that, Mr. Goudrault, because you know this case by heart.

40 MR. GOUDRAULT: You should know it, too.

MR. COOK: I know, but I am not making your case.

MR. GOUDRAULT: My question is very simple, —

MR. COOK: Yes, your question is simple enough, but where do you allege it against us?

Carmine Petracca for plaintiff (direct examination).

MR. GOUDRAULT: What is your objection?

MR. COOK: My objection is that it is outside the record.

MR. GOUDRAULT: Well, state it.

MR. COOK: I want you to state where it is.

10 MR. GOUDRAULT: Well, I don't have to tell you.

MR. HACKETT: I object to any testimony concerning contract 54,124, which it is proposed to introduce in evidence, until it is shown that it forms a part of the litigation between the parties.

THE COMMISSIONER: What is this contract about, Mr. Goudrault?

20 MR. GOUDRAULT: This contract, it is simple to show— I will give you the information; simply to show that this contract was changed, allowing the City of New York to pay Petracca 85 per cent. of the contract before it was even started, so he could pay for his pipe to Phillips. There may be other reasons also why this contract is being introduced, but I am not bound to state them here.

THE COMMISSIONER: Well, is this contract referred to in any way in the complaint or the answer?

30 MR. GOUDRAULT: Yes, in the declaration.

MR. HACKETT: Where?

MR. GOUDRAULT: Generally, several paragraphs, Mr. Commissioner. All of these, so far, have been taken under reserve and objection of opposing counsel; there is no reason why this piece of evidence should not go in.

40 THE COMMISSIONER: I will state this, that I am going to allow this to go in under reserve, but I don't think you have a right to have this, for the simple reason that I am to take the evidence of Carmine Petracca in reference to two contracts: No. 79,227, sewer at 37th Street, and contract No. 80342, construction of sewer in Farmers Boulevard, and the conversations that I read before. I will take it subject to the reservation.

MR. GOUDRAULT: The competent Court in Montreal will decide whether it is legal or not. We will be satisfied with the decision there.

Carmine Petracca for plaintiff (direct examination).

THE COMMISSIONER: Now, you are directed to answer the question, Mr. Petracca.

MR. GOUDRAULT: We offer this contract in evidence, as Plaintiff's Exhibit C-230.

10 MR. COOK: Defendants object to the production of this contract, first on the ground that it is not covered by the order of his Lordship, Chief Justice Greenshields, made on the 8th of September, 1931; second, because it is not otherwise referred to in the plaintiff's declaration; and also on the ground that it is irrelevant and illegal.

MR. HACKETT: I avail myself of that objection as well as the one already made.

20 THE COMMISSIONER: I grant you an exception and reservation.

(The contract referred to was thereupon received in evidence and marked Plaintiff's Exhibit C-230, of this date).

BY MR. GOUDRAULT:

Q.—So this contract was awarded to you? A.—Yes, sir.

Q.—And executed by you for the City of New York? A.—Yes.

Q.—You were paid? A.—Yes, sir.

30 Q.—Completely? A.—Yes.

Q.—Did you pay Phillips for the pipe you used in that? A.—I didn't buy the pipe from Phillips on that contract.

Q.—Whom did you buy the pipe from? A.—I bought the pipe from Ampere, New Jersey.

Q.—At any rate, that contract was executed by you and precast pipe was used? A.—It was the Lockjoint Pipe.

Q.—You got it from the Lockjoint Pipe? A.—I got it direct from Mr. Hirsch, of the Lockjoint, the President of the company.

40 Q.—In 1920, was it? A.—Between 1919 and 1920, something like that, ain't it?

Q.—The contract was awarded June 25, 1920, I see. Was that contract modified at any time? A.—Well, I remember I got paid for the pipe. But as a rule, after that, I think they took it off the City, after, if there was any material piled up on the job, you could get paid for it.

Carmine Petracca for plaintiff (direct examination).

Q.—That is not what I am asking you. I am asking you if that particular contract was modified, which you had with the City? A.—I couldn't remember that.

Q.—You couldn't remember. I show you a contract here dated the 3rd of August, 1920, between the City of New York and Carmine Petracca, for the construction of a sewer in Ormond Street. This is the contract you were referring to? A.—Yes, sir.

10 Q.—Now, I see here that you have signed here on page 2; is that your signature? A.—Yes, sir.

Q.—And you also see the signature for the President of the Borough of Queens of the City of New York?

MR. HACKETT: Am I correct in assuming, Mr. Commissioner, that all of this testimony is under the same reservation with regard to the contract.

THE COMMISSIONER: It is.

20 Q.—What is your answer? A.—I can't tell if it was his signature, or not.

Q.—You signed, anyway? I signed myself, yes.

Q.—And was that agreement carried out between the City of New York and yourself; this modification of agreement? A.—Well, it must have been.

Q.—I see.

30 MR. GOUDRAULT: We now offer for evidence, this agreement, dated the 3rd of August, 1920, between the City of New York and Carmine Petracca, by which the terms of the contract No. 54124 for the construction of a sewer on Ormond Street were changed, according to this new agreement, as Plaintiff's Exhibit C-231.

MR. HACKETT: Same objection.

(The said modifying agreement was thereupon received in evidence and marked Plaintiff's Exhibit C-231, of this date).

40 BY MR. GOUDRAULT:

Q.—Well, now, Mr. Petracca, will you look at this check, which has been filed as Plaintiff's Exhibit C-165, dated December 16, 1926, to the order of Peter B. Campbell, for \$500, signed for the firm of Petracca & Peterson, by Carmine Petracca and Earl Peterson, and state if that is your signature. A.—Yes, sir.

Q.—It is your signature and the signature of your partner? A.—Yes.

Carmine Petracca for plaintiff (direct examination).

Q.—Why was that check given to Pete Campbell? A.—I couldn't tell you.

Q.—Who would know? A.—Peterson.

Q.—Peterson would know, your partner? A.—Yes; I couldn't remember. May be he borrowed, or something.

Q.—You don't remember? A.—No.

Q.—Did you know Pete Campbell? A.—Sure.

10 Q.—Do you know if he was a friend of Phillips? A.—I couldn't tell you.

Q.—Is that the same Campbell that took the acknowledgment of your signature on that contract there? A.—Whether it is the Campbell that took the signature on the contract, there are so many in the State of New York, I don't know to which one you are referring.

Q.—I see. But Peter B. Campbell, that is the man who acknowledged your signature, and the check is made payable to Peter B. Campbell? A.—Yes, sir.

20 Q.—Petracca and Peterson, that was your firm A.—Yes.

Q.—That company built the sewer on 130th Street, sanitary sewer? A.—Yes.

Q.—It did? A.—Yes.

Q.—Do you know from whom you bought the pipe? A.—
Yes.

Q.—From whom was it? A.—Phillips.

Q.—I see.

30 MR. O'DONNELL: Objected to as not the best evidence of purchase.

Q.—Was the pipe paid for? A.—Yes.

Q.—Will you now look at checks—

MR. COOK: You are referring now to what contract, Mr. Goudrault?

MR. GOUDRAULT: Contract No. 83771, Exhibit No. 128.

40 Q.—Will you now look at this Exhibit C-128, which is for the construction of a sewer on 130th Street, awarded to Petracca & Peterson, date of award April 30, 1927, and state if that is the contract which your firm executed for the City of New York? A.—Yes.

Q.—You see your signature there on that contract? A.—
Yes.

Carmine Petracca for plaintiff (direct examination).

Q.—And the signature of your partner also? A.—Yes.

Q.—So you executed that contract, did you? A.—Yes.

Q.—And you bought the pipe from Phillips? A.—Yes.

Q.—And you paid for the pipe? A.—Yes.

Q.—How much did you pay for the pipe, do you remember?

A.—No, I couldn't remember.

10 Q.—Will you look at three checks, dated one March 10, 1927, bearing No. 1078, to the order of John M. Phillips, for \$10,000, signed for the firm of Petracca & Peterson by Earl Peterson and Carmine Petracca, and state if that was paid to Phillips for pipe for that job on 130th Street? A.—\$10,000 it can't be. The job, I don't think is a big job. I don't know if that could be the check for that job. You have got a job there that's only \$30,000; I don't think it is even that much. It is a small job, that is.

20 MR. HACKETT: But a big check.

THE WITNESS: We didn't collect that much from the City, then how could we give it to Phillips?

MR. GOUDRAULT: What is your answer to the question? (To the Clerk): Read the question and answer.

(Question and answer read by the Clerk).

MR. COOK: Are you offering the check?

30 MR. GOUDRAULT: No.

BY MR. GOUDRAULT:

Q.—The sewer on 37th Street was only built by you, and not by the firm of Petracca & Peterson? A.—37th Street?

Q.—Yes. A.—And what other street?

40 Q.—Well, will you look at this contract, No. 79,227, for the construction of sewer on 37th Street, awarded to Carmine Petracca on the 27th of April, 1926, and state if you know anything about this contract, and state if that is your signature therein appearing. A.—Yes, sir.

Q.—So you signed this contract with the City of New York? A.—Yes, sir.

MR. GOUDRAULT: We now offer for evidence this contract, which was fully described and identified by the witness, as Plaintiff's Exhibit C-232, of this date.

Carmine Petracca for plaintiff (direct examination).

(The said contract was thereupon received in evidence and marked Plaintiff's Exhibit C-232, of this date).

Q.—Whom did you buy your pipe from? A.—From Phillips.

Q.—Would you remember the amount of pipe you bought from Phillips? Will you look through the contract which is signed by you and refresh your memory and state how much pipe. A.—That's approximately 1074 feet in the contract.

Q.—What is the size of the pipe? A.—3-foot.

Q.—36 inches. How much did you pay for it? A.—I don't remember what I paid for that pipe. Haven't you got the check here?

Q.—Did you pay a lump sum? A.—No, it was by the foot. But you can judge according to the check; what is the total amount of the check? I think it is in the back of the check specified for pipe on Ormond Street.

Q.—You have not got the check? A.—No. What's his name had it — Buckner had it.

Q.—But you haven't got it? A.—No.

Q.—And you don't remember how much you paid? A.—No.

Q.—It would be \$8,000 or \$10,000? A.—I couldn't remember.

Q.—Now, yourself, not the firm of Petracca & Peterson, but yourself, Carmine Petracca, was awarded the Farmers Boulevard contract by assignment? A.—Yes.

Q.—And you also bought the pipe from Phillips? You told us that you also bought the pipe from Phillips for that particular job? A.—Yes.

Q.—Do you know how much pipe was used in that particular contract? A.—Not if you don't give me the pink slip. According to this contract, yes.

Q.—Now, will you look at the contract and state how much pipe was used there, about, as approximately as you can? A.—Here it only says 2-foot 3. It don't say the feet.

Q.—It was type B, wasn't it, precast pipe? A.—Well, it says right there it was type B.

Q.—Precast pipe, wasn't it? A.—Yes, precast pipe.

Q.—Now, look at type B there, and see if you can state the number of feet; the size, at least. A.—Well it says here 2208 feet.

Q.—How much? A.—2208 feet.

Q.—Any more feet there? A.—Here's 10-inch pipe, (indicating). 3938, — 6-inch pipe.

Carminé Petracca for plaintiff (cross-examination).

Q.—That is vitrified pipe? A.—Vitrified.

MR. GOUDRAULT: Your witness.

MR. HACKETT: Have you finished, Mr. Goudrault?

MR. GOUDRAULT: Yes, sir.

10 CROSS EXAMINATION BY MR. HACKETT:

Q.—You have a good deal of experience in sewer construction, Mr. Petracca? A.—Yes.

Q.—The territory in the Borough of Queens is a very difficult territory in which to place sewers, is it not? A.—Yes, sir.

Q.—Why? A.—Well, I got a job now that I didn't expect to strike any rock and water, in Ridgewood.

Q.—Frequently, your excavation was below the level of the sea? A.—Yes, some of them.

Q.—And the soil is shifty, and has to be held in place by—
A.—By good construction.

Q.—And the shifting of the soil subjects the pipe to a great many stresses and strains? A.—Positively, yes.

Q.—It has to be very good pipe? A.—Sure.

Q.—And I suppose that in some places the strains upon this pipe are greater than elsewhere? A.—Well, generally it is. the ground that you strike.

Q.—So you have had to get pipe that was specially suited for that very difficult work? A.—In some places, yes. We had to have special pipe.

Q.—Yes. And I suppose the manufacturer was responsible for it if it failed? A.—They guaranteed the pipe to stand the test and the weight.

Q.—It is quite customary for contractors to buy contracts or get assignments of contracts and pay for them? A.—Positively.

Q.—If you are out of work and somebody has got a contract, it is to your advantage to buy it and pay for it? A.—Certainly. The City agreed and the bonding company agreed.

Q.—And it was a practice that obtained, and was acquiesced in and tolerated by the contractors, by the City and by everybody? A.—Positively.

Q.—You said that when you bought the contract from the Riverdale Company, you had no job? A.—No.

Andrew Zorn for plaintiff (direct examination).

Q.—And it was in your interest to get work to keep your organization together? A.—Certainly. I am looking for one now, but there is not much going on.

MR. HACKETT: That is all.

(Witness excused).

10

MR. GOUDRAULT: Mr. Zorn.

DEPOSITION OF ANDREW ZORN.

20 ANDREW ZORN, age 57; residence, 507 First Avenue, Long Island City; occupation, salesman; 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 know Maurice E. Connolly, Mr. Zorn? A.—I did.

Q.—Who was he? A.—Borough President of Queens.

30 Q.—Did you know Mr. Frederick C. Seely? A.—Yes.

Q.—Who was he? A.—An engineer in the Sewer Department.

Q.—Sewer Department of what borough? A.—Borough of Queens.

Q.—Did you know John M. Phillips, in his lifetime? A.—I did.

Q.—How long did you know John M. Phillips? A.—Well, since he was a boy; about 45 years.

Q.—You knew him for 45 years? A.—Yes.

40 Q.—Were you intimate with him? A.—Very.

Q.—You saw him often? A.—Well, he was a next door neighbor of mine for 45 years.

Q.—On what street, — a neighbor, did you say? A.—Yes.

Q.—On what street? A.—On Academy Street.

Q.—Did you have occasion to meet him in the years between 1917 and 1921? A.—Oh, yes, I met him in the 45 years, pretty near every day.

Andrew Zorn for plaintiff (direct examination).

Q.—Did you work for him? A.—No, I didn't work for him exactly.

Q.—Were you on his payroll? A.—I was on his payroll for a couple of years.

Q.—For a couple of years. Do you remember the years? A.—No. About 3 or 4 years.

10 Q.—You would not remember the years? A.—Well, I guess it started around 1924 or 1925, I am not sure which.

Q.—You were not working for him, did you say? A.—Why, I was working for the Atlas Portland Cement all the time.

Q.—And you were on Phillips' payroll? A.—I was on Phillips' payroll.

Q.—How much were you receiving all those years? A.—The first salary I got off him was about \$200 a month, and then I got \$400 a month.

Q.—And then \$400 a month? A.—Yes.

20 Q.—For how long did you get \$200 a month, do you collect? A.—About two years.

Q.—And then \$400? A.—Yes.

Q.—For how long? A.—A couple of years.

Q.—But your main occupation was the cement business? A.—Yes.

Q.—What company? A.—At that time it was the Atlas Company.

MR. HACKETT: Salesman?

30 THE WITNESS: Salesman.

Q.—During those four years that you received a salary from Phillips, were you a cement agent then? A.—I was.

Q.—You were? A.—Yes.

Q.—What did you do for Phillips? A.—Well, I looked after cement, mostly, to see that he got his shipments in time; and many times to help him out on payrolls on Saturday. Saturday we did not work for the company, so I helped him out; and evenings.

40 Q.—And for that he paid you \$200. for two years? A.—Yes, sir.

Q.—And then \$400. the other years? A.—Yes, sir.

Q.—From 1917 to the fall of 1921, did Phillips have an office? A.—Well, that I couldn't tell you.

MR. COOK: Mr. Goudrault, this gentleman has just said that he entered Phillips' employ in 1924, as I understand it.

Andrew Zorn for plaintiff (direct examination).

MR. GOUDRAULT: Yes.

MR. COOK: Limit yourself to those years.

Q.—Now, as regards to salary, we will come back to that again. In 1917, you knew Phillips and saw him? A.—Oh, yes, sure.

10 Q.—Were you working for him then? A.—No.

Q.—Had he an office then? A.—That I don't remember. He stopped at my house sometimes, for three or four months, on and off; lived there.

Q.—And where was his office, then? A.—Well, I don't know that he had an office then.

Q.—You saw him every day? A.—Every day, pretty near.

Q.—You never saw him in any office during those years? A.—Well, I might have met him in some friend's office, some lawyer's office, where he was staying. That I couldn't tell you exactly what year. But once in a while he would be in Caplis's office. That was his personal lawyer.

Q.—But do you or do you not know if he had an office between 1917 and 1921? A.—The first office he really had permanent is an office that I opened up for my son-in-law.

Q.—What year was that? A.—That I don't know, neither. It is quite some time ago, ten years ago.

Q.—Ten years ago, that would be 1921? A.—I think it's ten years, yes.

Q.—Then from 1917 to 1921, do you know whether he had any other office? A.—I don't know.

Q.—You don't know? A.—No.

Q.—But you know that one was opened in 1921? A.—Yes.

Q.—I see. Where was that? A.—That was at 49 Jackson Avenue.

Q.—Was that an office opened for Phillips? A.—No.

Q.—For whom? A.—It was opened for a surety company.

Q.—What surety company? A.—I believe at that time it was the Amsterdam Surety Company.

Q.—Who rented that office? A.—I did.

40 Q.—You did? A.—Yes.

Q.—What number was that, Mr. Zorn? A.—49 Jackson Avenue.

Q.—In Long Island? A.—Yes.

Q.—Did Phillips come to that office? A.—Quite often.

Andrew Zorn for plaintiff (direct examination).

Q.—Quite often. From the day you rented it? A.—That I don't know. It might have been later on. But I know he was in there quite a while.

Q.—Did he have an office in that office? A.—He didn't have an office.

Q.—What did he have? A.—Why, there were three desks there; there was one there for my son-in-law, there was one there for myself, that I had the cement operations; and of course Mr. Campbell came in, and he had some real estate,—

Q.—That is Peter B. Campbell? A.—We wasn't so particular the desk we sat down. There were three desks there in the office.

Q.—And did Mr. Phillips use a desk there when he came in? A.—When he came in yes, sure.

Q.—Did you have an office before 1921? A.—No, I didn't.

Q.—Did you see Phillips often during that period of time?

MR. COOK: What period of time, Mr. Goudrault, please?

MR. GOUDRAULT: 1921, on.

MR. HACKETT: Mr. Goudrault, has not Mr. Zorn said that for 45 years he saw him almost daily?

MR. GOUDRAULT: Yes.

THE WITNESS: Except when he went to Montreal, or down Florida some place, then I didn't see him, of course. But when he was in town, I met him pretty near every day.

BY MR. GOUDRAULT:

Q.—So is your statement correct that you saw him most every day during those 45 years? A.—While he was around, I did.

Q.—Well, I am speaking more particularly after he had desk room in your office at 49 Jackson Avenue? A.—Well, every day I wouldn't say, because some time he would go away for a couple of weeks, and I didn't see him. I could not see him then.

Q.—Did you ever go with Phillips to the Borough Hall? A.—Oh, yes.

Q.—Frequently? A.—Lots of times.

Q.—Lots of times. How many times? A.—Oh, I don't know. We were going to the Borough Hall since 1900.

Q.—I see. Did you quite often, say between 1917 and 1921? A.—Oh, yes.

Andrew Zorn for plaintiff (direct examination).

Q.—With Phillips? A.—Phillips stopped going there for a while. I don't know exactly what year that was. There were a couple of years that he didn't go there at all.

Q.—He didn't go at all? A.—No.

Q.—Do you remember the year? A.—No, I don't.

Q.—How long ago would that be, about? A.—Say about ten years ago.

10 Q.—So it would be about 1921? A.—Yes.

Q.—After he ceased going, did you still continue to go? A.—Oh, yes.

Q.—Very often? A.—Sometimes once a week, sometimes every day; just according to what business I had there.

Q.—I see. Whenever you went there, did you have occasion to see Maurice E. Connolly? A.—Many times I saw him in the hall when he was going out.

Q.—In his office? A.—Many times I had to go in and talk to him about politics, and different things.

20 Q.—I see. Did you have occasion to see Frederick C. Seely there? A.—Sure, I did.

Q.—Do you know him well? A.—Yes.

Q.—I am always speaking of the period after 1921 on. You went there quite often? A.—Yes.

Q.—There is nothing unusual in that? A.—No.

Q.—You went in there for business, and you saw these men? A.—I saw my customers there, and so forth.

30 Q.—Did you look at blueprints then? A.—No. Many a time a customer of mine asked me to bring him a set, and I brought it to him.

Q.—You brought a set of blueprints? A.—Yes.

Q.—Did you ever bring any to 49 Jackson Avenue, from the Borough Hall? A.—I don't know. I couldn't say whether I did. Many a time a customer waited in 49 and I got it for him, and paid \$5. or \$10., whatever it was.

Q.—Did you ever carry any written messages from Mr. Phillips to the Borough Hall, from 1921 on? A.—May be sometimes about a job, or something like that.

40 Q.—From Mr. Phillips? A.—No. We were running a large section of Long Island City, Phillips and I.

Q.—You and Phillips? A.—Yes. He was in politics. Many a fellow wanted a job many a time, and I brought up a slip to him and I said "Now, see that this fellow gets bonded," something like that.

Q.—And you would bring that to the Borough Hall? A.—Yes.

Andrew Zorn for plaintiff (direct examination).

Q.—Did you ever have a running bank account for Phillips? A.—Well, I couldn't say that. I done a lot of things for Phillips.

Q.—I see. But try to recollect. That's important now. A.—What do you want to know?

Q.—Well, the question is very clear. A.—What is it you want to know? Did I get any checks for him, or something like that?

Q.—My question is simply this: I want to know if you had a running bank account in which you deposited money for Phillips and withdrew money for Phillips? A.—His account or my account?

Q.—Your account? A.—I had that.

MR. COOK: Of your own?

THE WITNESS: My own.

Q.—In that account did you have any money for Phillips? A.—Many a times.

Q.—Big amounts? A.—Sometimes big, and little.

Q.—During how long a period? A.—Well, that I don't know. Many a time he says to me "Go ahead and run that check through the bank for me, and bring me the money when the check is good", when the check passed.

Q.—Did you have that bank account before you were on his payroll? A.—Yes. I had a bank account for the last 40 years.

Q.—Yes. But I mean in which bank account you put in Phillips' money. A.—That didn't make any difference, wherever it was handled.

Q.—I am just asking you— A.—I had two bank accounts.

Q.—One for yourself, and one— A.—Both for myself.

Q.—And did you put Phillips' money in both those bank accounts? A.—Just as it happened to be.

Q.—I see. I am asking you now if you do remember that you did put money in your own bank account for Phillips before you were on his payroll. A.—Oh, yes.

MR. COOK: And after, also?

THE WITNESS: Yes.

Q.—Do you remember the amounts that you put in between 1924 and 1927, for Phillips? A.—In the races he got as high as \$25,000 and \$30,000 a day. He says "Go on, run the check through, and give me the cash when the check is good".

Andrew Zorn for plaintiff (direct examination).

Q.—During the period from 1924 to 1927, three years, inclusive, could you state how much, about, as approximately as possible, the amount that you had in your own bank account, which was the property of Phillips? A.—That I couldn't say. I was gambling myself down the races, and that was the main items.

- 10 Q.—Did it run into thousands? A.—Oh, yes.
Q.—Into hundreds of thousands? A.—I don't know. The income tax fellows charged me half a million dollars for one year.
Q.—What bank was that? A.—Bank of Manhattan.
Q.—Long Island City? A.—Yes.
Q.—Any other bank? A.—The other bank is an Italian Bank. I don't even know the name.
Q.—In New York? A.—No, on forty-seven, down alongside the office.
Q.—Long Island City, also? A.—Yes. It used to be Ladice's Bank, but they changed it.
20 Q.—Did you have any other office besides the one at 49 Jackson Avenue? A.—No. We moved from 49 over to 42, about two years before Phillips died. That must have been around 1926 or 1927.
Q.—You moved, you and Phillips? A.—Yes.
Q.—Did you ever have any office at 9 Jackson Avenue? A.—Yes, I guess Phillips had an office there. I didn't know anything about that. That was a room, not an office, just one room belonging to a front office.
30 Q.—You stated a minute ago that you know Mr. Seely, engineer of sewers for the Borough of Queens, that is what he was? A.—Yes.
Q.—Did you have occasion to see him at 49 Jackson Avenue? A.—Well, once in a while he came in.
Q.—Once in a while he came in? A.—Not often.
Q.—Did you know a contractor by the name of Petracca? A.—Yes.
Q.—Carmine Petracca? A.—Yes.
Q.—Did you ever work for him? A.—No.
40 Q.—Never? A.—No.
Q.—Now, did you know Dr. Matthews? A.—I did.
Q.—Was he one of Phillips' friends? A.—Yes.
Q.—Intimate friends, to your knowledge? A.—To my knowledge, yes.
Q.—Do you remember receiving a check from Matthews? A.—I receive a check?

Andrew Zorn for plaintiff (direct examination).

Q.—Yes, from Mathews; \$5,000. check for deposit? A.— Well, maybe. I don't know. If you show me the check, I will tell you.

Q.—Well, this may help you refresh your memory. Will you look at a slip dated December 13, 1920, and state if you ever have seen this slip before? A.—(Examining paper). It looks like my signature.

10 Q.—Is it your signature? A.—I mean it looks like my writing.

Q.—Your writing? A.—Yes. What's that, 1920?

Q.—This part of it is just a stamp, a Court stamp. It was shown to you before. A.—I think it looks like my writing.

MR. GOUDRAULT: Your writing. We offer for evidence, this paper, as Plaintiff's Exhibit C. —

MR. HACKETT: Just a minute.

20 MR. GOUDRAULT: Withdrawn.

THE WITNESS: Some writing is on there that don't belong to me, I think.

MR. GOUDRAULT: The stamp.

THE WITNESS: And the other side, whatever that is.

MR. GOUDRAULT: That is the Court stamp.

30 We now offer for evidence, as Plaintiff's Exhibit C-233, this slip, of deposit to the account of John M. Phillips in the Italian Discount & Trust Company, at Broadway and Walker Street, New York, dated December 13, 1920, wherein it appears that a check of \$5,000. has been deposited in that account.

MR. COOK: We object to this as irrelevant and illegal, and not the best evidence of any such deposit. Furthermore, the witness says he does not remember it.

40 MR. HACKETT: I join in that objection.

MR. GOUDRAULT: Well, Mr. Commissioner, at page 858 of the deposition on this Commission—

MR. O'DONNELL: Wait a minute. Are you going to read from that deposition now?

Andrew Zorn for plaintiff (cross-examination).

MR. GOUDRAULT: (Continuing) 858, we have the evidence of Dr. Mathews, as regards that check.

MR. COOK: You are referring to our own commission?

MR. GOUDRAULT: Our own commission, yes.

10 THE COMMISSIONER: I will allow the evidence and grant an exception and reservation.

(The said deposit slip was thereupon received in evidence and marked Plaintiff's Exhibit C-233, of this date).

BY MR. GOUDRAULT:

Q.—Now, look at this and leave out the stamp, which is a Court stamp. You recognize this slip otherwise as being prepared by you? A.—It looks like my handwriting.

20 Q.—Did you deposit the check for \$5,000? A.—I don't hardly remember it, I made so many deposits.

Q.—You don't remember what that particular check was? A.—No.

Q.—Do you know Dr. Mathews? A.—I do.

Q.—Do you know whether he gave you that check to cash for him? A.—I don't remember that. He gave me so many checks I don't remember whether that was his check; I don't know.

Q.—Do you know Major O'Rourke? A.—Yes.

30 Q.—With whom was he connected? A.—He was in the Tunnel business, I believe.

Q.—Was he the Oxford Engineering Company? A.—No, the O'Rourke Engineering Company. He was building tunnels for the City.

MR. GOUDRAULT: I am through with Mr. Zorn.

CROSS EXAMINATION BY MR. HACKETT:

40 Q.—Mr. Zorn, the Borough of Queens is a Borough in which there has been very rapid development in the last 15 years? A.—Last 10 years.

Q.—Last 10 years? A.—Yes.

Q.—The population there has grown very rapidly? A.—It tripled itself.

Q.—And there has been a great deal of construction work? A.—Yes, sir.

Q.—Paving? A.—Asphalt, sewers.

Q.—Asphalt— A.—Highways.

Andrew Zorn for plaintiff (cross-examination).

Q.—Asphalt, sewers, highways, waterworks? A.—Yes.

Q.—And a great deal of this work was carried on by the City? A.—Yes.

Q.—And the Borough Hall was a Mecca for engineers and contractors, and people who were interested in construction work generally, was it not? A.—Yes.

10 Q.—You have told us that you were selling cement. A.—Yes.

Q.—Was the Borough Hall a good place to go to meet people to whom you could sell cement? A.—That's the only place you could meet them.

Q.—So the Borough Hall was the place to go to meet the contractors and the engineers and the people with whom you could do business? A.—Absolutely. But that was only on the day of letting, because even if men did not bid on the jobs, they came around to see how the jobs went all the time. A couple of
20 hundred people there at every letting.

Q.—But there is this suggestion that there is something very sinister in the fact that you and Phillips went to the Borough Hall. Now, Phillips was selling pipe, was he not? A.—Yes.

Q.—And just as you met your clients and customers at the Borough Hall, I suppose Phillips could meet his clients and customers at the Borough Hall? A.—Absolutely.

Q.—And he had that reason to go. You have been asked if you knew Seely. He was an engineer, was he not? A.—Yes.

Q.—He had superior officers? A.—Yes. He had a couple.

30 Q.—There was Perrine? A.—There were 50 men under him.

Q.—Fifty men under him, and a half a dozen men over him? A.—About that, yes.

Q.—Do you remember offhand any of the names of the men who were his superior officers at the Borough Hall? A.—Well, Rice was the chief, — Mr. Rice was the chief engineer.

Q.—Yes. A.—And then one higher was Cliff Moore.

40 Q.—And then wasn't there Perrine? A.—Perrine, well, I don't know that Perrine was his superior. I believe they were on the same footing. I mean the title was about the same between Perrine and Seely.

Q.—Did you know Phillips' son, Francis? A.—Oh, yes.

Q.—You knew him pretty well? A.—Well, he came to the house. My boy and him were pals together.

Q.—Well, we have been informed that he informed that he went along a good deal with his father, and his father was very

Andrew Zorn for plaintiff (cross-examination).

fond of him? A.—Well, he had been sick up to a year or two before he died. He was paralyzed.

Q.—He was paralyzed, partially paralyzed in the hands and feet? A.—Yes. He couldn't walk.

Q.—Yes. But somebody has told us that the father was very fond of him and used to take him around a lot. A.—Yes.

10 MR. GOUDRAULT: Mr. Commissioner, I wish to object to any cross-examination on this particular point because it does not derive at all from the examination in chief.

THE COMMISSIONER: I will allow you an exception, and I will take the evidence.

MR. HACKETT: It wont be long, Mr. Goudrault.

BY MR. HACKETT:

20 Q.—And Phillips, what manner of man was he? I mean, was he a generous fellow? A.—Well, at times. Sometimes he would give you his shirt, and sometimes he wouldn't give you a hair.

Q.—Anybody he liked, he was apt to be very good to? A.—How he felt, according to the situation. I have seen him chase a beggar away, and then send me after him to see what he wanted. Other times he said to them "Go to work." Just how he felt about the situation.

30 Q.—He gambled very heavily on the races? A.—Some-
times.

MR. GOUDRAULT: I wish to enter an objection here, before you answer, Mr. Zorn, to this line of questioning, as trying to bring out from the witness his own conclusion as to the mind and disposition and character of John M. Phillips.

THE COMMISSIONER: Same ruling; exception.

40 MR. GOUDRAULT: And does not derive from the examination in chief.

BY MR. HACKETT:

Q.—You have said that it happened to you to cash race track checks. A.—Yes.

Q.—What was the largest amount that you knew Phillips to win on any one race? A.—Well, I don't know exactly. He

Andrew Zorn for plaintiff (cross-examination).

didn't have bets with one man alone; he had different men betting for him.

Q.—Different men betting for him? A.—Yes.

Q.—Did you know of Phillips winning more than \$100,000. in any one race? A.—On one race, I don't think so.

Q.—No. Were you and Phillips boys together? A.—Just the same age as I was.

10 Q.—Were you raised in the same locality? A.—I don't know. I was about 12 years old when I got in the neighborhood.

Q.—Did you have pretty much the same friends? A.—Yes.

Q.—Do you know when Mr. Phillips first knew Cassidy? A.—Yes.

Q.—When was that? A.—Cassidy was a brother of Borough President Cassidy, who was a good friend of both Phillips and myself, and we met Cassidy. Of course, Cassidy was living in a different locality than we were. But while he was serving as — what do you call the doctors before they are turned out? 20 They have to serve in the hospital.

Q.—Interne? A.—Interne.

Q.—What is Cassidy's business now?

MR. GOUDRAULT: I object, Mr. Commissioner, to this cross-examination, as it does not derive from the examination in chief.

MR. COOK: I object to this evidence as illegal and irrelevant.

30 THE COMMISSIONER: I will allow the answer to be made and give you an exception.

BY MR. HACKETT:

Q.—Are you still selling cement? A.—Yes, sir.

CROSS EXAMINATION BY MR. COOK:

Q.—Mr. Zorn, I understand that you were a friend of Mr. Phillips for a great many years? A.—Yes, sir.

40 Q.—Intimate friends, associates, neighbors, and so on? A.—Yes.

Q.—And in 1924, you entered his employ, or as you explained, on his payroll? A.—That's better.

Q.—Receiving \$200. a month for a period of about 2 years? A.—Yes.

Andrew Zorn for plaintiff (cross-examination).

Q.—And then your remuneration was increased for the next two years to about \$400?

Q.—And then your remuneration was increased for the next two years to about \$400? A.—Yes.

Q.—Prior to the time that you were on Phillips' payroll, you naturally would not be greatly interested in his affairs? A.—Oh, yes I would.

10 Q.—I mean you would not except as a friend? A.—As a friend.

Q.—But after 1924? A.—That \$200. didn't change any position at all. It was just the same as 30 years before that, or 35 years before that.

Q.—I understand that, Mr. Zorn. Still the relationship did change? A.—Not at all.

Q.—Not at all. So that although you were in Phillips' employ, to a certain extent, between 1924 and 1928, it really made
20 no particular difference in the relations which existed between you? A.—No.

Q.—That is correct? A.—That is correct.

Q.—You did things for him before? And you would have done things for him afterwards, if he was alive? A.—Yes.

Q.—Now, did you ever have occasion to go to the Borough Hall — you and Phillips were on the same side in municipal politics, weren't you? A.—Not all the time.

Q.—Not all the time? A.—No, sir. Many a time we had a Republican in, and we had to help him.

30 Q.—And Connolly and Phillips were not always on the same side, either? A.—No.

Q.—They were on different sides of the fence? A.—Absolutely.

Q.—You were the district leader, weren't you? A.—Yes, sir.

Q.—In Queens Borough? A.—No, not in Queens Borough. I was only the leader of a section of an assembly district, what they call Dutch Hills, that was my section.

40 Q.—Phillips was a very genial, friendly man, wasn't he, on many occasions? A.—What?

Q.—A very friendly man, had a great many friends? A.—Yes, he did. As an under-sheriff or 10 or 15 years, he made a lot of friends. He helped people with subpoenas, and jury notices.

Q.—He was always willing to help his associates and friends, if he could? A.—Yes.

Andrew Zorn for plaintiff (cross-examination).

Q.—Did you ever ask Connolly, on behalf of Phillips, to nominate people to jobs, in the Borough of Queens? A.—In behalf of Phillips?

Q.—Yes, or on your own behalf? A.—Oh, yes.

Q.—And did he do so? Did Connolly do so? A.—Well, most of the time we were better off if we didn't ask him.

10 Q.—Better off if you didn't ask him? A.—Yes. If we got a job, most of the time it would be without him knowing.

Q.—Most of the time it would be a refusal? A.—Most of the time.

Q.—I understand that Connolly and Phillips were not on good terms, on occasions. A.—On occasions, yes.

Q.—They were not on good terms? A.—No.

Q.—They didn't pull together. A.—If he nominated a candidate and we didn't like him, why, we went out against him. Many a times we had three candidates, each one was for a different one. We could not unite on one.

20 Q.—Do you remember asking Connolly to give Caplis a job, and he refused to do so? A.—Well, I don't know if I asked him or not; but I know Phillips supported Caplis in one election, and I didn't. I was for the regular nominee of the Democratic Party, and Phillips and me had many a battle over that because he wanted me to support his man and I wouldn't do it.

Q.—You got no assistance from Connolly? A.—Well, that I don't know. That was only about mine, between Phillips and myself.

30 MR. COOK: All right.

BY MR. HACKETT:

Q.—Well, Caplis was a lawyer, wasn't he? A.—Yes, sir. He ran for Judge over there about 15 years ago.

Q.—Did Connolly give you any help to nominate Caplis? A.—No. Phillips nominated Caplis. He got a petition signed for him, and I think Phillips was responsible for the expenses, I believe.

40 Q.—And Connolly fought you on that issue? A.—Why, of course.

Q.—Fought Caplis? A.—Connolly had a man by the name of Heddington.

Q.—Who won? A.—Heddington won.

MR. GOUDRAULT: That is all, Mr. Zorn. Thank you.

Francis William Hopkins Jr. for plaintiff (direct examination).

MR. HACKETT: When was that, Mr. Zorn?

THE WITNESS: About 15 years ago.

(Witness excused).

10

(Recess from 1:15 p. m. to 2:15 p. m.)

AFTER RECESS. 2:15 p. m.

DEPOSITION OF FRANCIS WILLIAM HOPKINS, JR.

20 FRANCIS WILLIAM HOPKINS, JR., age 35; residence, 2 Herbert Avenue, White Plains, New York; occupation, certified public accountant; 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.—You have a degree of certified accountant, Mr. Hopkins? A.—Yes, sir.

Q.—And as such you are licensed to practice as an accountant? A.—Yes, sir.

30 Q.—What is the name of your firm now? A.—Hopkins, Barnes & Company.

Q.—How long have you been an accountant, approximately? A.—Since 1913. Certified in New York in 1921.

Q.—Have you done any accounting in connection with certain state's investigations here in New York? A.—Yes.

Q.—Will you state the cases, if you remember them? The investigations, rather? A.—People against Connolly, et al., and I think it was the People against Tommaney Healy, and Ewald.

40 not. Q.—Were you in the Meyer Investigation? A.—No, I was

Q.—Justice Scudder? A.—Justice Scudder, yes.

Q.—You were in that investigation? A.—Yes. Justice Scudder and Justice Shearn.

Q.—That was another one? A.—No, that is all the Connolly case, prior to the—

Q.—Prior to the trial itself? A.—That's right.

Francis William Hopkins Jr. for plaintiff (direct examination).

Q.—But you did some accounting at the trial also of the People against Maurice Connolly and others? A.—Yes, that is what I was referring to; the whole proceeding, from Justice Scudder down.

Q.—Did you make an extensive work of accounting there in those various investigations or cases? A.—I certainly did.

10 Q.—Do you know the Lock Joint Pipe Company? A.—Yes, sir.

Q.—And its head office, where is it? A.—Ampere, New Jersey, it was then. I don't know where it is now.

Q.—Do you know the Core Joint Pipe Company? A.—No.

Q.—Do you know the Newark Pipe Company? A.—Only by reputation, both of them.

Q.—And the Federal Pipe, by reputation only? A.—Only by reputation.

20 Q.—Have you ever made any searches to find out the prices at which the Lock Joint pipes were being sold? A.—Yes.

Q.—Was that work carried on by yourself personally? A.—Yes.

Q.—I mean the searches, the information? A.—Yes.

Q.—You have examined at what prices that company was selling its pipe in various localities, have you, Mr. Hopkins? A.—Yes.

Q.—In the Borough of Queens, City of New York, and outside of the City of New York? A.—What period?

Q.—Say from 1918 to 1927. A.—Yes.

30 Q.—So do I understand you to mean that you are in a position to give us the prices at which the Lock Joint Pipe Company was selling its pipes during that period of time outside of the Borough of Queens? A.—Yes, sir.

40 Q.—Would you give us the source of your information; I mean the material from which it was obtained? A.—Original invoices, original books of account, ledgers; that's all. I might qualify that by stating that original invoices only from 1921 on, although my examination dated from 1917 to 1927, inclusive; 1918 to 1927 inclusive. The original invoices were not to be had, were not found. And when I say original invoices, I mean copies of the invoices that were rendered to the customers of the Lock Joint Company.

MR. COOK: Then they were not originals?

THE WITNESS: Copies.

Francis William Hopkins Jr. for plaintiff (direct examination).

Q.—That is only for a certain period of time, certain years, that you could not find the originals? A.—Prior to 1921.

Q.—How long were you working at the books and invoices and ledgers of the Lock Joint Pipe Company in connection with getting this data and information? A.—About 3 or 4 weeks.

10 Q.—May I ask you what was the outcome or result of your work as regards the prices charged by the Lock Joint Pipe Company to its various customers, in various localities, during that period?

MR. HACKETT: Mr. Commissioner, I wish to object to the further examination of this witness as irrelevant and illegal. The Lock Joint Pipe Company is not a party to this litigation, and so far as I am aware, it had no contract with the people of the State of New York, and the information which it is sought to elicit from this witness is, I submit, without point and without use to the determination of the issues before the Court.

20 MR. COOK: And on behalf of the other defendants, Mr. Commissioner, I wish to avail myself of the objection that Mr. Hackett has taken. This witness prefaces his evidence by saying that he made this so-called investigation from original invoices.

30 He then, very properly, corrects his statement by saying that he made his investigation from copies of the original invoices. Now, we have neither seen the copies nor the original invoices themselves, and it is perfectly absurd to think that he can forward as an expert witness and testify against us on the data which he himself has given.

THE COMMISSIONER: I will allow the evidence, subject to your reservations, and give you an exception.

MR. GOUDRAULT: What is the question, Mr. Schultz?

(Question read by the Clerk).

40 THE WITNESS: (Answering) I prepared a list.

MR. COOK: Mr. Commissioner, may I ask that the objections that have been made to this evidence shall apply to the entire evidence of this witness and not merely to this evidence.

THE COMMISSIONER: They shall apply to all the evidence forthcoming from this witness on the grounds stated by you,

Francis William Hopkins Jr. for plaintiff (direct examination).

and on the additional ground that the same is hearsay and not based on the original evidence.

MR. HACKETT: And that applies to the defendants whom I represent, as well as to the defendant represented by Mr. Cook, I assume.

10 THE COMMISSIONER: It does, Mr. Hackett.

BY MR. GOUDRAULT:

Q.—You have a list of the prices? A.—I prepared a list of the prices.

Q.—I see. Now, just to clear one point up. I understood you to say that you did work from ledgers and books of the Lock Joint Pipe, and furthermore, on invoices. Some of those invoices you stated were originals, or duplicates, is that right?

20 MR. COOK: He didn't say they were originals.

Q.—Mr. Cook, I think, made a mistake when he said that you first stated that it was original records and then you further corrected it by stating it was only copies, so just give us the very source of your information. A.—In our terminology, in accounting terminology, we speak of originals, as the sources of original information for the accounts. And when I said originals, I meant the original papers from which the original entry was placed on the account. I did not mean a so-called original invoice which, under ordinary circumstances, goes to the customer.

30 Q.—I see. A.—Those were checked to the ledgers, the accounts receivable ledgers, cost ledgers, general ledgers.

Q.—By yourself? A.—By myself.

Q.—As taken from those invoices that you had in your possession? A.—That were in the possession of the Lock Joint Pipe Company.

Q.—And at a certain time in your possession for the purpose of that work and investigation? A.—Yes, sir.

40 Q.—I see. And you further stated that you traced back by checking the items appearing on those invoices to the ledgers of the company? A.—Yes. I tied them into the accounts.

Q.—And those were the original ledgers of the company? A.—That's right.

Q.—Now, you have then prepared, I suppose, as you say, a summary of your work, in which summary I presume the prices are given, is that right? A.—Yes, sir.

Francis William Hopkins Jr. for plaintiff (direct examination).

Q.—Could you give us first, if you recollect, the various sizes of pipe, of precast pipe, being built by the Lock Joint Pipe Company and sold to its customers for the purposes of construction of sewers? By that I mean the pipes, say, from 24 inches up. A.—To the best of my recollection I saw no pipe sizes smaller than 24 inches, and no size larger than 90 inches, and they ran three inches apart; 24, 27, 30, 33 and so on up.

10 Q.—I see. Now, can you give us first the highest price at which Lock Joint pipe was sold for each size for that entire period of 1918 to 1927, starting with, say, first, the 24-inch pipe? A.—Outside of Queens County only?

Q.—Yes. A.—Yes.

Q.—Would you also be in a position to state the low price at which the same company sold its precast pipe—always outside of Queens—during that period? A.—Yes.

20 Q.—And on all those sizes of pipe from 24 inches up to 90? A.—My schedule will show. I can't recall offhand whether the same sizes of pipe were sold in each year or not. I would have to refer to my schedule.

Q.—I see. Then in preparing the schedule, did you at the same time prepare an average price at which the Lock Joint Pipe Company was selling its pipe outside of the Borough of Queens, City of New York? A.—Yes.

30 Q.—What would be the highest price at which these pipes of the various sizes, would be sold outside of Queens during the period? Take, for instance, the 24-inch pipe. A.—You mean during the ten years?

Q.—Yes. A.—The high for the ten years, or the high for one year?

Q.—The high for one year. A.—What year do you want?

Q.—The first year? A.—1918?

Q.—Right. A.—The high for what sized pipe?

Q.—24-inch. A.—\$1.90 per foot.

Q.—27-inch? A.—27-inch, \$2.25 a foot.

40 THE COMMISSIONER: This is outside of New York City?

THE WITNESS: Outside of Queens.

Q.—The 30-inch?

MR. COOK: What are you reading from?

THE WITNESS: I am reading from that schedule I prepared. There are five pages of it.

Francis William Hopkins Jr. for plaintiff (direct examination).

BY MR. GOUDRAULT:

- Q.—30-inch pipe? A.—\$2.40.
Q.—36-inch pipe? A.—\$3.60.
Q.—42-inch pipe? A.—\$3.50.
Q.—45-inch pipe? A.—\$4.15.
Q.—48-inch pipe? A.—\$5.75.
10 Q.—72-inch pipe? A.—\$10.50.
Q.—78-inch pipe? A.—\$12.50.
Q.—That would be the highest during those years, for those sizes of pipe, outside of Queens?

MR. COOK: For one year, Mr. Goudrault; not for those years.

THE WITNESS: For 1918.

MR. COOK: For that year. But you said “those years”,
20 and the witness is speaking of one year.

MR. GOUDRAULT: That’s right, 1918.

THE WITNESS: 1918.

Q.—Now, if you take the highest for the next year, 1919, the highest price at which these various sizes of precast pipe were sold by the Lock Joint Pipe Company outside of Queens, would you give us from 24 inches right along, and state the highest price at which it was sold? A.—The highest price,

30

24-inch	\$2.00
27 “	2.50
30 “	2.50
33 “	3.45
36 “	3.80
42 “	4.55
45 “	4.80
48 “	5.80
51 “	6.25

40 all in the year 1919.

Q.—Will you now give us the highest price for the year 1920, at which Lock Joint pipe was sold? A.—The year 1920—

33-inch	\$3.35
42 “	4.70
45 “	5.25
48 “	6.05
51 “	6.20

Francis William Hopkins Jr. for plaintiff (direct examination).

54-inch	\$7.60
57 “	7.70
60 “	9.15
66 “	10.25

That is all for the year 1920.

10 Q.—Will you now take the highest prices at which the pipe was sold during the year 1921? A.—In the year 1921—

36-inch	\$3.65
42 “	4.55
45 “	4.10
48 “	5.90
54 “	6.30
66 “	12.00
72 “	14.25

20 Q.—Will you now give us the highest price for the year 1922, at which that pipe was sold outside of Queens by the Lock Joint Pipe Company? A.—For the year 1922—

27-inch	\$2.00
33 “	2.85
36 “	3.00
42 “	3.90
45 “	4.15
48 “	5.45
54 “	6.65
66 “	9.45
30 72 “	9.50
78 “	11.90
84 “	13.10

That's all for 1922.

Q.—Now, for 1923? A.—For 1923—

24-inch	\$1.80
27 “	2.05
30 “	2.50
40 33 “	2.90
36 “	3.50
39 “	3.35
42 “	4.50
48 “	5.70
60 “	8.80
66 “	9.00
72 “	12.10

Francis William Hopkins Jr. for plaintiff (direct examination).

Q.—Is that all for that year? A.—That's all for 1923.

Q.—Will you now give the prices in 1924? A.—In 1924—

	30-inch	\$2.45
	33 "	2.90
	36 "	3.40
	42 "	4.20
10	48 "	5.45
	54 "	6.50
	66 "	9.25
	72 "	10.50
	78 "	13.75
	84 "	15.25
	90 "	18.25

That's all for 1924.

Q.—Will you now give the prices for the year 1925? A.—

20	24-inch	\$1.90
	27 "	2.45
	33 "	3.40
	36 "	3.15
	39 "	3.25
	42 "	4.50
	63 "	8.65
	78 "	12.40
	84 "	13.75

30 That's all for 1925.

Q.—Will you give those for 1926? A.—For 1926—

	24-inch	\$1.60
	30 "	2.45
	33 "	3.20
	36 "	3.70
	42 "	4.90
	48 "	6.10
	54 "	6.50
40	60 "	7.90
	66 "	9.40
	72 "	10.75
	78 "	13.00
	84 "	14.15

Francis William Hopkins Jr. for plaintiff (direct examination).

Q.—Now, for the year 1927. A.—For the year 1927—

	24-inch	\$2.10
	27 “	2.35
	30 “	3.00
	33 “	3.65
	36 “	4.00
10	39 “	3.65
	42 “	4.60
	48 “	6.00
	54 “	6.35
	60 “	8.80
	66 “	10.40
	72 “	12.40
	78 “	13.23
	84 “	14.21

That's all in 1927.

20

Q.—Now, for the last year, 1928? A.—I didn't take 1928.

Q.—Up to 1928, I see. A.—Yes.

Q.—And on that schedule of yours appear also the localities where these pipes were delivered? A.—Yes, sir.

Q.—Do those prices mean the prices at place of delivery alongside the job? A.—No, I won't say that. They are the price at the point of manufacture.

Q.—Will you now produce, as Plaintiff's Exhibit C-234, this schedule of high prices; that is, the highest prices. A.—That
30 schedule shows the high, low and average.

Q.—I see. A.—By sizes and by years, for the years 1918 to 1927, inclusive.

MR. HACKETT: I renew my objection, Mr. Commissioner, to the production of this document, as being purely hearsay, and irrelevant and illegal.

MR. COOK: On behalf of the defendants, I join in Mr. Hackett's objection, and state that the exhibit which is now
40 offered has nothing to do with the sale of pipe in Queens, and it is utterly irrelevant to the present issues.

THE COMMISSIONER: I will allow it in evidence subject to your objections, and grant you an exception and reservation.

Francis William Hopkins Jr. for plaintiff (direct examination).

(The said schedule was thereupon received in evidence and marked Plaintiff's Exhibit C-234, consisting of five pages, of this date).

Q.—That schedule, I understand, also contains the low prices at which the same company, the Lock Joint Pipe Company, was selling its precast pipe in the same localities for that
10 same period of time? A.—Yes, sir.

Q.—Is that right? A.—Yes, sir.

Q.—Will you give us the low price for each size of pipe which you have investigated, for each year from 1917 up to 1928.

MR. COOK: These are the high figures, are they? (Referring to Exhibit C-234).

THE WITNESS: No. Those are high, low and average.

MR. HACKETT: Just a minute. The witness has given
20 us the high prices. I understand that the low and the average prices are embodied in the same document, and I would suggest—

MR. GOUDRAULT: I quite agree with that, that they be filed.

MR. HACKETT: It is not necessary that they be incorporated in the deposition.

MR. COOK: Mr. Commissioner, I object to the production of this exhibit on another ground, namely, that I can not
30 understand it. He says "High, low and average, \$1.90". I don't know what he means by that.

THE WITNESS: May I explain it?

MR. COOK: Yes, surely; explain it.

THE WITNESS: Why, where it says high, low and average, with just one amount, it means there was only one sale.

MR. COOK: I see.

40

BY MR. GOUDRAULT:

Q.—One point, Mr. Hopkins? A.—One sale. It had to be high, low and average.

Q.—This schedule C-234 also contains the low price at which these various sizes of pipe were sold by the Lock Joint Pipe Company outside of Queens? A.—Yes, sir.

Francis William Hopkins Jr. for plaintiff (direct examination).

Q.—In that period of time? A.—Yes, sir.

Q.—And in order to get an idea of how that compares with the general range of prices, you also prepared the average price, is that right, Mr. Hopkins? A.—Yes, sir.

Q.—And that also appears on that same statement? A.—Yes.

10 Q.—I see. Now, Mr. Hopkins, I see that you have prepared another schedule which I now ask you to look at. Was that prepared by you? A.—Yes, sir.

Q.—Will you describe what that is? A.—Memorandum of prices at which Lock Joint Pipe has actually been sold in the years 1918 to 1927, inclusive, outside of Queens County, and in places and on sites where the pipe could be precast on the job and distributed accordingly. This is the original schedule from the books and accounts and duplicate invoices of the Lock Joint Pipe Co. That other schedule was prepared from this.

20 MR. COOK: Oh, the first schedule, Exhibit 234, was prepared from another schedule that you yourself had previously, is that correct?

THE WITNESS: Yes.

MR. COOK: Well, I renew my objection, Mr. Commissioner, to the first exhibit, C-234.

MR. HACKETT: So do I.

30 THE COMMISSIONER: Same ruling.

BY MR. GOUDRAULT:

Q.—I understand, therefore, that both schedules were prepared by yourself? A.—Yes, sir.

Q.—And the information that appears on that Exhibit C-234, is information which you gathered and which appears on this schedule? A.—The average price does not appear on this schedule. The average price is a mathematical calculation between the high and low as taken from this schedule (indicating).

40 Q.—But the high and low do appear on this schedule, which I now offer in evidence as Plaintiff's Exhibit C-235, containing seven pages.

MR. COOK: Same objection.

MR. HACKETT: Same objection.

Francis William Hopkins Jr. for plaintiff (direct examination).

THE COMMISSIONER: Same ruling.

(The said schedule was thereupon received in evidence and marked Plaintiff's Exhibit C-235, of this date, containing seven pages).

10 Q.—On this Exhibit C-235, you have all the sizes of pipe that do appear on that other schedule that you prepared? A.—Yes, sir.

Q.—And also the localities? A.—Yes, sir.

Q.—And that information and data were gathered at the office at Ampere, New Jersey, of the Lock Joint Pipe Company, by yourself? A.—Yes, sir.

Q.—And checked by yourself? A.—Yes, sir.

Q.—From the original books and invoices and ledgers? A.—Yes, sir.

20 Q.—Now, Mr. Hopkins, will you look at this set of books which have been filed as Plaintiff's Exhibit C-167-A to O, inclusive, and state if you have seen these before, by looking at them?

MR. COOK: What are they?

MR. GOUDRAULT: Those were the estimate sheets filed by Miss Ryan, the very last day of the February session.

THE WITNESS: (Answering) They look familiar.

30 Q.—Do you know what they are? A.—I don't know what they are.

Q.—These books, Mr. Hopkins, were filed by Miss Ryan, the Secretary and representative of Mr. Hart, who was salesman for Newark & Core Joint Pipe, and she testified that they were estimate sheets of prices submitted to clients for the purpose of selling these two kinds of pipes. Do you recollect that that would be these sheets?

40 MR. COOK: On behalf of the defendants, I object to this question as entirely improper, irrelevant, and having no bearing on the issues. I also do not admit the correctness of Mr. Goudrault's statement as to what Miss Ryan said, nor as to the relevancy of Miss Ryan's evidence, if she did say it.

THE COMMISSIONER: I will allow the question, subject to your objection.

Francis William Hopkins Jr. for plaintiff (direct examination).

THE WITNESS: What is the question?

(Question read by the Clerk).

THE WITNESS: (Answering) No, I couldn't recollect anything of the kind.

BY MR. GOUDRAULT:

10

Q.—Then will you describe what they are, by looking at them; if you have looked at them before? A.—These books appear to be estimate sheets for several kinds of concrete pipe.

Q.—What kind of pipes? A.—Several kinds, including Newark concrete pipe, Core Joint concrete pipe. And there are other odds and ends of piping here.

Q.—Mr. Hopkins, have you had occasion to go through these thirteen books before? A.—I can not say whether I had occasion to go through these thirteen books before. I did go through a number of estimate books of this man Hart, in the case of the people against Connolly. But whether these are the books or not, I don't know, because I haven't got the original schedule which I took certain information off.

20

Q.—All right. When you secured that information from some books of Hart's, what did you do? A.—I prepared a schedule showing the sales of pipe similar to the schedule that has already been submitted for Lock Joint, showing the high, low and average of sales, as shown by those estimate sheets.

30

Q.—And that schedule was prepared from some bid sheets that were submitted to you by Mr. Hart, I understand? A.—That's right.

Q.—And the work that you made for the Lock Joint Pipe Company, you did what those books of estimate do for the pipe that Mr. Hart was selling? A.—I did.

Q.—According, at least, to the bid sheets that were shown to you? A.—I did.

40 MR. GOUDRAULT: That is all, Mr. Commissioner, with this witness, as far as this witness is concerned, with the exception that we reserve our right to examine him further in Montreal, if the Court there allows us to further examine this witness.

Your witness.

Francis William Hopkins Jr. for plaintiff (cross-examination).

MR. HACKETT: Well, I will enter a protest now to that. We have come here because Mr. Hopkins and other gentlemen were not to be available in Montreal.

CROSS EXAMINATION BY MR. HACKETT: (Under reserve of objections made):

10 Q.—Mr. Hopkins, I understood from your testimony that you have given your whole business life to accountancy? A.—Practically.

Q.—You began in 1913? A.—Yes, sir.

Q.—You must have been a very young man then. A.—Just out of high school.

Q.—Just out of high school. And you continued until 1921, when you got your license? A.—That's right.

20 Q.—And from 1913 to the present time, you have been associated with accountants, or practicing accountancy? A.—Yes.

Q.—You are not a salesman? A.—No, sir; I should say not.

Q.—Much less an engineer? A.—Not an engineer.

Q.—Nor a freight rate expert? A.—No, sir.

Q.—Nor an economist? A.—No, sir.

Q.—You were asked to undertake a task and you performed it with such skill and experience as you possessed. A.—Yes.

30 Q.—And you don't know what it cost to move pipe across the Continent per unit of weight? A.—No.

Q.—And again, that would depend whether it was sent by rail or by water? A.—Yes.

Q.—Or over one road, or over half a dozen? A.—Yes.

Q.—I note that in the year 1922, 27-inch pipe sold at an average price of \$2.00, and that in 1919, 27-inch pipe sold for \$2.50. That is an increase, if my figures are correct, of about 25 per cent. in the prices, is it not? A.—I haven't got the schedule in front of me.

40 Q.—Well, if you will look at the exhibit you will find, I think, that in 1919 27-inch pipe was sold for \$2.50, and that in 1922, 27-inch pipe was sold for \$2.00, is that right? A.—That's right.

Q.—Now, if you add 25 per cent. to \$2.00, you arrive at \$2.50? A.—That's right.

Q.—So 27-inch pipe increased in price by 50 per cent.? A.—I wouldn't say that.

Francis William Hopkins Jr. for plaintiff (cross-examination).

Q.—Well, your figures show that, do they not? A.—My figures show that 27-inch pipe in 1919, the highest price was \$2.50, at Syracuse, New York. The figure that you refer to in 1922 for 27-inch pipe shows the highest price for the same pipe in Philadelphia, Pennsylvania.

10 Q.—Well, that is just to bring out that your schedule is a very interesting document, but of no interest or value in so far as the Borough of Queens is concerned. A.—I am not here to state whether it is or whether it is not.

Q.—You are a very wise witness, Mr. Hopkins. And I would like to draw to your attention that in the year 1919, according to your schedule, 42-inch pipe — or rather, 51-inch pipe, sold for \$6.25. A.—High.

Q.—High. And in 1922, 54-inch pipe sold for \$6.65? A.—You are comparing 51-inch pipe with 54-inch pipe.

Q.—With 54-inch pipe, yes. A.—That's right.

20 Q.—Now, I also find that in 1921, 72-inch pipe sold for \$14.25. A.—That's right.

Q.—And the next year, 1922, 72-inch pipe sold for \$9.50. A.—That's right.

Q.—So 72-inch pipe in 1922 was just 50 per cent. higher than in 1921? A.—You mean the other way around, don't you, lower?

Q.—Lower. A.—Approximately. That is what the figures show.

30 Q.—That is what the figures show, 50 per cent.? A.—Approximately. \$14.25 in 1921, as compared to \$9.50 in 1922.

Q.—Well, let us take it this way: \$9.50 was the price of 72-inch pipe in 1922? A.—Yes.

Q.—If you add 50 per cent. to that price, you arrive at \$14.25? A.—That's right.

Q.—Which was the price in 1921? A.—That's right.

Q.—Yes. So there was a little fluctuation there of 50 per cent.? A.—50 per cent. over the 1922 price.

Q.—Yes. A.—That's right.

40 Q.—That is what I was trying to make clear. And do you know anything of the tensile strength of pipe? A.—I know nothing whatsoever of the tensile strength of any kind of pipe.

Q.—And nothing of the stresses and strains to which pipe is subjected in different strata? A.—No, sir.

Q.—Nothing of hazards which attach to the particular contracts under which this pipe was placed? A.—No, sir.

Francis William Hopkins Jr. for plaintiff (cross-examination).

Q.—Or of the peculiarities of structure and mix that were executed for the Borough of Queens? A.—Nothing whatsoever along those lines. They are entirely outside of my province.

CROSS EXAMINATION BY MR. COOK: (Under reserve of objections made):

10 Q.—Mr. Hopkins, the figures that you have given, and the exhibit which you have produced, were figures of a price of the pipe at the place where that pipe was manufactured, wasn't it? A.—Yes.

Q.—So that we have not to consider freight rates or anything in connection with your figures at all? A.—Not as far as completed pipe is concerned.

20 Q.—That is what we are talking about. And yet, although that is the case, the prices of this pipe varied very considerably, as Mr. Hackett has pointed out and as you have admitted, from year to year; prices varied from year to year. For example, in the year 1922, the cost of 72-inch pipe was \$9.50, according to your statement, the high cost of the pipe? A.—As shown by the records. I am not responsible for the records.

Q.—No, no, I am not holding you responsible. I am only talking about your exhibit. A.—That's right.

Q.—It was \$9.50? A.—That's right.

Q.—And the year following that, in 1923, it was \$12.10.

30 Q.—That is correct, is it not? A.—At a different location.

Q.—And the year following that, in 1922, it was \$12.10. A.—At still a third different location.

Q.—A third different location. Well, why do you take different locations if you are not allowing anything for the freight rate, and are taking it at the point of manufacture. A.—At the time of the preparation of this schedule, I was instructed to get this information.

40 Q.—Yes; but you have not answered my question. You started by saying you took prices at the point of manufacture. A.—All right. May be your idea of the point of manufacture and mine are different. The point of manufacture in this Lock Joint Pipe is the place where they have their cement, and they got their sand and they got their reenforcement, and they have already shipped their forms there, and they build the pipe right there.

MR. GOUDRAULT: On the job?

Francis William Hopkins Jr. for plaintiff (redirect examination)

THE WITNESS: Practically on the job.

MR. COOK: Mr. Goudrault, please —

BY MR. COOK:

10 Q.—So that that is how you account for the variation in the prices? A.—I don't account for the variation in the prices whatsoever. I am not prepared to account for the variation in prices.

Q.—And you don't account for them? A.—I do not account for the variation in prices; I do not guarantee these prices. These are prices which were taken from records which, to me, as a man experienced in my profession — which I admit I am, with all due respect to the profession, from the original record, and I am not responsible for any prices or variations whatsoever.

20 Q.—And you have not got those original records here? A.—I have not got those original records here.

Q.—And there is no way of our checking those original records? A.—I don't know.

Q.—Except by politely and with due reference accepting your statement, isn't that so, Mr. Witness? A.—Well, I don't know. I wouldn't be surprised, but what you might be able to be given the same access which I was given. I am not in a position to state that.

30 Q.—You don't know that. At all events, the records are not here in this room? A.—I haven't seen them.

Q.—And all the figures you have given were for sales outside of the Borough of Queens? A.—Yes, sir.

MR. COOK: That is all.

REDIRECT EXAMINATION BY MR. GOUDRAULT:

40 Q.—In order to put it clear, Mr. Hopkins, I asked you while examining you in chief, or on direct examination, if those prices appearing on schedules that you have prepared, and which have been filed as Exhibits C-234 and C-235, if it was a price at the Lock Joint Pipe factory, and you stated "Yes", but you said at the point of manufacture. Will you explain what you mean by that, because I read on your schedule here, C-235, that you state "Memorandum of prices at which Lock Joint pipe has actually been sold in the years 1918 to 1927 inclusive, outside of Queens County, and in places and on sites where the pipe could be precast on the job and distributed accordingly."

Francis William Hopkins Jr. for plaintiff (redirect examination)

Well, now, do I understand that the prices that do appear there mean that the price is when it reached that particular point there, that place? A.—It is the price of the pipe completed where it was made.

Q.—And does the place where it was made appear on this schedule? A.—Yes.

10 Q.—So, to make it clear, if you have here 36-inch pipe sold at \$3.60 in 1918, at Milburn, New Jersey, that means that it is the price paid at Milburn, New Jersey? A.—That's right.

Q.—I see. And it is the same for each other place? A.—That's right.

Q.—Therefore you did not have to take any freight rates into account? A.—No.

Q.—None whatever? A.—Not on that finished pipe.

Q.—And this was all finished precast pipe? A.—That's right.

20 Q.—Now, do I understand that you also, in looking up these invoices, books and ledgers, of the Lock Joint Pipe Company, did you also investigate at what price the pipes were sold in Queens County during that same period? A.—Yes.

Q.—You did? A.—Yes.

Q.—And you have prepared a schedule? A.—Yes.

MR. HACKETT: With great deference, I submit, Mr. Commissioner, that we have got to finish this thing some time now.

30 MR. GOUDRAULT: Will you read me my last four or five questions and the answers?

(Record read by the Clerk).

BY MR. GOUDRAULT:

40 Q.—So, to complete my information, in order to clear this up for the Court, this item which I did have you explain there, that sale at Milburn, New Jersey, that means that according to the invoice P. Mauriello would have paid \$3.60 for the 36-inch pipe? A.—That's right.

Q.—There was no transportation charge. It was the price of delivery on the job. A.—That's right.

MR. GOUDRAULT: I have no further questions.

(Witness excused).

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

DEPOSITION OF JEFFERSON J. REILLY
(recalled).

JEFFERSON J. REILLY was recalled as a witness on behalf of the plaintiff, having been previously duly sworn, testified further as follows:

10

DIRECT EXAMINATION BY MR. GOUDRAULT:

Q.—Mr. Reilly, I now show you four sheets of paper. Will you describe them briefly, and state what they are? A.—Re-tabulation of bids received on August 3, 1925, for a sewer and appurtenances in Farmers Boulevard, from Judith Street to 143rd Road, etc., Fourth Ward. Two are type B — all are type B.

Q.—All are type B? A.—All are type B.

20

Q.—For how many contracts? Each bid is for one contract, is it? A.—There are four different contracts. Four sections.

MR. GOUDRAULT: Plaintiffs offer for evidence these summaries of proposals, as Plaintiff's Exhibit C-236, comprising four sheets.

30

MR. COOK: I object formally, that this is not the best evidence of the bids, being a mere re-tabulation, and further, that it is incompetent for the witness to produce this at the present time.

MR. HACKETT: I join in that.

THE COMMISSIONER: The objections are noted, and I grant you an exception.

(The said summaries of proposals, four sheets, were thereupon received in evidence and marked Plaintiff's Exhibit C-236, of this date.)

40

Q.—You have already, Mr. Reilly, fully explained in your previous testimony, how these summaries of proposals were prepared, haven't you? A.—Yes, sir.

Q.—You have personal knowledge of how they are prepared? A.—Yes, sir.

MR. COOK: They were not prepared by you, were they, Mr. Reilly?

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

THE WITNESS: No.

MR. COOK: They are copies made by an official of your department?

THE WITNESS: Yes, sir.

BY MR. GOUDRAULT:

10

Q.—Copies made as the bids were read, is that it, when opened? A.—They are checked. After the bids are received, they are taken in longhand in this fashion, (indicating). They are brought to the respective bureaus, and then checked by engineers. In fact, they are checked three times, and then they are transferred over so that they can be typewritten and checked again.

MR. O'DONNELL: None of the checking was made by
20 you?

THE WITNESS: No, sir.

Q.—I now show you three sheets. Will you describe them, as plaintiffs wish to offer them for evidence. A.—These are three recapitulation sheets for a sewer in Farmers Boulevard, from Judith Street to 143rd Street, Contract No. 2, Contract No. 3, and Contract No. 4, all type A, bids opened August 3, 1925.

MR. COOK: Same objection to this.

30

MR. HACKETT: I join in the objection.

THE COMMISSIONER: Same ruling.

MR. GOUDRAULT: Plaintiffs now wish to offer these as one exhibit, comprising three sheets. This is to be Exhibit C-237.

MR. COOK: Same objection.

40

MR. HACKETT: I join in the objection.

THE COMMISSIONER: Same ruling.

(The said three sheets were thereupon received in evidence and marked Plaintiff's Exhibit C-237, of this date.)

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

BY MR. GOUDRAULT:

Q.—Will you now look at this paper, and state what that is? A.—This is a bid sheet received from the Oxford Engineering Corporation, for a sewer in 150th Street, from 150th Avenue to North Conduit Avenue, etc., Fourth Ward. Bids received July 9, 1925, Type A.

10 MR. GOUDRAULT: Plaintiffs now offer for evidence, as Plaintiff's Exhibit C-238, this bid sheet.

MR. COOK: Same objection.

MR. HACKETT: Same objection.

THE COMMISSIONER: Same ruling.

(The said bid sheet was thereupon received in evidence and marked Plaintiff's Exhibit No. C-238 of this date).

20

BY MR. GOUDRAULT:

Q.—Will you now look at these two sheets of paper I am now showing you — no, I will put them in one by one. This sheet of paper, state what that is? A.—This is Recapitulation sheet of bid.

Q.—Summary of Proposals? A.—Summary of Proposals, construction of an outlet sewer in Horstman Avenue, etc., Fourth Ward. Bids received May 7th, 1925, this being under Type A.

30 MR. GOUDRAULT: We offer for evidence, this summary of proposals, as Plaintiff's Exhibit C-239.

MR. COOK: Same objection.

MR. HACKETT: Same objection.

THE COMMISSIONER: Same ruling.

(The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-239, of this date).

40

Q.—Now, will you look at this sheet and state what that is. A.—This is for the same one as previously stated, only Type B.

MR. GOUDRAULT: We offer this summary of proposals for Type B, as Plaintiff's Exhibit C-240.

MR. HACKETT: Is that Horstman?

Jefferson J. Rcilly for plaintiff recalled (direct examination).

THE WITNESS: Yes, sir.

MR. COOK: That was prepared in exactly the same way as you have stated before?

THE WITNESS: Yes, sir.

MR. COOK: Same objection.

10

MR. HACKETT: Same objection.

THE COMMISSIONER: Same ruling.

(The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-240 of this date).

BY MR. GOUDRAULT:

20 Q.—Do I understand that these summaries of proposals, C-239 and C-240, were for the Jamaica disposal plant? A.—Yes.

Q.—Will you now look at this document, and state what it is? A.—It is bid sheet submitted under Type A for the Horstman Avenue sewer just before spoken of.

Q.—Submitted by? A.—Welsh Brothers Contracting Company, Inc.

MR. GOUDRAULT: We now offer for evidence as Plaintiff's Exhibit C-241, this bid sheet.

MR. COOK: Same objection.

30

MR. HACKETT: Same objection.

THE COMMISSIONER: Same ruling.

(The said bid sheet was thereupon received in evidence and marked Plaintiff's Exhibit C-241 of this date.)

BY MR. GOUDRAULT:

40 Q.—Will you look at this document and state what it is. A.—Bid sheet, under Type A, submitted for the Horstman Avenue sewer by John D. Walsh, Inc.

MR. GOUDRAULT: We now offer for evidence as Plaintiff's Exhibit C-242, this bid sheet.

MR. COOK: Same objection.

MR. HACKETT: Same objection.

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

THE COMMISSIONER: Same ruling.

(The said bid sheet was thereupon received in evidence and marked Plaintiff's Exhibit C-242 of this date.)

BY MR. GOUDRAULT:

10 Q.—Will you now look at this document, and state what it is? A.—This is bid sheet, under Type B, submitted for the Horstman Avenue sewer by the Awixa Corporation.

MR. GOUDRAULT: Plaintiff now offers for evidence this bid sheet, as Plaintiff's Exhibit C-243.

MR. COOK: Same objection.

MR. HACKETT: Same objection.

THE COMMISSIONER: Same ruling.

20 (The said bid sheet was thereupon received in evidence and marked Plaintiff's Exhibit C-243, of this date).

BY MR. GOUDRAULT:

Q.—Will you now look at this document and state what it is? A.—Summary of proposals for a sewer, 124th Street, 4th Ward, bids for which were opened April 21, 1927, Type A.

30 MR. GOUDRAULT: We offer for evidence as Plaintiff's Exhibit C-244, this summary of proposals.

MR. COOK: Same objection.

MR. HACKETT: Same objection.

THE COMMISSIONER: Same ruling.

(The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-244 of this date).

BY MR. GOUDRAULT:

40 Q.—Will you now look at this document and state what it is? A.—This is summary of proposals, of bids, for sewer in 124th Street, 4th Ward, under Type B, bids for which were opened April 21, 1927.

MR. GOUDRAULT: Plaintiffs offer for evidence, as Plaintiff's Exhibit C-245, this summary of proposals.

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

MR. COOK: Same objection.

MR. HACKETT: Same objection.

THE COMMISSIONER: Same ruling.

10 (The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-245, of this date).

BY MR. GOUDRAULT:

Q.—Will you look at this last document, Mr. Reilly, and state what it is. A.—Summary of proposals for a sewer in Hayes Avenue, Type B, bids for which were opened October 18, 1926.

MR. GOUDRAULT: Plaintiffs now offer for evidence this summary of proposals as Plaintiff's Exhibit C-246.

20 MR. COOK: Same objection, for reasons above stated.

MR. HACKETT: Same objection.

THE COMMISSIONER: Same ruling.

(The said summary of proposals was thereupon received in evidence and marked Plaintiff's Exhibit C-246, of this date).

MR. GOUDRAULT: Any cross-examination of this witness?

30 MR. COOK: No.

40 THE COMMISSIONER: After having consulted counsel for the State of New York and the several defendants, at open hearing, it is hereby agreed that the Commissioner may use his discretion as to the method of transmitting the exhibits in this proceeding to the Clerk of the Superior Court at Montreal; and that the Commission and the evidence, and the certification by the Commissioner and the Clerk should be sent by registered mail to the proper authorities of the Superior Court in Montreal; and that the signing of the witnesses' testimony at the end thereof by the several witnesses is waived as to each and every witness's testimony.

(Whereupon, at 4:00 o'clock p. m., the 16th day of September, 1931, the commission was closed.)

John M. Smith for plaintiffs (examination in chief).

B. — PLAINTIFF'S EVIDENCE AT ENQUETE.

10

DEPOSITION OF JOHN M. SMITH, A WITNESS EXAMINED ON BEHALF OF PLAINTIFFS.

On this fifth day of October, in the year of Our Lord one thousand nine hundred and thirty two personally came and appeared JOHN M. SMITH, residing at No. 1819 Dorchester Street, West, in the City and District of Montreal, Manager, Montreal Safe Deposit Company, aged 87 years, a witness produced and
20 examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. GOUDRAULT, K. C., OF COUNSEL FOR PLAINTIFFS.

Q.—Are you still Manager of the Montreal Safe Deposit Company? A.—I am.

30 MR. HACKETT: Before continuing the enquete that was taken in New York I wish to reiterate my objections to most of the evidence that was taken by the Commissioner, Mr. DeCourcy Fales. The Commissioner interpreted his instructions to mean that he must accept in spite of any objection made all testimony or evidence that was offered, whether relevant or otherwise; believing that it behooved him to accept everything that was tendered by Counsel, and that this Court might pass upon the legality of such testimony or evidence. Before we start the enquete before your Lordship I wish to reiterate the objections I made to much of the evidence that was adduced in New York,
40 and to say to the Court that when we reach the consideration of this evidence I shall ask your Lordship to reject much that has been made, including any attempt that was made in New York to prove the conviction of Seeley and Connolly and any association between them and Phillips, as well as any alleged conversations with Phillips.

HIS LORDSHIP: The Court notes the objection, and reserves it.

John M. Smith for plaintiffs (examination in chief).

MR. COOK: I would like to associate myself with my friend Mr. Hackett in the objection, in which I fully concur.

HIS LORDSHIP: The objection is noted, and reserved.

BY MR. GOUDRAULT, CONTINUING.

10 Q.—You have been asked to produce the record of your Company appertaining to a certain safety deposit box? A.—Yes.

Q.—Have you it with you? A.—I have the books here.

Q.—You remember making a Declaration in this case before the Court, appertaining to a safety deposit box? A.—No, I do not.

Q.—Do you remember coming to Court and making a Declaration as regards a certain safety deposit box? A.—My memory does not go back to that.

20 Q.—From your records what do you know of a safety deposit box standing in the name of Phillips? A.—Francis Phillips.

Q.—What did he have? A.—A safety deposit box, as we call it.

Q.—With your Company? A.—Yes.

Q.—What number did that box bear? A.—No. 362.

Q.—In whose name? A.—In the name of Francis Phillips.

Q.—When was it rented? A.—It was rented on the 23rd January, 1928.

30 Q.—Were you present when the box was rented? A.—I must have been in the premises: that is all I can remember.

Q.—Do you recollect your dealings for the renting of this box on January 23rd, 1928? A.—I must go by my records. My memory does not carry me back. I am sure, because this is my writing. I am positive of it.

Q.—You say you wrote this card yourself? A.—Yes: I filled out the particulars.

Q.—Who were present when this card was written? A.—Mr. Phillips must have been present.

40 Q.—Was he alone? A.—That I cannot swear to at all.

BY THE COURT:

Q.—What is the full name of Mr. Phillips? A.—Francis Phillips.

John M. Smith for plaintiffs (examination in chief).

BY MR. GOUDRAULT, CONTINUING.

Q.—And, you say he must have been there? A.—He must have been there, because he signed it in my presence.

Q.—What do you call this card? A.—It is a contract.

Q.—Would you remember Francis Phillips if you saw him?

A.—No, I would not.

10 Q.—Do you remember receiving more than that one visit of Francis Phillips? A.—He was in our premises subsequently to this.

Q.—Was he there previously? A.—I could not say he was there previously to this.

Q.—Do you recall if he was alone, or with some other person, on January 23rd, 1928? A.—No, I could not remember.

Q.—Could anyone in your office testify as to that? A.—Well, it would be a matter of memory.

20 Q.—Who is your assistant? A.—Mr. Constable.

Q.—Is he here? A.—Yes, he is here.

Q.—I understand this contract was for one year? A.—For one year, yes.

MR. HACKETT: Might I ask my learned friend if he intends to file the contract?

MR. GOUDRAULT: No.

30 MR. HACKETT: Then I wish to enter an objection, unless the best proof be made — which is the contract itself.

HIS LORDSHIP: The best proof must be made.

BY MR. GOUDRAULT, CONTINUING.

Q.—Then, will you produce this contract as Plaintiff's Exhibit P-1 at enquete? A.—Yes.

40 Q.—I see on Exhibit P-1 at enquete that the words "Safe No. 362" are crossed out, and above them are the figures "1854". Will you explain those figures to His Lordship? A.—Safe No. 362 was surrendered, and a new safe, No. 1854, rented instead. That is the meaning of that.

Q.—Will you look at the Declaration of your Company, made by yourself on July 18th, 1928, and will you state if the signature "John M. Smith" is your signature? A.—Yes, it is.

Q.—Will you take communication of the document I show you, which is called a proces verbal (and which has been produce in the record) being an inventory of the contents of a box

John M. Smith for plaintiffs (cross-examination).

at your Company by a Notary appointed by the Court; and will you state if it refers to the box rented by Francis Phillips?

MR. HACKETT: I do not think Mr. Smith should be questioned on this. This is a Notarial document, which makes proof of itself.

10 MR. GOUDRAULT: My object is simply to identify the box.

WITNESS: What is your question?

BY MR. GOUDRAULT, CONTINUING.

Q.—Will you say if the safety deposit box to which this proces verbal refers is a safety deposit box with your Company in the name of Francis Phillips, the contract for which you have produced? A.—Certainly.

20 MR. GOUDRAULT: I will produce this proces verbal as Plaintiff's Exhibit P-2.

I produce, as Exhibit P-3 at enquete, a Declaration of the Royal Trust Company in regard to the disposition of the moneys in question. This Declaration is dated January 10th, 1929.

MR. HACKETT: At that time my friend Mr. Cook represented Francis Phillips, my client.

30 BY MR. GOUDRAULT, CONTINUING:

Q.—Do you personally know if the moneys found in the safety deposit box, \$312,000, as stated in the proces verbal, were all sent to the Royal Trust Company? A.—Yes.

CROSS EXAMINED BY MR. COOK, K. C., OF COUNSEL FOR THE HEIRS PHILLIPS.

40 Q.—You have been Manager of the Montreal Safe Deposit Company for a great many years, have you not? A.—I have.

Q.—And, you are constantly in the premises of the Safe Deposit Company? A.—Constantly, yes.

Q.—I understand that on December 19th, 1927, Colonel Clarence Smith came in to see you regarding the renting of a box? A.—Yes.

Q.—Accompanied by two friends: according to your records? A.—Yes.

John M. Smith for plaintiffs (cross-examination).

Q.—Can you tell me who were those two friends? A.—No. I cannot.

Q.—You do not remember? A.—No.

Q.—And, later on, Mr. Francis Phillips and who else came in to see you, in January — Mr. Cassidy? A.—Mr. Cassidy came along with him.

10 Q.—That is, according to your records? A.—Yes.

Q.—And, they rented a box? A.—Yes.

Q.—What was the number of that box? A.—362.

MR. HACKETT: I object to the use of the word “they”. A box was rented, and a contract for it is in the Record.

BY MR. COOK, CONTINUING.

20 Q.—A box, No. 362, was rented from your Company, acting through you? A.—Yes: according to the record I have — a contract.

HIS LORDSHIP: The number is mentioned on the contract?

MR. GOUDRAULT: Yes, your Lordship.

BY MR. COOK, CONTINUING.

30 Q.—Who made the arrangements for the renting of that box? A.—The question is hard.

Q.—Who made the arrangements?

MR. HACKETT: I object to any testimony as to any negotiations which antedate the contract. We have the contract, and the negotiations were consummated in the contract. I object to the question in its present form.

HIS LORDSHIP: Is it a preliminary question, Mr. Cook?

MR. COOK: Yes, your Lordship.

40 HIS LORDSHIP: I will allow it, as a preliminary question.

A.—The arrangement must have been made with Francis Phillips.

BY MR. COOK, CONTINUING.

Q.—Why do you say that? A.—Because he signed the contract.

John M. Smith for plaintiffs (cross-examination).

Q.—My instructions are that the preliminary arrangements were discussed between Mr. Cassidy, Francis Phillips, and yourself? A.—I do not know what it would be about. Francis Phillips is the renter of the box, and he is the only man I would have anything to do with.

10 Q.—You mean John Phillips? A.—John Phillips called at our place to see if we did rent boxes, and he examined some of the boxes; but Francis Phillips must have finally made the arrangement to rent it.

Q.—You say Dr. Cassidy was with Francis Phillips at that time? A.—Yes.

Q.—I am instructed the arrangements were made by Dr. Cassidy; Francis Phillips being a very young boy? A.—He may have been the spokesman.

Q.—Dr. Cassidy may have been the spokesman? A.—I would not say.

20 Q.—You would not say he was the spokesman, or that he was not? A.—No. I was only thinking of the fact.

MR. HACKETT: I object to this evidence as an attempt to contradict the terms of a written contract.

HIS LORDSHIP: The contract speaks for itself.

BY MR. COOK, CONTINUING.

Q.—When did John Phillips go to your office? A.—I remember he was there.

30 Q.—Mr. John Phillips? A.—Yes. He was there with Colonel Smith.

Q.—Colonel Clarence Smith? A.—Yes.

Q.—Who else was with him at that time? A.—I would have to see the books to be able to tell you that. I cannot speak from memory. I would not like to speak from memory.

Q.—But, you do remember seeing him some time before that with Colonel Clarence Smith?

WITNESS: You mean Dr. Cassidy?

40 COUNSEL: Mr. John Phillips.

A.—I have a recollection they must have been there, and their names are in the book.

Q.—Do you recollect having seen Dr. Cassidy before the day on which the contract was signed? A.—I have no recollection.

John M. Smith for plaintiffs (cross-examination).

tion further than I should say as his name is in our books we must have had him there; but I cannot recall it.

Q.—As far as your recollection goes, all you are certain about is what your records show? A.—Yes.

Q.—And, you are satisfied with them? A.—There is nothing else I can think of.

10 Q.—There is nothing else you could rely upon? A.—No.

Q.—So, when your record shows that on December 19th, 1927, Colonel Smith came into your office with two friends, you know he was there with two gentlemen, but you do not know who those two gentlemen were? A.—He was there with a man represented as Dr. Cassidy, so that he must have believed it was Dr. Cassidy.

Q.—And John Phillips was with him at that time, in December, 1927? A.—Yes: they came in together.

20 Q.—Who was Colonel Smith? A.—I was going to say he was his father's son. He was in the insurance business. I cannot tell you much more about him.

Q.—I understand he was the manager of the National Surety Company? A.—Probably. I could not say. I think I recall that.

Q.—Then, later on (from your records, as you have explained) young Phillips came in, accompanied by Dr. Cassidy, and the box was rented and placed in the name of young Phillips. Is that correct? A.—Yes.

30 Q.—And, that is what your records show? A.—Yes, that is what the records show, and I stand by that.

Q.—And, still a little later on, box No. 362 was broken open because the key had been lost? A.—That is correct.

Q.—And its contents were transferred to box No. 1854? A.—That is right.

Q.—And, still later the contents of box No. 1854 were taken out and delivered to the Royal Trust Company? A.—To the Royal Trust Company.

Q.—Is that a correct history of the transaction? A.—Yes, that is correct.

40 Q.—I understand you knew Colonel Smith? A.—I knew him personally, yes.

Q.—And, you knew his father? A.—I did.

Q.—And, I understand Colonel Smith introduced those gentlemen to you? A.—Colonel Smith introduced them.

Q.—He was the gentleman who introduced those persons to you? A.—He brought them into our vaults.

Q.—In December, 1927? A.—Yes.

John M. Smith for plaintiffs (cross-examination).

Q.—Was your assistant, Mr. Constable, present at the time? A.—He was in the premises.

Q.—In the natural course of events he would be there? A.—He would be there, yes.

Q.—When those gentlemen first came in do you remember asking Mr. Constable to show them the boxes? A.—I could not tell you exactly, but that would be the natural course of events.

10

Q.—That would be the natural course, but you are not sure? A.—Exactly.

CROSS EXAMINED BY MR. HACKETT, K. C., OF COUNSEL FOR THE CROWN TRUST CO.

Q.—I would like to know whether the testimony you have just given is from your own memory of faces and events, or whether it rests upon the recent perusal of your records? A.—My statements are from the books and the papers. I see certain names there, and certain records signed, and they must be right.

20

Q.—But, if you had not seen those records, could you, on your oath, say that Colonel Smith came to see you on a certain day in December? A.—You are putting me to a real test of memory there. You cannot do everything.

Q.—What I want to know is this: independently of your records do you recall the fact that Colonel Clarence Smith went to see you on a certain day in December, accompanied by two gentlemen, and do you recall the purpose of that visit? A.—I think I could state that I do know — my memory is perfect upon that — because we had discussed the matter that Colonel Smith had not brought the gentlemen back to rent a safe or safes. We were rather surprised he had not been in again long before.

30

Q.—Are you clear upon that? A.—My mind is perfectly clear about that. Those gentlemen, according to the names we have in our books, were not there. Several times we would refer to the fact that they had not yet returned.

Q.—Have you clearly in your memory the physical appearances of the gentlemen who were with Colonel Smith? A.—No; because I had no further interest than the renting of a safe.

40

Q.—So you cannot say from memory whether the gentlemen who accompanied Colonel Smith on that day were young or old, tall or short, stout or slender? A.—No, I could not go into it in great detail in that regard. I would be very foolish to try to do it.

John M. Smith for plaintiffs (cross-examination).

Q.—And, you cannot remember their names other than to the extent they are shown by your records. Is that correct?

A.—That is correct. I remember their names by the records only.

Q.—So, if the record does not show the name, you cannot remember it?

10 WITNESS: Do you mean I could not say whether they were Casidy, or the man in the moon?

COUNSEL: Yes: that is what I mean.

A.—I could not say that, no.

Q.—And, you could not say whether it was John Phillips or the man in the moon? A.—No. I have no recollection of John Phillips' material appearance.

20 Q.—As a matter of fact, you know there is no entry in your record on that day in December of the names of the men who came into your place of business with Colonel Clarence Smith? A.—No, there is no record.

Q.—The record does show that Colonel Clarence Smith and two friends went to your place of business on a day in December, and it shows nothing more. A.—That is right.

Q.—And, that is all you know about it? A.—That is all I know about it.

Q.—Your business as manager of the Montreal Safe Deposit Company consists, in part, of the renting of boxes? A.—Yes.

30 Q.—And, that is routine business for you? A.—Correct.

Q.—It is like a baker selling a loaf of bread? A.—It is a routine business.

Q.—There was nothing unusual to cause you to remember this or distinguish it from an ordinary transaction of leasing a box to Francis Phillips, was there? A.—That is putting it very strong. We would consider more about it if Colonel Smith should call on us and introduce certain gentlemen who were in search of a box. It is not the same as any Montrealer, or any native, coming in.

40 Q.—But, you have as tenants many boxholders who are not residents of Montreal? A.—Quite.

Q.—A great many, in fact? A.—Yes, quite a number.

Q.—So, the fact that an additional tenant came to you, who was not a resident of Montreal, was not a cause of astonishment to you, was it? A.—It is not a very common practice to find New Yorkers, or people from outside, coming in and renting

John M. Smith for plaintiffs (cross-examination).

boxes. It is not a very common thing, and we are very apt to remark upon it.

Q.—Do you remember the day Francis Phillips came to your office and rented this box? Do you remember the transaction? A.—I remember it as far as I myself am concerned. I could not do otherwise than remember it, for I provided the contracts to be signed.

10 Q.—But, if I correctly understood your testimony, you remember it because you have before you a contract, Exhibit P-1, which bears your signature? A.—Yes.

Q.—I am putting it to you in this way: if there had been no litigation, and you had not had occasion to look up your records, would you remember this particular contract? A.—I think my memory is pretty strong that way. I think I could remember those people coming on from New York and doing business with us.

20 The fact of the matter is we expected the business to be much larger than it was.

Q.—You signed the contract with Francis Phillips? A.—Yes.

Q.—And I note that on May 26th an entry appears to have been made on the contract, in the following terms: “Montreal, 26/5/28 safe 362 having been broken upon both keys being lost safe opened in presence of Francis Phillips”. The name “Francis Phillips” is in the handwriting of the late Francis Phillips? A.—Yes.

30 Q.—You can identify the signature because you witnessed it? A.—Yes. I signed it alongside.

Q.—Your signature “John M. Smith, Manager” appears beside it? A.—Yes.

Q.—Do you recall the transaction of May 26th, 1928? That was the day box No. 362 was broken open. A.—I can recall it was done, but I could not recall the date, and everything of that kind.

Q.—Do you recall who came with Francis Phillips? A.—Yes, I can.

40 Q.—Who was it? A.—A man named Grimes.

Q.—Do you remember him? A.—No, I could not swear to him any more than anyone I had only seen once in my life.

Q.—Would you have remember him if it had not been for the fact that you had recently examined your records?

WITNESS: You mean the name?

John M. Smith for plaintiffs (cross-examination).

COUNSEL: Yes.

A.—Not likely, unless it had been brought before me.

Q.—Would you remember his countenance today? A.—
No, I would not.

Q.—But you do remember a man named Grimes was present with Francis Phillips when box No. 362 was broken open and when he became the tenant for box No. 1854? A.—He had
10 nothing to do with the box. He was not a tenant at all. He was only present with Phillips.

Q.—But, you remember Grimes was present when box No. 362 was broken open and when Francis Phillips became the tenant for box No. 1854? A.—Yes.

BY MR. COOK:

Q.—When Colonel Clarence Smith came in to see you,
20 on December 19th, 1927, according to your records he was accompanied by two friends? A.—Yes.

Q.—Were they adults, or was one a young man? A.—As far as I can recollect they were adults.

Q.—Do you know who they were? A.—We had no conception of them at all.

Q.—Did those two men come back with Francis Phillips when he rented the box, as you have described, on January 23rd? A.—I could not tell you that, unless it is in the record.

Q.—Did either of them come back? A.—That is a question I could not answer accurately through lack of perspecuity,
30 or whatever you like to call it.

Q.—I understand you saw Mr. Grimes for the first time on May 26th, 1928? A.—To my knowledge, yes.

Q.—For the first and only time? A.—Yes.

Q.—And, you only know his name from your records? A.—It is from the records I could tell there was anyone of that name there.

AND FURTHER DEPONENT SAITH NOT.

40

J. N. KENEHAM,
Official Court Reporter.

Norris Constable for plaintiffs (examination in chief).

DEPOSITION OF NORRIS CONSTABLE, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFFS.

On this fifth day of October, in the year of Our Lord one thousand nine hundred and thirty two personally came and appeared NORRIS CONSTABLE residing at No. 3504 Park Avenue, in the City and District of Montreal, Vault Manager, aged 48 years, a witness examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. GOUDRAULT, K. C., OF COUNSEL FOR PLAINTIFFS.

Q.—What is your present occupation? A.—Vault Manager.

Q.—Of what Company? A.—The Montreal Safe Deposit Company.

Q.—Since when have you been Vault Manager of the Company? A.—Since June 1st, 1925.

Q.—Did you know Colonel Clarence Smith? A.—Yes.

Q.—Do you recollect his visiting the Montreal Safe Deposit Company at any time? A.—Lots of times.

Q.—Do you know personally of Colonel Smith introducing strangers to you, or to somebody else in your presence? A.—Yes.

Q.—Who were they? A.—I do not know.

Q.—Were you present when this introduction took place? A.—Yes.

Q.—Who else was there? A.—Mr. John M. Smith, the Manager. They were the only ones, outside of myself.

Q.—Mr. John M. Smith and yourself were officials or employees of the Company? A.—Yes.

Q.—With whom was Mr. Clarence Smith on that occasion? A.—Two gentlemen.

Q.—Adults, or young gentlemen? A.—Adults.

Q.—Were they introduced to you? A.—No.

Q.—About how old would they be? A.—About the same age as myself.

Q.—About how old would you think? A.—Anything from about 45 to 50, or a little over.

Q.—Were they both tall? A.—No: one was tall, and one was medium.

Norris Constable for plaintiffs (examination in chief).

BY THE COURT:

Q.—You did not know them at the time? A.—No, sir.

BY MR. GOUDRAULT, CONTINUING.

Q.—Were they introduced to you personally? A.—They were not.

10 Q.—Did you hear anyone mentioning any names? A.—No name whatever.

Q.—Do you recollect the purpose of their visit on that particular occasion? A.—To look at boxes.

Q.—Do you recall the month in which this took place? A.—Not without the records.

Q.—Have you the records here? A.—Yes.

Q.—Will you please look at your records and tell us the year and the month of the first visit? A.—December 19th, 1927.

20 Q.—Was this record kept by you? A.—No: it is kept by the man at the gate. He enters in it everyone that comes in, the time they come, and the time they go.

Q.—Will you please refer to the register of the Company and tell us the entry made there? A.—There is an entry for Colonel Clarence Smith and two friends.

Q.—No names are given? A.—No.

Q.—Is that the usual practice? A.—The usual practice is for every visitor to sign.

30 Q.—Do you know the reason why the usual custom was not followed on this particular occasion? A.—Because they would not do it. They refused to sign.

Q.—Do you know about that? A.—Yes.

Q.—Did you have anything else to do with those gentlemen on that occasion? A.—I was asked to show them the different sizes of boxes on that occasion.

Q.—What was the date? A.—December 19th, 1927.

40 Q.—Will you please tell His Lordship what was done on that occasion when you showed them the boxes? A.—I showed them the different sizes of boxes, whichever they might require; but nothing was decided in any shape or form on that date.

Q.—Did they remain there any length of time? A.—A few minutes, only.

Q.—Did they give you any reason why they refused to sign the book? A.—They did not want their names in the register.

Q.—Do you recall a subsequent visit of those gentlemen, or either of them? Do you remember them coming back to your

Norris Constable for plaintiffs (examination in chief).

Company for any purpose? A.—A little while after one of them came back, with Francis Phillips.

Q.—Therefore, Francis Phillips was not one of the men you had seen there on the first visit? A.—Not Francis Phillips, no.

10 Q.—Was the other gentleman one of the two whom you had seen on December 19th, 1927? A.—One of the two.

Q.—Which of them? A.—The tall man.

Q.—Do you recollect the date of the second visit? A.—Not without the records.

Q.—What would be the date of the second visit, according to your records? A.—January 23rd, 1928.

Q.—Do I understand the contract for the rental of the box was signed on that date? A.—Signed on the same date.

HIS LORDSHIP: That is the contract Exhibit P-1?

20 MR. GOUDRAULT: Yes, your Lordship.

BY MR. GOUDRAULT, CONTINUING.

Q.—Will you please take communication of the document Plaintiffs' Exhibit P-1 at enquete, and state if that is the contract to which you refer? A.—Yes.

Q.—Was it for the same box that was picked out on that occasion? A.—No box was picked out on the first visit.

30 Q.—You showed them the boxes? A.—I showed them the boxes, yes.

Q.—Who was conducting the negotiations, or who was doing the talking, on the occasion of the first visit? A.—Both gentlemen. One did as much as the other.

Q.—And, on the occasion of the second visit? A.—About the same. I think one had as much to say as the other.

Q.—Were you present when the box referred to in Plaintiffs' Exhibit P-1 at enquete was opened for the purpose of being used by the renter?

40 WITNESS: On the first visit?

COUNSEL: On the occasion of the second visit.

A.—We give them a box, and they take it around and do they like with it.

Q.—Therefore, you were not there when it was opened? A.—We give it to them, and they take it around into the room and do whatever they like with it.

Norris Constable for plaintiffs (cross-examination).

Q.—And, what date was that? A.—January 23rd, 1928.

Q.—With the consent of Counsel for the Defendants I will produce, as Plaintiffs' Exhibit P-4 at enquete, a photostatic copy of your register under date January 23rd, 1928, wherein appears the names of Dr. T. M. Cassidy and F. Phillips. I understand this is a photostatic copy of that page and that date of your original register? A.—It is a photostatic copy of that one page.

Q.—And, you have the original before you? A.—I have the original right here, yes.

Q.—And this is a photostatic copy of page 262? A.—Yes.

HIS LORDSHIP: Do you accept the photostatic copy in lieu of the original, Mr. Hackett?

MR. HACKETT: I do, my Lord.

HIS LORDSHIP: To avail as the original.

MR. HACKETT: Yes, my Lord.

BY MR. GOUDRAULT, continuing:

Q.—This is a photostatic copy of page 262 of your original register? A.—Yes.

Q.—Do you recollect the introduction of the two gentlemen who came back to you at the Montreal Safe Deposit Company on January 23rd, 1928? A.—Yes. One said, "I am the party who came in a few days ago".

CROSS EXAMINED BY MR. COOK, K. C., OF COUNSEL FOR THE HEIRS PHILLIPS.

Q.—Who was that? Mr. Cassidy? A.—Mr. Cassidy.

Q.—That is, the elder man said he was Dr. Cassidy? A.—The gentleman I would take as the elder man was Dr. Cassidy.

Q.—And the other was the boy, young Phillips? A.—Yes.

Q.—He had not been there before? A.—Francis Phillips was not in before.

Q.—As I understand it, Colonel Clarence Smith, Dr. Cassidy, and another man (whose name you do not know) came in on December 19th, 1927; and, according to your records, Dr. Cassidy and young Phillips came in on January 23rd, 1928? A. That is right.

Q.—And, after discussion, a contract was made, as appears by the document Exhibit P-1 of the Plaintiffs? A.—Yes.

Norris Constable for plaintiffs (cross-examination).

Q.—And, Dr. Cassidy was one of the men who had been there on the first occasion? A.—Yes.

Q.—That is what you said before, did you not? A.—Yes.

Q.—Later on the box was changed, I understand on May 26th, 1928, a new box, No. 1854, being given in the place of the original one? A.—That is correct.

10 Q.—And on that occasion young Phillips came in to see you? A.—Yes.

Q.—Accompanied by a gentleman stated by Mr. John M. Smith to be a Mr. Grimes? A.—That is correct.

Q.—Does the signature of Mr. Grimes appear in your book on that occasion? A.—On that one occasion, yes.

Q.—On May 28th, 1928, the contents of the original box were placed in the second box, and later on its contents were placed under seizure, and ultimately handed to the Royal Trust Company? A.—On May 26th, 1928.

20 Q.—I do not think your answer is correct, Mr. Constable. Will you please verify it? A.—It was May 26th.

Q.—On May 26th, 1918, the contents were taken from the first box and put into the second box? A.—Yes.

Q.—And, later on they were handed to the Royal Trust Company? A.—That was another date: yes.

Q.—Considerably later? A.—Yes.

Q.—Do you know the date? A.—January 10th, 1929.

Q.—On January 10th, 1929, the contents were handed to the Royal Trust Company? A.—Yes.

30 Q.—And it was then the entry to that effect was made on the contract which has been produced as Plaintiffs' Exhibit P-1 at enquete? A.—Yes, that is right.

Q.—And, that is the whole story? A.—You have the whole thing there.

CROSS EXAMINED BY MR. HACKETT, K. C., OF
COUNSEL FOR CROWN TRUST COMPANY.

40 Q.—You have told us it was the custom of your Company to exact the signatures of persons who visited your office? A.—Every visitor coming in is supposed to sign the register.

Q.—That is a custom which is observed more in the breach than otherwise, is it not? A.—Yes. If you are introduced to the Manager, you go by that.

Q.—There would not be ten per cent of the persons who go into your office who would actually sign the register? A.—Not into the office, no.

Arthur Garinther for plaintiffs (examination in chief).

Q.—You had nothing to do with Colonel Smith and the gentlemen who were with him, other than to show them boxes of different sizes? A.—That was all I had to do.

Q.—And, after you had exhibited your wares, so to speak, they went out? A.—Yes.

Q.—They did not discuss with you whether or not they should sign the register? A.—No.

10

AND FURTHER DEPONENT SAITH NOT.

J. N. KENEHAM,
Official Court Reporter.

DEPOSITION OF ARTHUR GARINTHER, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFFS.

20

On this fifth day of October, in the year of Our Lord one thousand nine hundred and thirty two personally came and appeared ARTHUR GARINTHER of the City and District of Montreal, Credit Manager Mount Royal Hotel, aged 25 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. GOUDRAULT, K. C., OF COUNSEL FOR PLAINTIFFS.

30

Q.—You are Credit Manager of the Mount Royal Hotel? A.—Yes.

Q.—As such would you have a personal knowledge of registration cards at the hotel? A.—I know the forms, but I would not be present when they were signed.

Q.—It would be the room clerk who would attend to that? A.—Yes.

Q.—Will you take communication of the two registration cards of the Mount Royal Hotel which I now show you, and will you tell His Lordship what they are?? A.—One is dated January 23rd, 1928. One John Martin, registering from Atlantic City, New Jersey, was assigned to room 6028.

40

Q.—Are you now reading from the original card? A.—Yes, this is the original, as signed by the guest when registering.

MR. COOK: What has this to do with the case? My friends might bring thousands of registrations at the Mount Royal Hotel,

Arthur Garinther for plaintiffs (cross-examination).

on all the dates in the calendar, but what would they have to do with this case?

HR. HACKETT: I object to the evidence as irrelevant.

HIS LORDSHIP: I will take it under reserve of the objection.

10 BY MR. GOUDRAULT, CONTINUING.

Q.—Will you produce this card, whereby the hotel assigned a room to John Martin, and will you tell us on what date it was assigned to him? A.—January 23rd, 1928: 9.18 a. m.

Q.—Will you produce this registration card as Plaintiffs' Exhibit P-5 at enquete? A.—Yes.

MR. COOK: I have no questions.

20 CROSS EXAMINED BY MR. HACKETT, K. C., OF
COUNSEL FOR CROWN TRUST COMPANY.

Q.—What was the number of the room Mr. John Martin occupied at the Mount Royal Hotel? A.—6028.

Q.—How long did he occupy it? A.—From 9.18 a. m. January 23rd, 1928; until the bill was paid, on January 28th, 1928.

Q.—Was the room occupied by only one person? A.—No. The records show there were two in there.

30 Q.—What was the name of the other person? A.—Francis Martin.

Q.—When did Francis Martin arrive in this room? A.—They both came in at the same time. The serial number on the registration card is the next number. They are listed by numbers. One is 78428, and the other is 78429 — showing they both registered at the same time.

Q.—And, did they check out at the same time? A.—Yes. According to the "Paid" stamp it shows they both checked out and paid their accounts at the same time.

40 Q.—And, they remained from the morning of January 23rd to the evening of January 28th? A.—The exact time they checked out is not stated. We do not usually keep the exact time on the cards: but they went out on the 28th.

Q.—And, they occupied this same room during those five days? A.—Yes.

Q.—Will you file, as Plaintiff's Exhibit P-6 at enquete, the card signed "Francis Martin", which bears stencil No. 78429;

Norris Constable for plaintiffs recalled (examination in chief).

which, as you have stated, follows immediately after the John Martin stencil No. 78428? A.—Yes.

AND FURTHER DEPONENT SAITH NOT.

10 AND IT BEING FOUR O'CLOCK, THE FURTHER HEARING OF TESTIMONY IS CONTINUED TO THURSDAY, OCTOBER 6th, 1932, AT 10.15 O'CLOCK IN THE FORENOON.

J. H. KENEHAN,
Official Court Reporter.

DEPOSITION OF NORRIS CONSTABLE, A WITNESS
RECALLED ON BEHALF OF THE PLAINTIFFS.

20

On this sixth day of October, in the year of Our Lord one thousand nine hundred and thirty two personally came and reappeared NORRIS CONSTABLE already sworn, who, being recalled on behalf of the Plaintiffs, deposes as follows:—

EXAMINED BY MR. GOUDRAULT, K. C., OF COUNSEL FOR PLAINTIFFS.

30

Q.—Will you please look at the photograph I show you, and state if it resembles any person you have seen before at your Company? A.—I cannot say from memory who it is at all. I know the face, but that is all.

Q.—You know the face? A.—Yes. I have seen the face.

Q.—Whose face is it? A.—I cannot swear to whose face it is.

BY MR. COOK, K. C.

40

Q.—Was he the man who went in to see you? A.—I think he is the man who came in and saw me.

BY MR. GOUDRAULT, CONTINUING.

Q.—On the first visit? A.—Yes, on the first visit.

Q.—With whom? A.—With Mr. Smith.

BY THE COURT:

Q.—Which Mr. Smith? A.—With another gentleman.

Norris Constable for plaintiffs recalled (examination in chief).

Q.—Which Mr. Smith: Colonel Smith, or Mr. John M. Smith? A.—Colonel Smith.

BY MR. GOUDRAULT, CONTINUING:

10 Q.—Will you produce this photograph as Plaintiffs' Exhibit P-7 at enquete, being a photograph of a man you think resembles the man you saw on this first visit when Colonel Clarence Smith came to see you with two gentlemen for the purpose of renting a safety box? A.—Yes.

Q.—Did you have a conversation with the man whose picture has been produced as Exhibit P-7? A.—With those gentlemen: the same as we always have — we ask them what size they require, and what they are going to use the box, for, and we try to quote them according to what they ask for.

20 Q.—Did this gentleman whose photograph is Exhibit P-7 at enquete tell you anything about the purpose of the renting of the box?

MR. HACKETT: I object to this evidence. We had Mr. Constable yesterday afternoon on this question, and why begin over again. I object to the evidence as irregular and illegal.

BY MR. HACKETT:

30 Q.—I understood you to say you think you have seen the man whose photograph has been filed as Exhibit P-7? A.—Yes, sir.

Q.—You do not want to pledge your oath to this Court that you identify this photograph as a photograph of John Phillips, do you? A.—No, sir, not for a moment.

BY MR. COOK:

Q.—Was anything said as to what the box was to be used for? Please be frank and tell us what happened?

40 MR. HACKETT: I object to this as not arising out of the examination in chief of the witness.

HIS LORDSHIP: If it flows from the questions put by Mr. Goudrault this morning, I will allow it.

WITNESS: He said the box was to be used for books.

Norris Constable for plaintiffs recalled (examination in chief).

BY MR. COOK:

Q.—He said the box was to be used for books, When you say “he”, just whom do you mean? A.—Both Mr. Cassidy and the other gentleman.

Q.—You mean the gentleman whose photograph you have produced as Exhibit P-7? A.—I would not say that.

10 Q.—Is that the gentleman to whom you are referring? A. The two gentlemen answered the question.

Q.—Both Mr. Cassidy and the other gentleman who came in on December 19th, 1927, told you the box they required was for the purpose of putting books into? A.—Yes.

Q.—You swear that? A.—Yes.

Q.—And, you think one of the gentleman was the man represented by the photograph Exhibit P-7? A.—Yes, sir.

Q.—But, you are not quite sure? A.—I am not positive.

20 Q.—You are sure the other man was Cassidy? A.—I am sure the other man was Cassidy.

Q.—You are sure of that now? A.—I am sure of that.

Q.—And, that is the whole story? A.—Yes.

Q.—Do you know whose books they were? A.—They never said whose books.

AND FURTHER DEPONENT SAITH NOT.

J. H. KENEHAN,
Official Court Reporter.

30

40

Charles A. Schneider for plaintiffs (examination in chief).

DEPOSITION OF CHARLES A. SCHNEIDER, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFFS.

On this sixth day of October, in the year of Our Lord one thousand nine hundred and thirty two personally came and appeared CHARLES A. SCHNEIDER residing at No. 46 St. Marks
10 Place, New York City, in the State of New York, lawyer, aged 40 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. GOUDRAULT. K. C., OF COUNSEL FOR PLAINTIFFS.

Q.—What position do you hold at present? A.—I am a Deputy Assistant Attorney General for the State of New York.

Q.—Where do you reside? A.—New York City.

20 Q.—Where is your office? A.—No. 80 Centre Street, New York City.

Q.—From what University did you graduate? A.—The Brokaw Law School, St. Lawrence University.

Q.—When were you admitted to the practice of law? A.—June, 1920, term.

Q.—That entitles you to practice where? A.—Throughout the State of New York. I also have membership in the United States Courts for the Southern and Eastern Districts of New York, for the Circuit Court of Appeals for the Second Circuit,
30 and in the United States Supreme Court.

Q.—You have a thorough knowledge, I presume, of the laws of your State? A.—A passing and average knowledge.

Q.—This Action has been instituted by the People of the State of New York. In Paragraph 1 of our Declaration we allege the People of the State of New York are and constitute the State of New York, which is one of the States of the United States of America. Is that a fact? A.—That is an accurate description.

Q.—Where would that description be found? A.—I believe that description could be found in the Preamble to the Constitution of the State of New York.
40

Q.—Therefore, I presume it is in the Statutes of the State of New York? A.—I think it would be found there. In any event, that characterization of the State of New York by the term “The People of the State of New York” is one in common usage throughout the State, and accepted by the Courts.

Charles A. Schneider for plaintiffs (examination in chief).

Q.—You have taken communication of the Declaration in this Action? A.—Yes, I have.

Q.—The Declaration, or Complaint as you call it in the United States? A.—Yes.

Q.—Will you tell His Lordship under what authority it was brought by the Attorney General of the State of New York for the People of the State of New York? A.—May I examine
10 some notes, to refresh my recollection?

COUNSEL: You are entitled to do that.

A.—The authority of the Attorney General to institute this suit is derived from Section 1229 of the Civil Practice Act of the State of New York.

Q.—Does it make any reference to Article 76 of the Civil Practice Act? A.—Yes. Section 1229 of the Civil Practice Act is one of the Sections embraced in Article 76 of the Civil Prac-
20 tice Act.

Q.—Do I understand you to mean that the source of the authority of the Attorney General lies in Article 76 of the Civil Practice Act of the State of New York? A.—Yes.

Q.—What was the answer you were about to give as regards one particular Section? A.—I asked you if you required me to read Section 1229, which contains the authority.

Q.—Will you please read it? A.—(reading)
Attorney General Must Bring Action.

The Attorney-General must commence an Action, suit or other judicial proceedings, as prescribed in this Article. whenever he deems it for the interest of the People of the State so to do; or whenever he is so directed, in writing, by the Governor".
30

Q.—Will you please refer to Section 1222 of Article 76, and read it into the Record? A.—(reading):

“Action By People in State Courts for illegal receipt or disposition of public funds or other property:

Where any money, funds, credits, or other property, held or owned by the State, or held or owned officially or otherwise for or in behalf of a governmental or other public interest, by a domestic municipal or other public corporation, or by a Board, officer, custodian, agency, or agent of the State, or of a city, county, town, village or other division, sub-division, department, or portion of the State, has heretofore been or is hereafter, without right obtained, received, converted, or disposed of, an Action
40

Charles A. Schneider for plaintiffs (examination in chief).

10 to recover damages or other compensation for so obtaining, receiving, paying, converting or disposing of the same, or both, may be maintained by the People of the State in any court of the State having jurisdiction thereof, although a right of Action for the same cause exists by law in some other public authority, and whether an Action thereof in favor of the latter is or is not pending when the Action in favor of the People is commenced.”

Q.—According to the New York Statute had the Attorney General the right to institute the present Action in any foreign country? A.—Yes, sir.

Q.—Would that foreign country include Canada; and if your answer is “yes”, will you kindly read the Section of the Act which applies? A.—It is Section 1224 of Article 76 of the Civil Practice Act of the State of New York, which reads:

“Actions in Foreign Courts:

20 The People of the State may commence and maintain in their own name or otherwise, as is allowable, one or more Actions, suits, or other judicial proceedings, in any court, or before any tribunal of the United States, or of any other State, or of any territory of the United States, or of any foreign country, for any cause specified in the last section but one.”

Q.—I understand once the Action is commenced the cause of Action is vested in the People of the State of New York. Is there a section in the New York Act as to that? A.—Section 1225 of Article 56 of the Civil Practice Act of the State of New York reads:

30 “Cause of Action Vests in People on Commencement of Action:

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

Q.—You have recited three sections. What was the first section? A.—The first section was Section 1229 of Article 76.

Q.—Will you please read Paragraph 2 of Plaintiffs' Declaration, and state if Section 1229 of Article 76 applies, and is

Charles A. Schneider for plaintiffs (examination in chief).

the authority which is meant in Paragraph 2 of Plaintiffs' Declaration? A.—I have read it, and I should state that it is.

Q.—You have also recited Section 1222. Will you look at Paragraph 34 of Plaintiffs' Declaration, and state if it is one and the same Section? A.—It appears to be the same, save for the title to the Section.

10 Q.—What you have recited as Section 1222 of Article 76 is recited in Paragraph 34? A.—Yes, save for the title.

Q.—Will you please read Paragraph 35 of the Declaration, and state if Section 1224 which is therein recited is the Section you have given as being the law of New York? A.—It appears to be the same, save for the title.

20 Q.—You should say it is the same, or it is not. A.—May I explain what I mean: each of the sections, apart from the actual text, is prefaced by a title. The title represents the substance of the Statute. The Phraseology employed in your Declaration, Paragraph 35, corresponds to the exact language of Section 1224 of Article 76, the title only being omitted.

Q.—And, this explanation applies to the other Paragraph of the Declaration which you have read? A.—Yes.

Q.—Will you look at Paragraph 36, and read the Plaintiffs' recital of law therein contained, and will you state if it is the same as the law of the State of New York? A.—It is, with the same exception.

30 Q.—The present Action of the State of New York, on behalf of the people of the State of New York, was instituted for benefits that had accrued within a period of ten years, as otherwise it would be prescribed. Will you please read the section of the New York Act which refers to that limit of time? A. Section 1226 of Article 76 of the Civil Practice Act of the State of New York covers the point. It reads:

“Limitation of Action:

The People of the State will not sue for a cause of Action specified in this Article unless it accrued within ten years before the Action is commenced.”

40 Q.—Will you please read Paragraph 37 of Plaintiffs' Declaration, and will you state if the law as therein set out is the law as therein set out is the same as what you have just recited? A.—It is exactly the same, with the same exception and the same explanation.

Q.—In virtue of the law of the State of New York has the Plaintiff the right to attach any property before judgment, in a case of fraud, and is there a section of the law which applies to

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that? A.—The State may attach property claimed to belong to it. Section 902 of the Civil Practice Act of the State of New York, in my judgment, applies.

MR. HACKETT: I object to any evidence on this point, inasmuch as it is not pleaded, and it is not competent to the Plaintiff to make proof of foreign law which is not alleged.

10

BY MR. GOUDRAULT, CONTINUING.

Q.—Will you please read Section 902? A.—(reading):
“In What Actions Attachment of Property May Be Had:

A warrant of attachment against the property of one or more defendants in an Action may be granted upon the application of the Plaintiff, as specified in the next Section, where the Action is to recover a sum of money only, as a tax or as damages or one or more of the following causes:

20

1. Breach of contract, express or implied, other than a contract to marry;

2. Wrongful conversion of personal property;

3. An injury to person or property in consequence of negligence, fraud or other wrongful act;

4. A wrongful act, neglect or default by which the decedent's death was caused, when the cause of action arose in this State before or after the passage of this Act and the Action is brought by an executor or administrator against a natural person who, or a corporation which, would have been liable to an Action in favor of the decedent by reason thereof if death had not been sued.”

30

MR. HACKETT: I would like to renew my objection to this evidence. It is apparently evidence of the law of procedure of the State of New York, and that is a type of foreign law which may not be introduced into the forum which is hearing this case. Substantive law may be introduced, as a fact; but our Courts must exercise their function according to our own law of procedure.

40

I will ask your Lordship to note my objection, because I shall rely upon it in argument.

HIS LORDSHIP: Your objection is noted, Mr. Hackett, and reserved.

MR. COOK: I would like to join my friend Mr. Hackett in the objection, which I regard as a fundamental objection to

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evidence of this character. A seizure after Judgment in the Province of Quebec, for example, must be taken according to the procedure of the Province of Quebec.

HIS LORDSHIP: The objection is noted, and reserved.

BY MR. GOUDRAULT, CONTINUING.

10 Q.—Is there another section of the same Article which would apply to this present Action? A.—Yes, sir.

Q.—Will you please read Paragraph 39 of Plaintiff's Declaration, and will you state if the law therein contained is the law of the State of New York?

MR. COOK: This will be all under reserve of the same objection?

HIS LORDSHIP: Yes, Mr. Cook.

20 WITNESS: The recital contained in the 39th Paragraph of the Declaration, purporting to be the language of Section 904 of Article 54 of the Civil Practice Act of the State of New York, is an accurate transcript of the law of the State with respect to that Section of that Act.

MR. HACKETT: I take it it is not necessary to repeat the objection to all this evidence?

30 HIS LORDSHIP: No. The objection has been noted, and the evidence is being taken under reserve of it.

BY MR. GOUDRAULT, CONTINUING.

Q.—Will you please read Section 904 of the same Article?

A.—(reading):

“Warrant in Action for Peculation and Deceit:

40 A warrant of attachment against the property of one or more Defendants in an Action may also be granted, upon the application of the Plaintiff, where the complaint demands Judgment for a sum of money only; and it appears that the Action is brought to recover money, funds, credits, or other property, held or owned by the State, or held or owned, officially or otherwise, for or in behalf of a public governmental interest, by a municipal or other public corporation, board, officer, custodian, agency, or agent, of the State, or of a city, county, town, village or other division, subdivision, department, or portion of the

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10 State, which the Defendant without right, has obtained, received, converted or disposed of; or in the obtaining, reception, payment, conversion or disposition of which, without right, he has aided or abetted, or to recover damages for so obtaining, receiving, paying, converting, or disposing of the same, or the aiding or abetting thereof; or in an Action in favor of a private person or corporation brought to recover damages for an injury to personal property where the liability arose, in whole or in part, in consequence of the false statements of the Defendant as to his responsibility or credit, in writing, the hand or signature of the Defendant or his authorized agent, made with his knowledge and acquiescence. In order to entitle the Plaintiff to a warrant of attachment, in the case specified in this section, he must show that a sufficient cause of action exists against the Defendant for a stated sum.”

20 Q.—Do I understand the Section you have just recited is the Section contained in Paragraph 39 of Plaintiffs’ Declaration? A.—It is.

Q.—Is it imperative upon the Attorney General of the State of New York to institute Actions of this kind and nature; and is there a section in the law which provides for this? A.—It is imperative, and the Section of the Statute making it mandatory upon the Attorney General to commence an Action of this character is Section 1229 of the Civil Practice Act, Article 30 76.

Q.—Will you kindly read it? A.—(reading):
“Attorney-General Must Bring Action:

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

40 Q.—Will you please read Paragraph 8 of the Declaration, and state if that is the law therein recited? A.—It is: save for the absence of title.

Q.—You spoke of the New York Civil Practice Act, Will you tell us, in a word, what it is? A.—It is an Act passed by the Legislature of the State of New York.

Q.—Would it be the actual law of New York? A.—It is the law of that State.

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Q.—Would it be solely on procedure, or would it be also the law in itself?

I might explain that in this Province we have the Civil Code, which contains the fundamentals and the principles of law; then we have the Code of Civil Procedure, which is for the purpose of applying this law, and which states how we should proceed in applying the principles. I know you have not the Civil Code in New York State, but have you something similar to our Civil Code?

A.—The Civil Practice of the State of New York is governed by three sources: the Common Law, the Civil Practice Act, and the rules of Civil Practice. The Civil Practice Act, to which reference has heretofore been made, contains not only the substantive law, but the adjective law as well. By adjective law I mean the procedure law. By substantive law I mean what apparently you mean by fundamental law.

In the preparation of this Statute known as the Civil Practice Act the Legislature has taken cognizance of the principles enunciated in the Common Law, and has embodied them in the Civil Practice Act; so, we will find in the Civil Practice Act not only matters that are purely procedure, but we will find a declaration of the law as stated in the Common Law and enacted as part of the Common Law.

Q.—What is the Statute which created the City of New York as a municipality? A.—It was an Act of the Legislature, passed, I think, in 1901; and is officially known as Chapter 466 of the laws of 1901. The Act is commonly entitled the Charter of the City of New York. There have been amendments to it from time to time.

Q.—As an attorney have you a knowledge of the Charter of the City of New York? A.—I have a general and average knowledge.

Q.—And, it is New York law? A.—It is the law as it applies to the City of New York.

Q.—I understand the City of New York is divided into Boroughs? A.—It is.

Q.—Will you please tell His Lordship if the name of the Borough mentioned in this case is one of the Boroughs of the City of New York? A.—It is.

Q.—And, what Borough is it? A.—Queens.

There are five Boroughs: Richmond, Brooklyn, Manhattan, Bronx, and Queens.

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BY MR. COOK:

Q.—Queens is the biggest? A.—It is the largest in point of size.

BY THE COURT:

10 Q.—But, not in population? A.—Not in point of population. In point of population the largest is the County of Kings, or the Borough of Brooklyn.

BY MR. GOUDRAULT, CONTINUING:

Q.—Will you please refer to the Greater New York Charter, and tell us in what Article thereof the Borough President of Queens would derive his authority, or his powers, and duties? A.—Section 383, of Chapter 9, of the Charter of the City of New York; Title (1), is the source of authority vested in the President of the Borough.

20 Q.—Will you tell His Lordship what are the powers and duties of the President of a Borough within the City of New York Section 383?

WITNESS: Shall I read the Section?

COUNSEL: Yes.

A.—(reading):

“President of Borough; Powers and Duties:

30 (Sec. 383) The President of a borough shall, by virtue of his office, be a member of the Local Board of every District of local improvements in his Borough, and Chairman thereof, entitled to preside at its meeting and to vote as any other member. He shall have an office in such hall or public building of the Borough as the Board of Aldermen may by resolution direct. He may appoint and at pleasure remove a Commissioner of Public Works for his Borough, who may discharge all the administrative powers of the President of the Borough relating to streets, sewers, public buildings and supplies conferred upon him by this Act; and who shall, in the absence or illness of such President discharge all the duties of such President. He may also appoint and remove an Assistant Commissioner of Public Works who may discharge such powers and perform such duties as may be in writing conferred upon him

40 by said President of the Borough. He shall have power

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10 to appoint a Secretary and such assistants, clerks and subordinates as he may deem necessary, if provision be made therefor by the Board of Estimate and Apportionment and the Board of Aldermen. The said Secretary, assistants, clerks, and subordinates shall hold office at the pleasure of the President, subject to the provisions of the Civil Service Laws. In the event of the illness or absence of the Commissioner of Public Works or the Assistant Commissioner of Public Works, the President of the Borough may in writing confer upon any subordinate duly designated by him, such powers and such duties as by the provisions of this Act, he is authorized to confer upon the said Commissioner of Public Works or the said Assistant Commissioner of the Public Works, except, that such subordinate so designated shall not be authorized by such designation to act for or represent the said Borough President upon the Board of Estimate and Apportionment of the City of New York, nor upon any of the Committee of the said Board of Estimate, nor in the exercise of any powers or authority vested in the said Borough President by reason of his membership in the said Board of Estimate and Apportionment. He shall, within the Borough for which he shall have been elected, have cognizance and control:

- 20
1. Of regulating, grading, curbing, flagging, and guttering of streets and laying of crosswalks.
 - 30 2. Of constructing and repairing public roads.
 3. Of paving, repaving, resurfacing and repairing of all streets and of the relaying of all pavements removed for any cause.
 4. Of the laying or relaying of surface railroad tracks in any public street or road, of the form of rail used or character of foundation, and the method of construction, and of the restoration of the pavement or surface after such work.
 - 40 5. Of the filling of sunken lots, fencing of vacant lots, digging down lots, and of licensing vaults under sidewalks.
 6. Of the removal of encumbrances.
 7. Of the issue of permits to builders and others to use or open the streets.
 8. Of the construction and maintenances of all bridges and tunnels which are within his Borough, and

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form a portion of the highways thereof, except such bridges as cross navigable streams, and, in the Borough of Manhattan, except certain viaducts which, by the provisions of Section 595 of this Charter, are placed under the cognizance and control of the Commissioner of Plant and Structures.

10

9. Of all subjects relating to the public sewers and drainage of his Borough, and shall initiate the making of all plans for the drainage of his Borough, except as otherwise specifically provided in this Act. He shall have charge of the construction of all sewers in accordance with said plans. He shall have in charge the management, care and maintenance of the sewer and drainage system of the Borough of which he shall be President and the licensing of all cisterns and cesspools.

20

10. Of the construction, repairs, cleaning and maintenance of public buildings, including markets, except schoolhouses, almshouses, penitentiaries, and the fire and police station houses, and other buildings whose care and custody are otherwise provided for in this Act.

11. Of the care and cleaning of all offices leased or occupied for public uses.

30

12. Of the location, establishment, care, erection, and maintenance of the public baths, public urinals, and public comfort stations; and of the placing of all signs indicating the names of the streets and other public places.

The President of each Borough shall prepare all contracts relating to his Borough, subject to the approval as to form by the Corporation Counsel. He shall have such other powers as are expressly conferred upon him by this Act, and such other powers as may be conferred upon him by the Board of Alderman. He shall make an annual report of the business and transactions of his Borough to the Mayor.

40

The Presidents of the Boroughs of Queens and Richmond shall, each for the Borough of which he shall have been elected President, in addition to the powers above specified, have cognizance and control:

1. Of the sweeping and cleaning of the streets of the Borough, and the removal or other disposition as often as the public health and the use of the streets may require, of ashes, street sweepings, garbage, and other light refuse and rubbish, and of the removal of snow and ice from

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leading thoroughfares and from such other streets as may be found practicable.

10 2. Of the framing of regulations controlling the use of sidewalks and gutters by abutting owners and occupants for the disposition of sweepings, refuse, garbage or light rubbish within the Borough which, when so framed, and approved by the Board of Aldermen, shall be published in like manner as City Ordinances, and shall be enforced by the Police Department in the same manner and to the same extent as such Ordinances, together with such other powers concerning street cleaning as are expressly conferred upon them by this Act.

20 3. The said Presidents of the Boroughs of Queens and Richmond shall have power to appoint such subordinates as may be necessary to enable them to carry into effect the provisions of this Act, regarding cleaning the streets of his Borough, but the aggregate salaries of such officers shall not exceed in any one year the amount appropriated therefor by the Board of Estimate and Apportionment and the Board of Aldermen...”

MR. COOK: This is, of course, under reserve of our objection to all the evidence of this character.

HIS LORDSHIP: Yes, Mr. Cook.

WITNESS: (continuing reading):

30 “The said Presidents of the Boroughs of Queens and Richmond shall have such other powers relating to street cleaning within said Boroughs as are conferred upon the Commissioner of Street Cleaning by Sections 541, 543, 544, and 545 of this Act.

40 Whenever by any of the provisions of this Act the powers are conferred or duties are imposed upon a President of a Borough, such powers may be exercised and such duties may be performed, upon the request of said President, by the Commissioner of Public Works of said Borough, if such official shall have been appointed; and if not, by any subordinate duly appointed by the President of said Borough, under the powers conferred upon him by this Act, as duly designated thereto in writing; and such powers and duties when exercised or performed by such Commissioner of Public Works or other appointee shall be regarded as having been exercised or performed by such President in the same manner as if such powers and du-

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ties had been actually exercised or performed by such President personally.”

BY MR. GOUDRAULT, CONTINUING.

10 Q.—I understand the law you have just read has been amended. Will you tell us in what respect? A.—This perspection of Charter of the City of New York was amended by local law No. 1, in the year 1929. In substance it only affects the powers of the Borough President of Queens and Richmond with respect to street cleaning.

Q.—It does not affect the law you have just read, as regards sewer construction? A.—No, it does not. That power still is vested in the Borough President.

20 Q.—Will you tell us how the sewer contracts are made, or awarded, in a general way, in the City of New York, and how the contractors are paid — according to the Charter? A.—In a general way — and I do not pretend to be very accurate about it, but as a life long resident of the City, and one in a measure familiar with the organization of its Government — I can say that the practice is for a body known as the Local Board, consisting of the members of the Board of Aldermen of the Districts embraced in this Local Board (of which there are, I believe, twenty four or so in number, throughout the City) . . .

30 Q.—(interrupting) Twenty four what? A.—Twenty four Local Boards within the City of New York. The members of this Local Board consist of the members of the Board of Aldermen embraced within the Local Board District. The Local Board usually consists of more than one aldermanic district, hence in a Local Board there may be two, or three, or four, or more members of the Board of Aldermen who compose that Local Board. In addition, the President of the Borough sits as a member of the Local Board.

Q.—Do I understand this Local Board of which you have spoken . . .

40 MR. HACKETT: (interrupting) Up to now I have not felt it necessary to object to leading questions, but as we are getting into what my friend terms very vital evidence, I would ask that his questions be put legally, and not illegally as the present one is about to be put.

BY MR. GOUDRAULT, CONTINUING.

Q.—You have just told us how the Local Board of Alder-

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men is composed? A.—Not the Local Board of Aldermen: the Local Board for Improvements.

10 Q.—If a sewer is to be constructed, what are the proceedings that have to be made by those various bodies? A.—The Charter provides that a proposed improvement has to be arranged by the Local Board for Improvements. At a meeting, a resolution has to be adopted, and approved by the President of the Borough. It is then submitted to the Board of Estimate and Apportionment for its approval. That approval is limited, as I understand it, merely to matters of form, and also for the purpose of appropriating the moneys required to be expended for the proposed improvement.

20 The Borough President, under the practice, calls upon his subordinates: and in the instance of a proposed sewer may call upon his engineering staff — his Chief Engineer or Consulting Engineer, or other subordinates. He calls upon them to prepare an estimate which, under the Statute, is required to be submitted to the Board of Estimate for its consideration, better to enable it to determine the amount to be appropriated for the proposed improvement.

The Statute also provides that those meetings are to be called by the President of the Borough.

30 Q.—Can you tell us what the Board of Estimate and Apportionment of the City of New York has to do with the construction? A.—I have stated it, in substance, to be that they are called upon to appropriate a sum of money required for the proposed improvement, and also to approve the contract as to form.

Q.—Is there a section in the Charter of the City of New York which refers to the rights of the President of the Borough as regards bids for the construction of sewers, and, if there is such a Section, will you kindly recite it? A.—I think Section 419 of the Charter of the City of New York applies to the question propounded.

That Section reads:

“Contracts for work or supplies:

40 All contracts to be made or let for work to be done or supplies to be furnished, except as in this Act otherwise provided, and all sales of personal property in the custody of the several Borough Presidents, Departments or Bureaus shall be made by the appropriate Borough Presidents or heads of Departments under such regulations as shall be established by Ordinance or resolution of the Board of Aldermen. Whenever any work is necessary to

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10 be done to complete or perfect a particular job, or any
supply is needful for any particular purpose, which work
and job is to be undertaken or supply furnished for the
City of New York, and the several parts of the said work
or supplies shall, together, involve the expenditure of more
than \$1000, the same shall be by contract, under such
regulations concerning it as shall be established by ordin-
ance or resolution of the Board of Aldermen, excepting
such works now in progress as are authorized by law or
ordinance to be done otherwise than by contract, and un-
less otherwise ordered by a board of three fourths of the
members elected to the Board of Aldermen; and all con-
tracts shall be entered into by the appropriate Borough
President, and heads of Departments, and shall, except
as herein otherwise provided, be founded on saled bids or
proposals, made in compliance with public notices, duly
20 advertised in the City Record, and the Corporation news-
papers, and said notice to be published at least ten days;
if a Borough President or the head of a department shall
not deem it for the interest of the City to reject all bids,
he shall, without the consent or approval of any other
department or officer of the City Government, award the
contract to the lowest bidder, unless the Board of Estimate
and Apportionment by a three quarter vote of the whole
Board shall determine that it is for the public interest that
a bid other than the lowest should be accepted; the terms
30 of such contract shall be settled by the Corporation Coun-
sel as an act of preliminary specification to the bid or
proposal.

40 In any contract for work or supplies made here-
under, there may be inserted in the discretion of the Bor-
ough President or head of department making such
contract, a provision that additional work may be done
or supplies furnished for the purpose of completing such
contract, at an expense not exceeding Five Per Centum of
the amount of such contract, if such additional work or
supplies shall be ordered by such Borough President or
head of department.

The bidder whose bid is accepted shall give security
for the faithful performance of his contract in the manner
prescribed and required by ordinance; and the adequacy
and sufficiency of this security shall, in addition to the
justification and acknowledgment, be approved by the
Comptroller. All bids or proposals shall be publicly open-

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10 ed by the officer or officers advertising for the same, and
in the presence of the Comptroller, but the opening of the
bids shall not be postponed if the Comptroller shall, after
due notice, fail to attend; if the bidder whose bid has been
accepted shall neglect or refuse to accept the contract
within five days after written notice that the same has
been awarded to his bid or proposal, or if he accepts but
does not execute the contract and give the proper security,
it shall be readvertised and relet as above provided. In
case any work shall be abandoned by any contractor, the
appropriate department may, if the best interests of the
City be thereby served, and subject to approval by the
Board of Estimate and Apportionment, adopt on behalf
of the City all subcontracts made by such contractor for
such work and all such subcontractors shall be bound by
such adoption, if made; and the appropriate Borough
20 President or the head of the appropriate department shall
in the manner provided in this section readvertise and re-
let the work specified in the original contract exclusive of
so much thereof as shall be provided for in the subcontracts
so adopted. No bid shall be accepted from, or contract
awarded to, any person who is in arrears to the City of
New York upon debt or contract, or who is a defaulter as
surety or otherwise, upon any obligation to the City.
Every contract when made and entered into, as before
provided for, shall be executed in duplicate and shall be
30 filed in the Department of Finance; together with a copy
of the resolution or ordinance of the Board of Aldermen
and the Local Board, and together with the approval of
the Board of Estimate and Apportionment wherever same
is required by the provisions of this Act, or copies of both,
as the case may be, authorizing of or said work; such copy
shall be so filed within five days after the contract shall
have been duly executed by the contractor. All warrants
upon vouchers duly audited and approved, for payment of
amounts due under contracts, shall, by number or other
40 description, refer to the voucher, the fund and the contract
upon which the payment is to be made, and all cheques
drawn by the Chamberlain on warrants duly approved and
executed pursuant to law, as payments on contracts, may
be mailed to the contractor at the address furnished by
him, or delivered to him or his authorized representative,
and when so mailed or delivered, the endorsement by the

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contractor upon a cheque attached to such a warrant, which has been paid by the Bank or Trust Company upon which the same has been drawn, shall be considered as a receipt of the contractor for the amount of said cheque so paid on account of said contract.

10 No expenditure for work or supplies involving an amount for which no contract is required shall be made, except the necessity therefor be certified to by the appropriate Borough President or the head of the appropriate department, and the expenditure has been duly authorized and appropriated.”

Q.—Do I understand the rights of the Board of Estimate and Apportionment are given in specific sections of the Charter?

A.—Yes.

20 Q.—What sections would they be? And, will you read them into the record? A.—I will have to examine the Charter, if you refer to the Board of Estimate and Apportionment. If you refer to the Local Board, it is contained in Section 433 of the Charter.

Q.—What does Section 433 say? A.—Section 433 of the Charter of the City of New York is entitled: “Local Board: Proceedings After Petition”.

It reads:

30 “The Local Board, after the submission of such petition and consideration of the same, may then, as the petition shall ask, pass a resolution to bridge, to tunnel, to open, to close, to extend, to widen, to regulate, to grade, to curb, to gutter, to flag, to plant trees on the sidewalks of and to pave streets, to lay crosswalks, and to construct sewers within its district and generally for such other improvements in and about such streets within its district as the public wants and convenience of the district shall require.”

BY MR. HACKETT:

40 Q.—You say the Local Board is made up of the Aldermen of one or several districts? A.—Usually two or more.

Q.—And, you said there are twenty four aldermanic districts in New York? A.—No: there are twenty four Local Boards. My impression is there are now sixty one, or sixty two, or sixty three members of the Board of Aldermen, exclusive of members who are ex officio members, such as the Presidents of the Boroughs. In other words, each President of a Borough is a member

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of the Board of Aldermen, ex officio. In addition to that there are persons elected in aldermanic districts; an aldermanic district being a political subdivision of a borough.

BY MR. GOUDRAULT (Continuing):

10 Q.—Will you read Sections 434 and 436? A.—Section 434 bears the subcaption: “Local Board: To Transmit Resolution; Further Procedure; Expenses to be a Lien”. It reads:

20 “If the Local Board shall by resolution decide that proceedings be initiated for a local improvement within its jurisdiction, it shall thereupon, forthwith, transmit a copy of such resolution to the Board of Estimates and Apportionment. Said Board shall promptly consider such resolution, and approve or reject the same, and return said resolution if approved to the President of the Borough where it originated, and he may thereupon proceed to the execution of the work covered by said resolution in accordance with the provisions of this Act; but no public work or improvement, involving an assessment for benefit, shall be so authorized until there has been presented to the Board of Estimate and Apportionment an estimate in writing, in such detail as the Board may direct, of the cost of the proposed work or improvement, and a statement of the assessed value, according to the last preceding tax roll, of the real estate included within the probable area of assessment. The expense of all such improvements shall be assessed and be a lien on the property benefited thereby in proportion to the amount of said benefit; but no such work shall be done by the Borough President on any item which imposes a charge upon the whole City of more than five hundred thousand dollars, except with the approval of the Board of Aldermen”.

30 Section 436 bears the caption: “Power To Assess For Local Improvements”. It reads:

40 “In all cases where the Board of Estimate and Apportionment or the Board of Aldermen or the Board of Estimate and Apportionment and the Board of Aldermen together, with or without the concurrence or approval of any other Board or officer, are authorized to determine that a local improvement is to be made, the said Board of Estimate and Apportionment or the said Board of Aldermen, or both, as the case may be, shall determine whether any, and if any, what proportion of the cost and expense

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10 thereof shall be borne and paid by the City of New York,
and the remainder of such cost and expense shall be assessed upon the property deemed to be benefited thereby;
and the assessment shall be laid and confirmed and collected in accordance with the provisions of Chapter 17 of
this Act. The determination or decision of such Board
as to the proportion of cost and expense to be borne and
paid by the City of New York, and as to the proportion to
be borne by the property benefited, after it shall have been
made and announced, shall be final, and such determination
or decision shall not be reopened or reconsidered by
said Board. Except that the Board of Estimate and Ap-
portionment as provided in this Section, may in its discretion,
upon the petition of a majority of property owners
whose property has been assessed because deemed to be
benefited by such local improvement, as herein provided
20 within six months after such assessment has been imposed
reopen and reconsider its said determination and decision
and may redetermine the proportion of such expense to be
borne by the City of New York and by the property
benefited as hereinbefore provided in this Section. The
words 'Local Improvement' as used in this section shall be
construed to mean any work the payment of which was,
prior to the passage of this Act, provided for by the laws
in force in the territory of the Corporation formerly known
as the Mayor, Aldermen and Commonalty of the City of
New York, in whole or in part, by assessment upon the
30 property demanded to be benefited thereby or the owners
thereof, other than assessments which are confirmed by
a Court of Record. For the purpose of computing assessments
upon property deemed to be benefited by a local
improvement, all property within the area of benefit although
otherwise exempt by law from such assessment, shall be included
in such computation. The sum so computed on such exempt
property shall be borne by the City of New York. This provision
shall not be construed so as
40 to repeal or otherwise affect exemptions granted by law."

Q.—In virtue of the New York Charter who is supposed to call the meetings of the Local Board? A.—The President of the Borough within which the Local Board is embraced. Authority therefor is contained in Section 384 of the Charter of the City of New York, which reads:

"The President of a Borough shall call all meetings of the various Local Boards of the Borough, and shall

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give such notice thereof to the members as the ordinances of the Board of Aldermen may require. And he shall certify all resolutions, proceedings and determinations of the Local Boards of the Districts of Local Improvements in his Borough."

10 Q.—Do you know if in the New York Charter there is a section which refers to patented articles not to be used in the bids, or something similar to that? A.—I know there is such a provision, but I cannot identify it by section number.

Q.—Will you look at Section 1554 of the New York City Charter, and state if that is the Section? A.—That is it.

Q.—Will you please read it into the Record? A.—The title reads: "Patented Articles: How Supplied". The Section reads:

20 "Except for repairs no patented pavement shall be laid and no patented article shall be advertised for, contracted for, or purchased, except under such circumstances that there can be a fair and reasonable opportunity for competition, the conditions to secure which shall be prescribed by the Board of Estimate and Apportionment".

30 Q.—In our Declaration we have alleged that one Frederick G. Seely was the Assistant Engineer in the office of the President of the Borough of Queens, in the Department of Engineering and Construction, Division of Sewers. Is there a section of the New York Charter setting forth the duties and powers of the man holding such a position? A.—I think Section 386 of the Charter, in part, applies to the question propounded by you. The Section is captioned: "Employment of Engineers and Architects". It reads:

40 "The President of a Borough may at any time employ, if thereto authorized by the Board of Estimate and Apportionment and the Board of Aldermen, a consulting engineer, who shall be an expert on all matters relating to sewers and highways, and who shall have had fifteen years experienced as a civil engineer; and a consulting engineer be an expert of construction, repair and maintenance of public building; and a consulting architect who shall be an architect of recognized scientific and artistic standing and of not less than fifteen years experience. All other engineers or assistant engineers appointed by or under the authority of the Borough President must be civil engineers of at least three years experience".

They may be appointed by an immediate superior, whom in turn, would be subordinate to the Borough President; but the

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appointments would be under the supervision of the Borough President.

Q.—We have had several witnesses tell us that the bids had first to be published in the City Record, for the purpose of awarding those contracts for sewer construction in Queens or elsewhere. Is there such a thing as the City Record? A.—Yes. It is the official paper published by the City of New York.

10 Q.—And, it is published in virtue of the Charter of the City of New York? A.—It is published pursuant to a provision of the Charter of the City of New York.

Q.—Will you take communication of Exhibit C-206, already produced in the case, which is a contract awarded to Angelo Paino for the construction of a sewer within the Borough of Queens, and will you explain in a summary way what this Exhibit is?

20 MR. HACKETT: Is my friend merely asking the witness what the Exhibit is, taking it as typical?

MR. GOUDRAULT: Exactly.

MR. HACKETT: There is nothing peculiar about this particular contract?

MR. GOUDRAULT: No: it is just one of the ordinary contracts. We have produced a series of them.

30 WITNESS: Is it your question to determine whether this, in form, is the usual form of contract employed by the City of New York for the letting of work on sewers?

MR. GOUDRAULT: Yes. You might state in a summary way what it contains, as regards letting, and awarding, and payments.

40 WITNESS: Those contracts do not come to my attention in my official capacity. It is a function of the Corporation Counsel of the Law Department of the City of New York, as distinguished from the Office of the Attorney General. At the same time, I have a general knowledge, as a lawyer, as to its form. It appears to be in such form as is usually contained in contracts between the City of New York and persons to whom it gives public work to be done, or materials to be supplied.

It contains the specifications originally advertised in the City Record pursuant to Statute. It contains a copy of the bid. It contains the award of the contract.

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MR. HACKETT: What is the number?

MR. GOUDRAULT: 76068. Awarded August 6th, 1925.

10 WITNESS: It contains the bond furnished by the bidder. It contains the resolutions of the Local Board of Improvement, and the approval of the Board of Estimate and Apportionment. It is executed by the contracting parties to the contract. It contains a certificate by the President of the Borough as to the estimated cost of the contract, and the manner in which that cost is to be charged to a particular fund. In the specifications it contains a recital, as in sewer contracts, as to the type of sewer pipe; commonly designated as type "A", and type "B" — type "A" being a monolithic design pipe, and type "B" being a precast pipe. There are other types of sewer pipe as well, but generally those are the two types of sewer pipes employed.

20 Attached to this contract is a record of payments made by the City to the contractor.

BY THE COURT:

Q.—If I understand you correctly, a complete file of the matters relating to the contract will be found in Exhibit C-206?
A.—Yes.

BY BR. GOUDRAULT, CONTINUING:

30 Q.—And, Exhibit C-206 is one of those typical contracts which were awarded in the Borough of Queens for the construction of sewers? A.—Yes.

Q.—Does the contract state the number of feet of concrete sewer that has to be built? A.—It does. In this particular instance it is shown as part of the specifications, and the notice of bidding.

Q.—It also gives the size of pipes to be used? A.—Yes. It gives all the details with respect to the materials required.

BY THE COURT:

40 Q.—Does it show the law or authority in this matter?
A.—Reference is frequently made in the contract to the source of authority, derived from the Statute, with respect not only to the advertising of the bidding, but also with respect to the right of the Borough President to affix his name as one of the contracting parties.

Q.—Does it show that all the formalities exacted were followed? A.—The formalities with respect to the form of the

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contract, and with respect to the preliminaries of bidding, etc., and the opening of the sealed bids, and its acceptance, and the award: yes, such recital is contained in the printed form of the contract.

BY MR. GOUDRAULT, CONTINUING:

10 Q.—In this contract Exhibit C-206 payments appear to have been made. Would that be a receipt, or would it be a proof of payment of the contractors for the execution of the work?
A.—Yes.

There are two methods by which proof of payment is determined, one is the endorsement on the cheque made by the City through the Chamberlain's Office; that endorsement constituting evidence of the receipt of the moneys recited in the cheque. In addition to that...

20 MR. HACKETT: (interrupting) If my friend Mr. Goudrault intends to prove the ordinary procedure of negotiation leading up to a contract and the signing of the contract and the execution of it, and the payment of the amounts thereunder, I have no objection; but, if he is attempting to prove that certain amounts were paid under a certain contract, then I object.

MR. GOUDRAULT: That is not the point of my question.

BY MR. GOUDRAULT, CONTINUING:

30 Q.—What does the reciting of moneys on the contract mean. A.—I understand your question to be directed to the abstract question whether a sheet such as the one I hold in my hand, and which is attached to Plaintiffs' Exhibit C-206, and which bears the subcaption: "Payments: Amounts Retained and Earned" would be competent evidence generally with respect to payments made by the City and received by a contractor. In answer to that I state that in accordance with the practice in New York State, under our Common Law, entries made in the usual course of business are binding upon parties to a dispute. So that if it
40 were determined that those entries were made by an official in the regular course of business, such an entry would be presumptive proof of the truth of the statement contained in such entry; subject to be rebutted.

MR. HACKETT: That gives point to my objection. If my friend Mr. Goudrault is attempting to prove that moneys were paid under this contract, I submit Mr. Schneider is not competent

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to give that evidence, and I object to the evidence as not being the best evidence available.

MR. COOK: And I join in the objection.

10 When Mr. Goudrault started this line of examination of Mr. Schneider on the contract Exhibit C-206 I certainly considered he was merely referring generally to the form of the contract in order that your Lordship might have general information as to the ordinary methods adopted in regard to the execution of such agreements. I certainly never thought for a moment that he intended to establish specific facts in reference to the contract, because otherwise I would have objected long ago.

HIS LORDSHIP: What is the purpose of the question, Mr. Goudrault? What do you want to prove? Do you want to prove payment was made?

20 MR. GOUDRAULT: No, your Lordship.

HIS LORDSHIP: Then you might perhaps say, in view of the objection made by Mr. Hackett, that your purpose in putting the question is not to prove an actual payment of the amount which appears on the document.

30 MR. GOUDRAULT: Quite right, your Lordship. I just want to establish the fact that it is an official receipt of the City of New York, that the amount was paid by the City of New York: subject to rebuttal.

MR. HACKETT: It is not an official receipt.

MR. GOUDRAULT: It is an official record of payment.

BY MR. GOUDRAULT, CONTINUING:

Q.—Is this an official recital of the moneys paid to the contractor by the City of New York on that particular contract?

40 HIS LORDSHIP: Or, is it simply a memorandum of payments made?

WITNESS: The form of paper employed in this Exhibit C-206 is similar to the form of paper employed in contracts let by the City of New York, and the entries made on the sheet conform in form and in practice to the established practice in the Chamberlain's Office in noting payments made by the City to contractors.

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I do not know anything as to the payments in this particular case, but this form conforms to the general practice adopted by the City of New York, of having a clerk in the Chamberlain's Office note payments.

BY THE COURT:

10 Q.—Does it even constitute a presumption of payment?
A.—The entries made in the ordinary course of business are, in common law, considered presumptive proof of a thing therein stated, subject to rebuttal.

MR. HACKETT: A presumption only against the person who made the entry, which would be the City of New York -- not against anybody else.

WITNESS: I cannot agree to that.

20 MR. GUERIN: My learned friend Mr. Hackett is citing our law; but that is not what the witness says.

MR. HACKETT: But, I do not want you to put into the Record any law you have not alleged; and I do not want you to prove a payment by a gentleman who is undoubtedly familiar with the law but who knows nothing of accountancy or of this contract.

BY MR. GOUDRAULT:

30 Q.—Will you please tell us what this page I now show you in Exhibit C-206 indicates?

MR. HACKETT: I object to that. This is an attempt to prove payment to Paino by Mr. Schneider. I object to it as Mr. Schneider is not a competent witness on the subject.

HIS LORDSHIP: The document speaks for itself. I understand the witness is not trying to prove that the figures represent amounts paid to his knowledge.

40 WITNESS: Your Lordship is correct.

BY MR. GOUDRAULT:

Q.—You are not in a position to state those amounts were paid to Paino? A.—No, I am not in a position so to state.

Q.—Coming back to my question: you have sufficient knowledge of Exhibit C-206 to state it is a contract of the City of New York? A.—Yes.

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Q.—And, as you stated, the City of New York is run by the City Charter, and under the authority of the Government at Albany? A.—May I phrase it this way: the original source of authority under which the City of New York is run civically is derived from the Charter of the City of New York. Since the enactment of the Charter subsequent legislation, commonly known as the “Home Rule Law” has been adopted; so that no longer does the City of New York derive its authority from the Legislature of the State of New York, because the right to enact legislation is now entrusted to the Board of Aldermen and the Board of Estimate and Apportionment.

BY THE COURT:

Q.—Do I understand the City of New York have delegated powers from the legislature of the State of New York? A.—The City of New York is a corporate entity — a political subdivision — a part of the State of New York. Originally under the scheme of government it derived its authority from an Act of the Legislature, commonly known as the Charter of the City of New York. Subsequently, additional legislation was passed, to meet local sentiment, and that legislation is known as the “Home Rule Bill”, by which the City of New York might be governed by local representatives elected within the City, rather than by legislation enacted elsewhere, namely at the capital city of the State of New York, by legislators not coming from the City of New York. To meet that local sentiment, the Home Rule Bill was enacted.

AND IT BEING 12.15 O’CLOCK, THE FURTHER TESTIMONY OF THE WITNESS IS CONTINUED TO 2 O’CLOCK IN THE AFTERNOON.

AND FURTHER FOR THE PRESENT DEPONENT SAITH NOT.

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AND AT TWO O'CLOCK IN THE AFTERNOON, PERSONALLY CAME AND REAPPEARED THE SAID WITNESS

CHARLES A. SCHNEIDER

AND HIS TESTIMONY WAS CONTINUED AS FOLLOWS:—
BY MR. GOUDRAULT:

10 Q.—Will you please look at the document I now show you, and say what it is?

MR. HACKETT: I object to the attempt to introduce into this Record documents which bear upon a criminal investigation held in another jurisdiction, between other parties, which are not res adjudicata as between the present parties, and which can be of no assistance to the Court in reaching a decision in this case. They are irrelevant, illegal, and there is already an Inscription in Law under advisement by your Lordship in which the very question at issue is whether or not allegations which have been attacked may be proved. The introduction of those documents would tend to prove those allegations which are objected to.

MR. COOK: On behalf of the Heirs of the late Mr. Phillips, I join my friend Mr. Hackett in this objection. It is a very serious objection to the proof my friend intends introducing, and while, strictly speaking, I suppose we should wait until he has put his question, I join with Mr. Hackett in his objection.

30 MR. GOUDRAULT: I object to the objection as made. We do not yet know what the document is. I have not even offered it in evidence. I was going to offer it in evidence. I was going to offer it in evidence, but I want the witness to describe what it is. It may be a purely civil document, or it may be a criminal document. I submit we should have a description of it, and then the objections may be made.

HIS LORDSHIP: But, your opponents must know what it is.

40 MR. GOUDRAULT: My learned friends contend it is a document in connection with a criminal charge. I say it is purely the nomination of a Commissioner, made under the New York Civil practice, to investigate into the affairs of Queens.

HIS LORDSHIP: It may be a preliminary question, and the objection may properly come to the succeeding question.

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MR. HACKETT: With due deference, may I pay a tribute to the skill of my learned friend.

Let us assume this is a criminal Judgment...

HIS LORDSHIP: Is it a conviction?

MR. HACKETT: Let us assume that. My friend is asking the witness to tell us what it is, so that it may appear on the Record.

We know what it is, and your Lordship can see what it is. I would ask your Lordship to take communication of it, and I would then ask you to rule upon its admissibility.

It is a very subtle way of getting into the Record something which has no right to be there.

HIS LORDSHIP: I suppose if the witness limits himself to saying that it is a document from some tribunal, without naming anyone, there might be no objection. If, however, he goes further than that, then it would be time for your objection.

Counsel simply wishes to know the nature of the document, without prejudice as to what may be in it. We will see what the document is, and then deal with it later on.

I may say I looked at the Inscription in Law yesterday, and if I am forced by the witness to render Judgment on the Inscription in Law I may have to render it immediately. If I maintain the Inscription in Law, the Plaintiffs will be prevented from making the proof.

For the time being, I think Mr. Goudrault may put the question.

MR. GOUDRAULT: I stated this morning I would not introduce evidence before your Lordship's Judgment was rendered on the Inscription in Law. In my opinion this document is not evidence of a criminal act on the part of anyone.

MR. HACKETT: Your Lordship can take communication of the document, and decide just what it is. My submission is that it is not proper to ask the witness the nature of this document, thereby getting an answer from the witness before your Lordship's decision has been rendered. It is my submission that obtaining an answer of the witness before it is determined whether or not this is legal evidence is an illegal and irregular way of proceeding.

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(HIS LORDSHIP TAKES COMMUNICATION OF THE DOCUMENT.)

HIS LORDSHIP: It strikes me this is a Commission issued by an authority of the State, to a Justice of the State, to make an investigation.

10 MR. GOUDRAULT: Absolutely, your Lordship.

The Plaintiffs offer in evidence, as Exhibit P-8 at enquete, the document the witness is now about to describe.

20 WITNESS: This is a certified copy of the appointment of a Commissioner under the Statutes of the State of New York, officially known as Section 34 of the Public Officers Law, popularly called the Moreland Act; by the terms of which the Governor of the State of New York is empowered to remove public officials — and particularly to investigate Borough Presidents. Instead of conducting the hearings himself, he may designate a person to sit as a Commissioner for the purpose of hearing testimony appertaining to the removal of a public official.

BY THE COURT:

Q.—Delegating his power? A.—Delegating his power under the Statute, rather than hearing it in the first instance himself.

30 This officer is required to report his findings to the Governor.

Q.—There is a certificate annexed to Exhibit P-8 at enquete? A.—Yes.

This is a photostat of an original, to which is attached a certificate bearing the signature of the Deputy Secretary of State of New York, who is authorized under our laws to certify to the authenticity of the transcript of the original document.

MR. HACKETT: This, of course, is under reserve of our objection.

40 HIS LORDSHIP: Yes.

BY MR. GOUDRAULT, CONTINUING:

Q.—Who received the appointment, and for what purpose?
A.—The original of this instrument bears the date February 8th, 1928, and it bears the signature of the then Governor of the State of New York, Alfred E. Smith: attested to by the Secretary of

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the Government. It makes reference to the fact that charges were filed with the Governor on the 14th day of January, 1928, by a citizen of the County and Borough of Queens, against one Maurice E. Connolly, President of the Borough of Queens; the petition praying that that official be removed from office as President of the Borough of Queens.

10 The certificate recites that pursuant to Section 34 of the Public Officers Act, the Governor designates one Honorable Townsend Scudder, a Justice of the Supreme Court of the State of New York, to take evidence as to the charges and the additional charges under certain designations described, and that such Justice so designated is possessed of all the powers, rights and duties conferred by the Statute to hold such hearings and to appoint Counsel and assistants, etc.

BY THE COURT:

20 Q.—This is an official document? A.—It is a certified copy of the original, which is the official document of appointment.

BY MR. GOUDRAULT, CONTINUING:

Q.—And, according to your law it is properly certified by the proper official? A.—Yes, sir.

30 Q.—Will you take communication of another document, which purports to be the appointment of the Honorable Clarence J. Sheeran for the same purpose, and will you produce it as Plaintiff's Exhibit P-9 at enquete; and will you state briefly what this document is? A.—This document is in all respects substantially similar to the document Exhibit P-8. It recites as the designee of the Governor one Honorable Clarence J. Sheeran, with like power.

This document is a photostat of an original, and its correctness is certified to by the Deputy Secretary of State, who is the duly authorized official to certify and execute this certificate under the laws of the State of New York.

40 BY THE COURT:

Q.—So much so that if it were produced before your Courts it would be a legal document? A.—Yes, sir.

Q.—Making proof of its contents? A.—Yes, your Lordship.

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BY MR. GOUDRAULT, CONTINUING:

Q.—And, it is properly certified by the proper official according to your law?

MR. HACKETT: It is understood that the same objection applies to all this evidence.

10 MR. COOK: And, the same objection applies on behalf of Heirs Phillips.

HIS LORDSHIP: Yes. The objection is noted, and reserved.

WITNESS: Yes.

BY MR. GOUDRAULT, CONTINUING:

20 Q.—I have another document, which is a certified copy of an Order of the State of New York, instructing the Attorney General of the State of New York, in virtue of Section 62 of the Executive Law of the State of New York, to proceed to a grand jury trial within the County of Queens.

MR. COOK: Objected to for the same reason.

MR. HACKETT: Same objection.

HIS LORDSHIP: The objection is noted, and reserved.

30 BY MR. GOUDRAULT, CONTINUING:

Q.—Will you produce this document as Exhibit P-10, and will you state what it is?

MR. COOK: Same objection.

MR. HACKETT: Same objection.

HIS LORDSHIP: The objection is noted, and reserved.

40 WITNESS: This is dated April 5th, 1928.

The document Exhibit P-10 is a photostat of an original designation by the then Governor, Alfred E. Smith, to the then Attorney General, the Honorable Albert Ottinger, directing the Attorney General or his assistants or deputies to attend an extraordinary special and trial term of the Supreme Court to be held in Queens County on a date stated, and to appear before the grand jury drawn for said term of said Court, and before any

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10 grand jury or grand juries which shall be drawn and which shall sit for any later term or terms of said Court; for the purpose of managing and conducting in said Court and before said grand jury all proceedings, examinations and enquiries, and all criminal actions and proceedings which may be had or taken before said grand jury, concerning or relating to its enquiry into any wilful or corrupt misconduct in office of public officials, and any and all unlawful acts of any and all persons of every description in connection therewith in the County of Queens, and to manage and prosecute and conduct the trial at said term, or any other term, and all indictments which may be found against any public officers or other persons therein to be tried; and that the designee, namely the Attorney General or his assistants and deputies, exercise all the powers and perform all the duties conferred upon him and them by Section 62 of the Executive Law.

20 To which instrument is attached a certificate bearing the signature of the Deputy Secretary of State, who is duly authorized to certify to the correctness of the transcript from which I have read.

BY MR. GOUDRAULT, CONTINUING:

Q.—Will you produce this document as Exhibit P-10 at enquete?

MR. COOK: Same objection?

MR. HACKETT: Same objection.

30 HIS LORDSHIP: The objection is noted, and reserved.

MR. HACKETT: May I formulate my objection to what purports to be a certificate of conviction of certain men by a criminal court in the State of New York?

HIS LORDSHIP: I suppose Mr. Goudrault wants to make the proof in conformity with the allegation against which there is an Inscription in Law.

40 MR. GOUDRAULT: I would not offer this in evidence until your Lordship has decided upon the Inscription in Law, but I have the witness here, and my idea was that the evidence might be made under reserve of your Lordship's Judgment on the Inscription in Law.

HIS LORDSHIP: I think it might be as well for me to decide the Inscription in Law now.

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I will not maintain the Inscription in Law. After reading the Pleadings it seems to me that the allegation in the Answer flows from the allegation contained in the Plea. Unfortunately according to the amendment to our Code of Civil Procedure proof cannot be ordered before adjudicating, so I am forced to give Judgment. If I do so it is because after considering the Pleadings I do not feel the Inscription in Law can be maintained, and I
10 dismiss it with costs.

You are free to make your evidence, Mr. Goudrault, under reserve of the objections. Of course, I may revise my Judgment when I come to consider the whole case, and I may set aside the evidence if I come to the conclusion that the ruling I now give is wrong.

MR. COOK: On behalf of the Defendants we very respectfully except to the Judgment your Lordship has just rendered, and persist in the objections we have taken to the relevancy and legality of the evidence which is now being offered in this connection.
20 My friend Mr. Hackett joins me in this objection and exception.

MR. HACKETT: Mr. Goudrault has handed me three documents, which he states he intends to offer as evidence. One is an indictment for conspiracy, another is a finding of the Appellate Division of the Supreme Court of the State of New York on an appeal from a conviction in a criminal matter. The third document is a finding of the Appellate Division of the Supreme Court of the State of New York on appeal from a conviction.
30

I have omitted the names of the parties, but I object to the introduction of those documents, first, because they are irrelevant — they could only be of use to this tribunal if they constituted res adjudicata as between the parties. My second objection is because they are offered for the pernicious effect that they might have upon any tribunal which may be called upon to pass on this case.

We know nothing of the tribunal which has found in those matters, nor of the circumstances which gave rise to the prosecution, and unless your Lordship feels it incumbent upon you to hear this whole case over again, I suggest very careful consideration should be given to the question of the illegality of the production of these documents. If they are admitted, and if the door is opened to enquire into those criminal prosecution which took place in New York, I shall find it necessary to bring some of the persons who may be still alive and able to speak for themselves.
40

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HIS LORDSHIP: Of course, your objection comes before any question is put.

MR. GOUDRAULT: That is what I find peculiar. My friends are reproaching me, and giving me good advice as to how to proceed, although I have not even offered the documents.

10 MR. HACKETT: If my friend wants to be funny I would suggest that he do it after Court hours. He has given me three documents which he told me he intended to introduce in evidence, and I am dealing with him as a man knowing his business.

HIS LORDSHIP: He gave them to you in order that you might examine them and prepare yourself from the point of view as to whether you should or should not make an objection. I think it is premature to make an objection before Mr. Goudreault tries to produce the documents. Of course, you are entitled to see the documents.

20 MR. HACKETT: Then I will say this: If my friend attempts to introduce these documents (as he told me he was going to do) I will ask your Lordship to consider what I have said as my objection to the introduction of the documents.

MR. COOK: The first document offered is an indictment for conspiracy against two men neither of whom is before this Court; Seely and Connolly. I do not know Seely at all. I have never seen him. Connolly I have only seen once in my life.

30 The next document he offers is a decision of a jury convicting Seely and Connolly.

The next document is a confirmation of the Appellate Court of the conviction of Seely, and a similar document in regard to Connolly.

There is nothing whatever in any of those documents indicating that Phillips was in any way brought before or tried by the criminal Courts, or convicted. As a matter of fact we know he died long before those proceedings were taken.

40 Why should the heirs of the unfortunate Phillips be dragged into a case in which he was never even tried? Anybody else might have been brought in having been convicted in the State of New York, but I cannot for the life of me see why my friend should bring this evidence against the heirs of the unfortunate Phillips, seeing that he was never tried.

HIS LORDSHIP: And, even if he had been tried, he might have been acquitted.

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10 MR. COOK: I submit it is grossly unfair to introduce those documents. I do not care as to the form in which my learned friend tries to bring them in, but I submit it is grossly unfair that evidence of this sort should be brought before this court, and possibly before the Appeal Courts of this country. I strongly object, not only on the grounds Mr. Hackett has so well set forth, but on the grounds of fairness and decency, and proper procedure, and I submit to your Lordship that the questions my friend is going to ask should be ruled out in advance.

MR. GOUDRAULT: The Plaintiffs, who appear on the indictment are the same plaintiffs who appear in this case — the people of the State of New York.

20 I charge in paragraph 9 of my Declaration facts of fraud and conspiracy between Connolly, Phillips and Seely, and I allege the facts which justify the people of the State of New York in taking an attachment before Judgment, because at the very same time those proceedings were being carried on by the people of the State of New York (as these documents show) Phillips was trying to conceal and do away with his money. He was up in Canada, renting a safety deposit box.

Paragraph 9 states very clearly that those three men conspired to fraud and cheat the City of New York of huge sums of money. That does not affect Phillips, because he was never tried.

MR. HACKETT: Then, why put it in?

30 MR. GOUDRAULT: Paragraph 9 states he was a party to the conspiracy, with the other two, and I have to prove against the other two, in order to prove there was a conspiracy to defraud. Certainly I am entitled to prove against Connolly and Seely.

MR. HACKETT: Why come before this Court at all, if you have a judgment?

MR. GOUDRAULT: For its jurisdiction.

HIS LORDSHIP: The objection is noted, and reserved.

40 BY MR. GOUDRAULT, CONTINUING:

Q.—Will you look at the document I intend to produce, and will you state what it is? A.—This is a certified copy of an indictment.

MR. HACKETT: I object to the sufficiency of the document.

Charles A. Schneider for plaintiffs (examination in chief).

HIS LORDSHIP: Your objection is noted, and the proof is admitted under reserve.

10 WITNESS: This is a certified copy of the original of an indictment filed in the office of the Clerk of the County of Queens; the certificate being executed by Edward W. Cox, Clerk of the County of Queens, who is duly authorized to attest and certify as to the accuracy of the transcript. This certificate is dated October 4th, 1932, and makes reference to the date of the filing of the original indictment on October 4th, 1928. The indictment is entitled "Supreme Court, County of Queens, The People of the State of New York against Maurice E. Connolly, John M. Phillips, and Frederick Seely."

BY MR HACKETT:

20 Q.—October 4th, 1928, was the date the original indictment was preferred? A.—Yes.

MR. GOUDRAULT: Plaintiffs offer in evidence, as exhibit P-11, this certified copy of the indictment.

MR. COOK: Of course, this is objected to, and my friend Mr. Hackett, joins me in the objection.

BY MR. GOUDRAULT, CONTINUING:

30 Q.—You said this document was certified by the Clerk of the County of Queens? A.—Yes.

Q.—Do you wish to correct anything in your answer, as regards the certificate? A.—Yes, I want to correct the date of the filing of the indictment, as being June 22nd, 1928. The reference to the certificate, October 4th, 1928, was read by me, from the certificate, but it apparently refers to the date of conviction rather than to the date of the filing of the indictment. The exact date of the filing of the indictment is June 22nd, 1928.

Q.—Is the document certificate by the Secretary of State for New York? A.—It is not so certified.

40 Q.—Will you see to it that it is so certified, so that the certification may be filed with the document? A.—I am required to say this to you: the Secretary of State is not the proper authenticating officer for this purpose — in other words, if this instrument is to be authenticated, the County Clerk's certificate must be authenticated by a Judge of the Supreme Court, not by the Secretary of State.

Charles A. Schneider for plaintiffs (examination in chief).

Q.—Then, will you have it properly authenticated by a Judge of the Supreme Court? A.—Yes.

Q.—And will you have the Commission of the Judge also authenticated by the proper officer of the State of New York? A.—I will.

10 MR. COOK: What is the character of the document under which it is authenticated?

MR. GOUDRAULT: It is a document certified by the proper Court official, and I wish to complete it by having the signature authenticated by the proper official of the State of New York. It is in the record, produced by us, save that it has to be completed and perfected.

HIS LORDSHIP: (To the witness) You will take good care of the documents?

20 WITNESS: Yes, Your Lordship.

BY MR. GOUDRAULT, CONTINUING:

Q.—Will you look at this document I now show you, and state what it is? A.—I would describe this document as being an extract of the Minutes of the Clerk of the Court at the time of the imposition of sentence upon two of the defendants, named in the indictment, namely...

30 MR. HACKETT: (Interrupting). I object to the introduction of this document, as irrelevant and illegal.

MR. COOK: I join in Mr. Hackett's objection.

WITNESS: Two of the defendants named, namely Maurice E. Connolly and Frederick Seely.

MR. COOK: I object to the statement of the witness as being totally irrelevant, and I ask that it be rejected from the record.

40 HIS LORDSHIP: The objection is noted.

WITNESS: This is an extract from the Minutes of sentence under the indictment previously referred to in the same entitled matter.

Charles A. Schneider for plaintiffs (examination in chief).

BY MR. GOUDRAULT, CONTINUING:

Q.—Against two of the parties therein named? A.—Two of the parties named in the indictment.

The instrument bears the certificate of the County Clerk of Queens County, certified that the original had been compared by him with this transcript, and that this is a true transcript thereof.

MR. GOUDRAULT: Plaintiffs offer in evidence, as exhibit P-12 at enquete, this extract of the Minutes of sentence of the Supreme Court, Queens County, in the State of New York.

HIS LORDSHIP: Of course, it is your duty to show your opponents the documents you want to produce, and it is their right to see those documents.

Now, objection is made, and I want to know the nature of the document offered. I also want to know if it is allowable under the pleadings. I can only know that by knowing the nature of the document. What is the document? Is it a conviction or what?

MR. GOUDRAULT: Your Lordship asked me a question, and I should have answered it. When I wanted to explain the nature of the document, I was met by an objection from Counsel for the Defendants.

The document exhibit P-12 offered in evidence is an extract from the Minutes of the County Clerk, Supreme Court, of the County of Queens, which recites the Jury finding of the sentence imposed upon two of the alleged conspirators in our Action, to wit: Maurice E. Connolly and Frederick G. Seely. It is a judgment of the First Instance.

HIS LORDSHIP: Objection has been taken by its production, on the ground of irrelevancy. In order to decide the objection I have to know the nature of the document. If I find it is relevant I will allow the evidence. If I have a doubt, I have the right to admit it under reserve.

I think I interrupted you, Mr. Hackett.

MR. HACKETT: This is a proces-verbal of a clerk of a criminal court in which two men were convicted of a crime. I submit, in the first place, the document is not authenticated; and in the second place, it is irrelevant. I also submit it cannot be of any assistance to this Court.

Charles A. Schneider for plaintiffs (examination in chief).

10 Your Lordship is trying an action in damages: an action by the terms of which the people of the State of New York are claiming money from the Estate of the deceased Phillips. Some documents have been introduced, which create a presumption at least that two other people were convicted of a crime. We are not associated with those people, and we are not bound by any judgment that was rendered in those cases. Those being criminal actions, would be determined by different rules of evidence, and in a way that would preclude their admission here, even had the cases been tried in this jurisdiction, and were they parties to this suit. The cases were cases of different parties, and these documents do not constitute *res adjudicata* between the parties, and they are, therefore, irrelevant.

MR. COOK: I join my friend Mr. Hackett in the objection. It is a most serious objection on our part.

20 From the legal point of view it seems to me utterly irrelevant to bring in judgments against parties who are not parties in the action. We know nothing about Seely and Connolly, as far as this suit is concerned. Their names have been mentioned, but they are not parties here. Phillips was not convicted, nor even tried, and it seems to me grossly unfair to introduce convictions against other people in order to bolster up a civil claim against the estate of a man who is dead and cannot answer.

HIS LORDSHIP: You must not forget there is the question of conspiracy. For the time being, the objection is reserved.

30 BY MR. GOUDRAULT:

Q.—Will you see this document exhibit P-12 is properly authenticated by the Supreme Court Justice of New York, and also by the Secretary of State? A.—I will.

40 MR. HACKETT: Will your Lordship permit me an observation? Of course, your Lordship understands that if we are to try those men over again in this jurisdiction it will probably be necessary to bring them, if they are available, and to bring other people who may be able to testify to some of the facts attested to be established by the judgments which have been filed.

HIS LORDSHIP: I take it the evidence is offered to establish the part in the paragraph in the Answer which was objected to, and the striking out of which was asked.

Charles A. Schneider for plaintiffs (examination in chief).

MR. GOUDRAULT: With regard to my learned friend's remark in connection with having those parties here, I may say that Connolly and Seely will be welcome at any time by the Plaintiffs.

HIS LORDSHIP: Of course, Mr. Goudrault, you must limit yourself to proving that part of the paragraph of your Answer to which objection has been taken. You must allege a fact before you can prove it.

MR. GOUDRAULT: I have alleged a conspiracy to defraud. In my Answer to Plea I have specifically alleged they were sentenced to jail.

I may tell your Lordship that both those Defendants in the New York Courts went to appeal on the decision which is recited in exhibit P-12. Now I offer as evidence a document, which I will describe as being a judgment of the Appellate Division upon the appeal of Frederick Seely.

HIS LORDSHIP: In other words, you want to produce another document showing that the appeal was dismissed?

MR. GOUDRAULT: Yes, your Lordship.

BY MR. GOUDRAULT, CONTINUING:

Q.—Will you produce, as plaintiff's exhibit P-13, at enquete, this confirmation of judgment before the Appellate Division, of Frederick Seely?

MR. HACKETT: I object, for the same reasons.

MR. COOK: I join my friend, Mr. Hackett, in the objection.

HIS LORDSHIP: The objection is noted, and taken under reserve.

WITNESS: Yes.

BY MR. GOUDRAULT, CONTINUING:

Q.—Will you produce, as exhibit P-14, copy of the Judgment of the Appellate Division of the Supreme Court of the State of New York, whereby Cononlly's appeal was dismissed and the first Judgment maintained?

MR. COOK: Same objection.

Charles A. Schneider for plaintiffs (cross-examination).

MR. HACKETT: Same objection.

HIS LORDSHIP: The objection is noted, and reserved.

A.—Yes.

BY MR. GOUDRAULT, CONTINUING:

10 Q.—Will you kindly attend to the proper authentication of those documents by the proper officials? A.—I will.

Q.—I understand both documents have been signed by the duly appointed clerk of the Court? A.—Yes, that is true.

Q.—Will you please tell his Lordship is the parties in the indictment exhibit P-11 are the same parties as in our Declaration? A.—Only one, John M. Phillips.

Q.—I mean the Plaintiff — the prosecuting party? A.— Yes, the Plaintiff in P-11 is the same entity described in the Declaration before this Court.

20 Q.—Are the Frederick Seely and the Maurice E. Connolly whose names appear in the indictment P-11, the same Maurice E. Connolly and Frederick Seely whose names appear in our Declaration before this Court?

MR. O'DONNELL: I object to the question as illegal.

HIS LORDSHIP: What is the ground of your objection?

30 MR. O'DONNELL: The same as in regard to the other evidence. It is illegal and irrelevant. It is the same line of evidence.

HIS LORDSHIP: The objection is noted, and reserved.

WITNESS: Unquestionably, yes.

CROSS EXAMINED BY MR. HACKETT, K. C., OF COUNSEL FOR CROWN TRUST COMPANY:

40 Q.—I understood you to say you were admitted to the Bar in the year 1922? A.—June, 1920, term.

Q.—How long did you practise on your own account? A.— I am still engaged in the practice of Law on my own account, apart from holding a public office.

Q.—When were you appointed to public office?

WITNESS: In the present instance?

COUNSEL: For the first time.

Charles A. Schneider for plaintiffs (cross-examination).

A.—In 1924.

Q.—Have you been continuously in office since? A.—No sir. I served in 1924 as Deputy Assistant Attorney General; an office similar to the one I now possess. In the interim, for part of the time, I served as Assistant Counsel to the Sheriff of New York County. In February, 1931, I was appointed by the present Attorney General for the State of New York as Deputy Assistant
10 Attorney General — an office I hold to this day.

During the entire period since my admission to the practice of law, I have been engaged in the private practice of law.

Q.—But this work of Assistant Attorney General takes most of your time, I understand? A.—It does.

Q.—All your time, in fact? A.—During the past year and nine months, almost my entire time.

Q.—And, the appointment is a political appointment, is it not? A.—Well, no, it is not entirely so — and I say that in all earnestness.
20

If I understand your question correctly, the present Attorney General is a Democrat by political faith, but there are men who are Republicans who have retained office.

Q.—But there are no Republicans appointed by the Democrats? A.—Yes sir, there are Republicans appointed by the Democratic Attorney General. There are a number of Republican Assistant Deputy Attorneys General now holding office under a Democratic Attorney General.

Q.—But they were not appointed by them? A.—I think they were re-appointed — I am not certain of that. I think the requirement calls for re-appointment. As Assistants under the preceding administration the tenure of office lasted only as long as the office of the predecessor.
30

Q.—In any event, you have lived all your business life in New York? A.—I have.

Q.—You have taken an active interest in politics? A.—I am identified with a political organization.

Q.—Tammany? A.—Tammany Hall.

Q.—Mr. Alfred E. Smith, the gentleman whose name appears on some of the documents you have produced this afternoon (and I refer to documents exhibits P-8, P-9, and P-10) was Governor of the State of New York? A.—Yes.
40

Q.—And, was supported by Tammany? A.—He was the candidate of the Democratic Party of the State of New York.

Q.—Supported by Tammany? A.—Supported by Tammany. He formed part of that organization.

Charles A. Schneider for plaintiffs (cross-examination).

Q.—I think you told us this morning that New York comprises five boroughs? A.—Yes, that is correct.

Q.—You mentioned them, I think, as Queen's, Richmond, Bronx, Brooklyn, and Manhattan? A.—Yes.

Q.—It is a matter of common knowledge that Connolly, whose name has been referred to so frequently, and who was president of the Borough of Queens, was not a Tammany man?
10 A.—That is not entirely accurate.

Q.—It is accurate to the extent that he opposed Mr. Smith in so far as he was a Tammany man? A.—Nor is the accurate.

HIS LORDSHIP: Do you think this has any relation to the case, Mr. Hackett?

MR. HACKETT: I think it has the gravest relation, your Lordship. I have struggled with all my energy to keep those documents out of the record. My instructions are that we are
20 in the presence of a political vendetta in which Tammany was trying to crush a leader who would not submit. When those documents were offered I argued to your Lordship that in my view they were absolutely irrelevant. Now, they are brought in, and it will behoove me to say that there was political warfare on and that Connolly and the men who surrounded him were opponents of Tammany and met the fate of all those who opposed Tammany.

HIS LORDSHIP: Not only have I much doubt that they
30 are relevant to the case, but I think they are not, and I think you are simply taking the time of the Court for nothing. We are not going to examine into the political situation of the State of New York.

MR. HACKETT: I bow as gracefully as I can to any judgment of your Lordship, but you will remember I urged with great persistence that the criminal trial of Connolly had nothing to do with this case.

HIS LORDSHIP: Those documents were brought in to
40 support an allegation in the Answer to the Plea.

MR. HACKETT: Not as far as I was concerned. I merely denied the allegation.

HIS LORDSHIP: They have no bearing upon the merits of a certain part of the case.

Charles A. Schneider for plaintiffs (cross-examination).

I do not want to interfere with your Cross-examination, provided it bears upon the Examination in Chief.

MR. HACKETT: If I am able to satisfy your Lordship that Connolly and Seely were the objects of the enmity of Tammany and came into a head-on collision with Tammany, I think I shall have established the bearing of the testimony upon the
10 validity of those documents that are filed.

HIS LORDSHIP: I think the main point is to know if John M. Phillips conspired with Connolly or Seely. I may have no condemnation to pronounce against Seely or Connolly, and I can only look at it in so far as Phillips or his Estate is concerned. I have not seen the evidence adduced in New York. It will be a great task for me to go through it, but I will have to examine all the evidence and all the exhibits. I may find there are many documents which do not bear upon the case, nevertheless it is my
20 duty to examine everything that is submitted to me, and I will try to perform the duty to the best of my ability.

MR. HACKETT: Do I understand your Lordship rules that it is irrelevant for me to show Connolly was a political opponent of Tammany?

HIS LORDSHIP: I do not want to make any ruling. I simply interrupt you to tell you that I would not like you to enter too far into it. Confine yourself to the case. If you were before a Jury, it might be different, but here you are simply
30 before a Judge.

BY MR. HACKETT, CONTINUING:

Q.—To be brief, you do know that Connolly was not a supporter but was an antagonist or an opponent of Smith? A.—I did not so state.

Q.—I know you did not, but you know it, do you not? A.— I do not know it to be the truth.

I will put it affirmatively: from my knowledge of political
40 activities in the City of New York, I will say that Connolly was not a political opponent of Tammany Hall, nor of Governor Smith.

Q.—You know that for a fact? A.—I speak of it, because of my activities in Democratic political circles in the City of New York.

Q.—You say that Connolly was not a political opponent of Smith? A.—I say that.

Charles A. Schneider for plaintiffs (cross-examination).

Q.—You do know, do you not, as a matter of fact, that neither Smith nor Tammany could control Connolly?

MR. GUERIN: I do not see we should go any further with this subject. I submit it does not arise out of the Examination in Chief of the witness, and, secondly, it is absolutely irrelevant to the issues here.

10 MR. HACKETT: We have three documents, one calling for an investigation into the conduct of Connolly, another granting a special panel of the Grand Jury, and another directing an Attorney General to proceed during the summer. All those documents are signed by Governor Smith, and if my instructions are correct, it seems to me the information to be elicited is most relevant.

20 HIS LORDSHIP: I suppose you do not want to impugn the authority of the Governor or of those officers?

MR. HACKETT: No, I do not wish to impugn their motives, but I am unfortunately brought in this civil case to meet something that is entirely outside of the record — a criminal trial of some other persons; brought in, the Lord knows why. The only way I can meet is to show that this was a political feud.

30 HIS LORDSHIP: I would be inclined to permit any questions tending to test the credibility of the witness or his knowledge or ignorance of the law, but I will not permit the opening up any political campaign in the State of New York.

To my mind, the only question up of any political campaign in the State of New York.

To my mind, the only question is to know whether those documents are genuine.

MR. GUERIN: Do I understand the objection is maintained?

40 HIS LORDSHIP: Maintained, with the exception of what I have just said. Of course, Counsel has the right to question the credibility of the witness, or his knowledge on the law of the State of New York.

BY MR. HACKETT, CONTINUING:

Q.—How long have you been devoting your time to these particular cases arising out of alleged irregularities in the Borough of Queens? A.—I have devoted no time to any of those

Charles A. Schneider for plaintiffs (cross-examination).

cases, save this case in this jurisdiction. I commenced my activities by assignment from my immediate superior in New York to assist Mr. Goudrault and his firm in the preparation of the facts of the case for submission to the Commissioner in the Rogatory Commission issued to him. And then, to come to Montreal and to assist Mr. Goudrault and his firm, and also to appear as a witness here with respect to the statute law of the State of New York, — since April or May, 1931.

10 Q.—Is it to your knowledge that some eighteen or nineteen suits are pending in New York with regard to the same issues that have been raised here? A.—There are pending in the City of New York, I think twenty-six actions instituted by the City of New York against contractors who dealt with Mr. Phillips, and who, in turn dealt with the City of New York, or with whom contracts were made; to recover excessive prices paid to them.

20 Q.—An action has been brought against the Estate Phillips in New York? A.—There is an action, I believe, instituted by the Corporation Counsel on behalf of the City of New York against Phillips.

Q.—For the same reasons as this action we are trying here, and for the same amount? A.—I do not know whether the amount is the same, but it is predicated upon a fraud practised upon the City of New York. I have not seen the complaint in the Action. I merely heard reference made to it in a conversation.

30 MR. GOUDRAULT: We object to this line of evidence; first, on the ground that it does not arise out of the examination in chief, secondly, because it is not pleaded, and not being pleaded, we are taken by surprise. In the third place, it is not the best evidence as regards another action which may have been taken by the City of New York against the Estate of John M. Phillips.

MR. HACKETT: My friend overlooks the fact that he can suffer no prejudice. It is his client who might suffer any prejudices, and his client has taken those Actions, so that there cannot be any element of surprise.

40 MR. GOUDRAULT: Not our clients. The City of New York. We are acting for the State of New York.

MR. HACKETT: The action is an action of the City of New York, which, under a special statute, you are prosecuting in the name of the people of the State of New York.

Charles A. Schneider for plaintiffs (cross-examination).

I submit the evidence is relevant, and I submit it will give your Lordship some opportunity of appreciating the spirit with which this case is being prosecuted.

HIS LORDSHIP: Is it your intention to prove that another action has been taken by another party?

10 MR. HACKETT: By the same party. On the same contracts. By the City of New York.

HIS LORDSHIP: By the people of the State of New York.

MR. HACKETT: There is an allegation in the Declaration which says that the real plaintiff is the City of New York; but under a provision of the Statute, when a certain type of claim is made it may be enforced through the Government of the State of New York instead of through any corporation of municipality. The real plaintiff, and the beneficiary, as my friend took the
20 trouble to prove this morning, is the City of New York.

I am now endeavoring to prove the City of New York has another action in New York for the same matter.

HIS LORDSHIP: You have not pleaded that.

MR. HACKETT: No, my lord. I am learning it.

MR. GUERIN: We are absolutely taken by surprise. In our Action we recite that we are entitled to take such an action when there is no action taken. There is nothing in the defence
30 showing that another action has been taken by the City of New York. The witness was never questioned about it. If it be true, let Mr. Hackett make a special Plea for defence, and we will answer it. We do not want this evidence to be in the record without being able to answer my learned friend.

We never asked the witness any questions on this point, so my learned friend has no right whatsoever to cross-examine him upon it.

In the second place, there is no such allegation in the
40 pleadings.

HIS LORDSHIP: Can you show me any allegation to that effect in your Plea, Mr. Hackett?

At first sight I would be disposed to maintain the objection on the ground that the evidence does not flow from the examination in chief of the witness. In the second place, if you cannot show me it is pleaded, that would be another ground on which I

Charles A. Schneider for plaintiffs (cross-examination).

would maintain the objection. If it is pleaded, I will hold it is premature inasmuch as it does not flow from the examination in chief. The time to make the proof will be when you are making your evidence in defence.

10 MR. HACKETT: I would draw your lordship's attention to the fact that I am now cross-examining a party to the suit, not a witness.

HIS LORDSHIP: That does not matter.

MR. HACKETT: My submission is that a Deputy Attorney General of the State of New York, appearing as a witness in an action of this nature, occupies a position somewhat different from an ordinary witness in an ordinary action. In cross-examination I find that actions on the same contracts are pending in New York, I have no other way of finding it out.

20 I submit that in a question of conspiracy, dealing with criminal charges, I am entitled to any and all information that flows from a general statement of claim, and if it be a good defence to the action to show that actions are pending out there, I submit I am entitled to make that defence, and I submit I should not be stopped in my cross-examination because I have not alleged something I did not know.

30 MR. GUERIN: My learned friend is a better lawyer than that. He knows when the evidence is in the record it will not be necessary for him to amend his Plea. He knows very well if there is no objection, and if the evidence goes into the record without objection, it is sufficient for the Judge.

HIS LORDSHIP: There is a decision of the Supreme Court to that effect. More than that, there would be no end to the case if we permitted such evidence.

Have you anything to add, Mr. Hackett?

MR. HACKETT: No, my Lord.

40 HIS LORDSHIP: The objection is maintained, for the reasons already given. First, because it does not flow from the examination in chief; secondly, because it is not pleaded, — and I put counsel for the defence en demeure to show me an allegation in which it was pleaded. Thirdly, because it would be premature to make this evidence before the termination of the plaintiff's case. If there was an allegation in the Plea, the time to make the evidence would be when the defendants make their case.

Charles A. Schneider for plaintiffs (cross-examination).

MR. GUERIN: There is an answer in the record, which I submit should not be there. The witness has given an answer, which I ask your Lordship to have struck from the record. He has said an action was taken in New York. I would ask that that be struck from the record.

10 HIS LORDSHIP: You should have objected to it at the time. You must be on your guard. The questions and the answers must remain in the record, but Mr. Hackett will not go any further, because of my judgment on the objection.

BY MR. HACKETT, CONTINUING:

Q.—I understood you to say this morning that the City of New York was divided into approximately sixty-two aldermanic districts. Is that correct? A.—I believe that is the number. I could give you an accurate answer by reference to the City Charter.

20 Q.—You also said a local board was made up of the aldermen of at least two districts, and frequently there were more than two districts united in one board? A.—That is correct.

Q.—Also, I understand, the aldermen of the adjacent aldermanic districts form a part of the local board? A.—Only the aldermanic districts recited in the City Charter compose a particular local board. To illustrate: if the first local board was described in the charter as being composed of the members of the Board of Aldermen coming from the first, second and third aldermanic districts, those persons constituted the local board: and, though the fourth aldermanic district adjoins the third, not being embraced in the statute (although nevertheless adjacent to the third) the fourth is not a member of the first local board.

30 Q.—Is it to your knowledge that the local board, or the local boards, in the borough of Queens were constituted of aldermen of the aldermanic districts within the jurisdiction of the board, and of aldermen of the adjacent districts? A.—In creating the local board, and making it to be composed of aldermanic districts, an attempt was made to have contiguity, but contiguity was not the test: the test was, as recited in the statute, namely,

40 if the first local board was to be composed of the first, second and third aldermanic districts, those three composed the local board.

Q.—My question was whether the local board in Queens was comprised of the aldermen of the districts within the jurisdiction of the board, plus any contiguous districts. Will you please answer that, yes or no? A.—I cannot answer it yes, or no, save only as I have already answered it.

Charles A. Schneider for plaintiffs (cross-examination).

Q.—The President of the Borough was always a member of the local board? A.—Of each local board.

Q.—And any works — and I restrict the meaning now to sewers — were initiated by petition of the rate payers to the Borough President? A.—Under the statute and theory; not frequently in practice.

10 Q.—I understood you were testifying this morning as to the statute — the charter of the City of New York. Under the charter, I have correctly stated the law, have I not? A.—You have.

Q.—And, when a majority of the ratepayers have signed a petition to the President of the Borough he convenes a meeting of the local board in which the work is to be performed? A.—That is not the practice; neither by statute nor by actual practice.

20 Q.—What is the practice? A.—The President calls a meeting of the local board. The local board then submits a resolution to the president of the borough reciting that a local improvement is desired within the area of that local board. It is not on petition on behalf of rate-payers or by tax payers.

30 Q.—How does the request of the rate-payers come before the board of estimate and apportionment, which I understand is the final court of decision on matters of this kind? A.—There is no request of rate-payers. The matter comes to the attention of the board of estimate and apportionment through the president of the borough, who presents an estimate of the proposed cost. The Board of estimate and apportionment then determines whether or not the proposed plan is in conformity with a general scheme or plan in use in the city, and also determines whether or not there are sufficient moneys for the purpose of making an appropriation for the proposed improvement.

Q.—And this board of estimate and apportionment is a central board, comprised of certain officials taken from different parts of the City of New York? A.—That is correct.

Q.—On it is the Mayor, who has three votes? A.—That is correct.

40 Q.—The comptroller, who has three votes? A.—That is correct.

Q.—An auditor? A.—The next is the president of the Board of aldermen.

Q.—How much does he have? A.—I believe the same number of votes — three.

Q.—Then there are the presidents of each of the five boroughs? A.—With varying votes. Some have three, some two, and some one — the number depending upon the population of the borough.

Charles A. Schneider for plaintiffs (cross-examination).

Q.—I am instructed the presidents of the boroughs of Manhattan and Brooklyn have two votes each, and the presidents of the other two boroughs have one vote each? A.—Of the other three boroughs, I believe that is a correct statement.

Q.—All applications for sewers have to come before this central body called the Board of estimates and apportionment?

10 A.—For their consideration, for the purposes stated: Namely, that is conforms to the general scheme or plan, also for the purpose of determining whether there are sufficient moneys on hand to make the necessary appropriations.

They have no jurisdiction with respect to whether or not it is needed in the given community from whence it originated?

Q.—They have jurisdiction indirectly? A.—They could withhold an appropriation.

Q.—And, of course, if the appropriation were withheld the work could not go on? A.—That is correct.

20 Q.—Let us assume that works have been passed by the board of estimate and apportionment and have been approved, and the work has actually been begun. There is a close relationship, in so far as supervision, both financial and technical are concerned, on the part of the board of estimate and apportionment, over the work as it progresses, is there not? A.—None at all.

Q.—Will you pledge your oath to that? A.—I do.

30 Q.—Will you say there is no inspector in the employ of the Board of estimate and apportionment on those jobs? A.—I do solemnly so state.

Q.—And, there is no engineer? A.—An appointee of the board of estimates — a member of the staff of the board of estimates and apportionment.

40 Q.—An appointee of the board of estimates and apportionment? A.—There is no supervision exercised by the board of estimate and apportionment, or by any of its employees, with respect to the manner in which contracts are fulfilled. The supervision, and the only control, that is exercised, comes from two sources: one from the borough — and that is usually the only source. The only other source comes from the comptrollers office. The comptroller is required to audit, approve and make payment of the vouchers submitted to him by the borough president. In him vests the power to acquire into the measure of performance of a contract, — that is independently of the borough president. But there is so such power in the board of estimate and apportionment.

Q.—The comptroller is one of the three officers, I think, elected by the electorate of the entire city? A.—Yes.

Charles A. Schneider for plaintiffs (cross-examination).

Q.—And, he has three votes in the board of estimate and apportionment? A.—Yes.

10 Q.—And it is your testimony that the comptroller, who holds the purse of the city, has on each sewer job an inspector and an engineer representing his interests and those of the board of estimate and apportionment, as distinguished from the interests of the borough and its president? A.—The question is not accurately stated. I did not say the comptroller had an engineer or an inspector to examine the fulfilment of every contract, I said that power resided in him for the purpose of determining whether or not there had been a fulfilment of the terms of the contract, but I did not say there was an inspector or an engineer employed by him in each instance to check it up.

20 Q.—Are you in a position to deny that in each of the contracts before this Court there was such an inspector and such an engineer on the jobs? A.—I have no knowledge upon which I can base an answer to your question, as to whether or not there was an engineer or an inspector on any of the contracts.

30 Q.—Are you sufficiently familiar with the work of the board of estimate and apportionment, and with the work of the office of the comptroller, to state whether or not it is the custom to have such an inspector and such an engineer on all such works? I refer to sewers, of course? A.—I do not believe it to be the practice nor the custom as respects the board of estimate and apportionment. I do know that in isolated instances it has been the practice of the comptroller to cause an inspection to be made with respect to the fulfilment of a contract on which payment is demanded.

Q.—And, those inspectors and engineers are paid by the comptroller? A.—They are: by the City of New York.

Q.—And the comptroller is one of the dominating influences of the board of estimate and apportionment? A.—If you mean as a individual, it varies. If you mean as a political entity, he has one of 16 votes. He has the assistance of three of 16 votes.

40 AND IT BEING 4 O'CLOCK THE FURTHER TESTIMONY OF THE WITNESS IS CONTINUED TO FRIDAY, OCTOBER 7th, AT 10.15 O'CLOCK IN THE FORENOON.

AND FURTHER FOR THE PRESENT DEPONENT SAITH NOT.

J. H. KENEHAN,
Official Court Reporter.

MONTREAL, OCTOBER 7th, 1932.

Court reconvened at 10.15 o'clock a. m., pursuant to adjournment.

10

Mr. Goudrault, K. C., for the Plaintiffs, made application for permission to suspend the cross-examination of the witness Charles A. Schneider, in order to permit of the examination of two other witnesses actually in Court, but who may not be available as witnesses after today.

20 MR. HACKETT: I have no objection to suspending the cross-examination of Mr. Schneider, to meet the convenience of my learned friend Mr. Goudrault, but I consent to this without waiving my right to object to further testimony the two witnesses whom Mr. Goudrault intends to call.

MR. COOK: I join in Mr. Hackett's objection.

30 I wish to say now to your Lordship that perhaps it is a little premature, but it can do no harm — that representing the Defendants in this case I object to the evidence that was taken in New York being repeated before this Court, because it is already in the Record and we had five or six weeks work in New York in connection with those witnesses, who were examined at great length. I do not intend to consent to the examination again of any witnesses who were heard in New York on the subject matter on which they were examined there.

If it is understood there is no consent on my part, I have no objection to the suspension of the cross-examination of Mr. Schneider.

40 HIS LORDSHIP: Although Mr. Goudrault has not given the names of the witnesses he asks to have heard this morning, I presume you all know who they are.

MR. COOK: Mr. Goudrault should say who they are.

HIS LORDSHIP: Seeing that the hearing of this case cannot be interrupted, and seeing no prejudice in hearing the witnesses now, and seeing the consent of Mr. Cook and Mr. Hac-

kett and their statement that they have no objection to suspending the cross-examination of Mr. Schneider, the Court consents to hearing those other witnesses, reserving the right to decide later on if they are pertinent witnesses and if Counsel has the right to have them heard. Therefore, the Court suspends for the time being the cross-examination of the witness Charles A. Schneider, and allows the evidence of the other witnesses to be heard; although Counsel for Plaintiffs has not yet mentioned the names of those witnesses.

10

MR. GOUDRAULT: At the suggestion of the Court I state the two witnesses are Mr. Herman Ahrens, of Ampere, New Jersey, and Dame Mary E. Ryan — Mrs. Mooney — of New York City. Mrs. Mooney was already heard in New York.

20 In argument we will explain the Plaintiffs' method of coming to the prices of pipe that were paid during the period of time Phillips dealt with Queens. I do not want to speak at length on the subject for the moment, but I may tell your Lordship these facts, in order that the evidence given by the witnesses may be more easily understood.

HIS LORDSHIP: I do not want you to recommence your case here. As I understand it, those witnesses were heard in New York. If there are any new facts to be put before the Court, which have not been covered under the Commission, I will allow the evidence, provided it is pertinent to the case and to the Pleadings.

MR. GOUDRAULT: Only one of the witnesses was heard.

30 HIS LORDSHIP: Then you may examine the witness who was not heard.

40

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

DEPOSITION OF HERMAN F. AHRENS, JR., A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFFS.

On this seventh day of October, in the year of Our Lord one thousand nine hundred and thirty two personally came and appeared HERMAN F. AHRENS, JR., of the City of Ampere, in the State of New Jersey, Treasurer of the Lock Joint Pipe Company, aged 54 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn deposes as follows:—

EXAMINED BY MR. GOUDRAULT, K. C., OF COUNSEL FOR PLAINTIFFS.

Q.—How long have you been with the Lock Joint Pipe Company?

20 MR. HACKETT: I would like to appear of Record as objecting to the hearing of the testimony of Mr. Ahrens, and in particular to his taxation in the event of the case going against my client. We were in New York for six weeks for the express purpose of hearing those gentlemen who resided there and in that vicinity.

HIS LORDSHIP: Your objection is noted.

MR. COOK: I wish to associate myself with Mr. Hackett in the objection.

HIS LORDSHIP: Your objection is noted, Mr. Cook.

BY MR. GOUDRAULT, CONTINUING.

Q.—How long have you been with the Lock Joint Pipe Company? A.—Ever since it has been in existence. Ever since it was incorporated: in 1905.

Q.—What have been your duties with the Lock Joint Pipe Company for, say, the last twelve or thirteen years? A.—My occupation has been an administrative one; in an executive way. I have had charge of all sewer sales, the manufacture of pipe, collections, and in general that branch of the business.

Q.—I presume your functions render you quite familiar with pipe prices, as far as your Company is concerned? A.—That is correct.

Q.—Had you access to the books, the ledgers, bills, etc. A.—Yes.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

Q.—You were asked by the Plaintiffs to look through the books of your Company for a certain period of time? A.—Yes.

Q.—From what year to what year? A.—1917, to 1928.

Q.—Have you done it? A.—Yes, I have.

Q.—What have you brought here with you as regards that period of time? A.—One list of sales covering the territory east of the Mississippi and north of Tennessee, from 1917 to 1928; another list of sales in Queens in 1917 to 1918; and a third list, 1919, 1920, and 1921.

Q.—How did you prepare those lists? What was the actual source of those lists? A.—The first one mentioned — the territory east of the Mississippi and north of Tennessee — is a list of sales in that territory. That was made up for a comparison with the sales in the Borough of Queens for the other two periods.

Q.—Will you please show me the list?

20 MR. COOK: I object to the production of this document, as totally irrelevant to the case. The cost of pipe and material for use in Queens is not by any means the same as the costs of pipe in the territory east of the Mississippi and north of Tennessee; and until my friend shows the conditions are absolutely identical, such a list is not of the slightest value to this Court or to anybody else. Consequently I object to the production of the document my friend now offers.

MR. HACKETT: I associate myself with the objection.

30 MR. COOK: I respectfully ask that before we have the burden cast on us of investigating contracts east of the Mississippi and north of Tennessee, or wherever this gentleman speaks of, your Lordship should rule on the objection, because our burden is already heavy enough in this case.

40 MR. GOUDRAULT: I might explain to your Lordship why we make this evidence. At the argument of the case we will have to explain the theory the Plaintiffs had to adopt in order to calculate what, in their estimation, was a fair price for pipe in and outside of the Borough of Queens during the period of time covered by our Action. If the evidence is to be allowed under reserve of the objection, I will not give the explanation now, but if your Lordship wishes I will give you an outline of it. I understand it is hard for your Lordship to understand all the complexities and ramifications of this case until you have had

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

an opportunity of seeing the complete record. I might, however, explain the way we proceeded.

10 In the Borough of Quenes during that period of time there were on all bids for the construction of sewers two types admitted. The first, type "A". was a monolithic sewer; and type "B", which was a precast concrete pipe. We are only interested
20 in type "B". Type "B", or the precast pipe, was being built by the Lock Joint Pipe Company for the last thirty years. The Lock Joint Pipe Company is the largest Company of its kind in the world. They had an agreement with John M. Phillips that he should sell this pipe exclusively in the Borough of Queens for the period of ten years. This was under three separate arrangements. The third arrangement was that Phillips built this same pipe within Queens, and would pay a royalty or rental for the moulds to the Lock Joint Pipe Company. We claim that we have
20 established under the Rogatory Commission to New York that Phillips would charge as much as \$30.00 per foot for, say, a four foot diameter pipe of the type "B" — the precast pipe — which he was allowed to build in Queens according to his agreement with the Lock Joint Pipe Company. This same pipe, less two improvements (with which I will not deal at the moment) was being sold by the Lock Joint Pipe Company within a radius of 100 miles from New York, and all over the country as a matter of fact, at a much lower figure.

30 The only way we can establish the facts is by the examination of Mr. Ahrens.

Our major proposition is that we have established under the Rogatory Commission the figures Phillips charged. Our minor proposition is that the Lock Joint Pipe Company, and other Companies, were charging other and much lower prices for a similar type of pipe, delivered F. O. B. on the job. We say if Phillips charged, say, \$1,000,000 for so many feet of pipe within Queens, and the Lock Joint Pipe Company charged, say, \$200,000 for the same kind of pipe less the two improvements,
40 then, by subtraction, we have a difference of \$800,000 for the quantity of pipe sold to two different individuals or companies; and when we establish the prices at which the Lock Joint Pipe Company sold its product we have, in our estimation, established what may be called a fair market price.

As I say, the Lock Joint Pipe Company is the largest concern of its kind in the world. Mr. Ahrens has been connected with

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

that Company for many years, and he has come here with invoices and contracts for pipes during the same period of time outside of Queens. He is prepared to give us the figures at which his Company has sold pipes to other contractors throughout the country.

10 I simply want to put into the Record the names of the places where those sales or quotations were made, the sizes of the pipes, and the prices at which they were sold. As I say, we have already established the prices charged by Phillips for the same kind of pipe.

20 HIS LORDSHIP: Counsel will understand that in a matter of this kind, after a very long investigation made in New York, it is not easy for the Judge presiding over another part of the investigation, not au courant with all the Pleadings and all the investigations made on the Rogatory Commission, to decide offhand an objection of the kind now made. It would be very imprudent and very illogical for any Judge to decide offhand, without having full knowledge of what has already taken place either in New York or elsewhere, definitely maintaining or dismissing the objection. In the circumstances, I think it would be more prudent and I think it would be more in line with equity and justice to reserve the objection which is now made. I understand the examinations of those witnesses will not take very long, but, in any event, I think it is a matter of justice to hear the witness now in the box, and see if his evidence may have any
30 bearing upon the case.

In the circumstances, I think it is better to reserve the objection, and when the whole matter is before me I will decide definitely what I think should be done. I would not like to refuse to receive any evidence which might be legal or which might have a bearing on the case.

I, therefore, reserve the objection, a tout fins que de droit.

40 MR. COOK: I would like to draw your Lordship's attention to the fact that the contracts made by Phillips — and my friend will correct me if I make a mis-statement— were all made with individual contractors, and not with the Borough of Queens at all. That is a further objection to the evidence, and a further ground why it should not now be admitted.

MR. HACKETT: I associate myself with Mr. Cook in this.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

10 HIS LORDSHIP: Perhaps I should add to what I have said that I have decided that when all the evidence is in I shall order Counsel to prepare a factum, concise if possible, setting forth their respective contentions; and that a copy shall be given to opposing Counsel in order that they may answer. Then the Plaintiffs will have the right to reply to the contentions of the Defendants. In such a case as this, with the number of documents and the quantity of evidence adduced, I think it is only fair to the Judge to separate what should not be in the case from what should be in the case. When those factums are placed before me I will be in a better position to decide upon the different issues of the case. I think I am not mistaken in saying that in this Record and Exhibits there must be many things that should be set aside. I am putting this before Counsel so that they may know exactly where they will be at the end of the hearing.

20 BY MR. GOUDRAULT, CONTINUING.

Q.—I now show you a document, which I wish to offer in evidence on behalf of the Plaintiffs. Will you please describe it in a few words, and will you produce it as Plaintiffs' Exhibit P-15 at enquete?

MR. COOK: On behalf of the Defendant I respectfully object to the production of this document, and I ask that the objection I am now making shall avail in regard to all this evidence.

30 MR. HACKETT: I associate myself with Mr. Cook in this.

HIS LORDSHIP: I will take it as an objection to all the evidence of the witness.

WITNESS: This is a list of the job sales outside of the Borough of Queens, from 1917 to 1927.

BY MR. GOUDRAULT, CONTINUING.

40 Q.—By what company? A.—By the Lock Joint Pipe Company.

MR. GOUDRAULT: This list is filed as Plaintiffs' Exhibit P-15 at enquete.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

BY MR. GOUDRAULT, CONTINUING.

Q.—Where did you get the data or particulars which enabled you to prepare this Exhibit P-15? A.—This was made up from the duplicate or carbon copies of the original bills or contracts.

10 Q.—Which your Company had with the contractors therein named? A.—Yes.

Q.—Have you with you those particulars, contracts, bills, and invoices? A.—Yes, I have.

Q.—Every one that refers to the particulars contained in this Exhibit P-15? A.—Yes.

Q.—Did you personally, or did someone else in your firm personally, attend to those particular quotations on Exhibit P-15? A.—They were all attended to under my supervision, and in some cases by myself personally.

20 Q.—Will you look at the first item on Exhibit P-15, which is a sale dated 1917, to Brighton, New York; and will you tell us to whom that sale was made, the quantities, sizes, and prices? A.—That was to a contractor named Nicolo Desidero Brighton, New York, for 2845 feet of 36 inch pipe, at \$3.75 a foot, delivered.

Q.—What do you mean when you say “delivered”? A.—On the job.

Q.—Have you the data or the particulars to justify you in putting this item on Exhibit P-15? A.—Yes.

30 Q.—What have you? A.—The original contract.

Q.—The contract you now show me? A.—Yes. It is signed by Nicolo Desidero himself.

Q.—This is an original, or a duplicate original, contract? A.—It is the original contract.

Q.—Will you please look at the next sale on Exhibit P-15, and give us the particulars? A.—This was a sale, made in 1918, at Milburn, New Jersey, to a contractor named P. Mauriello, for 320 feet of 36 inch pipe, at \$3.60 a foot, and 1200 feet of 48 inch pipe at \$5.75 a foot. All delivered.

40 Q.—What are the dates? A.—Manufacturing on this job started March 26th, 1918, and was completed May 11th, 1918.

Q.—Have you the particulars and data on which you rely to include this item in Exhibit P-15? A.—I have the original signed contract.

Q.—Which you now show me? A.—Yes.

Q.—Will you now give me the particulars of the third item? A.—East Orange, New Jersey: contractor, Harrison and Craig.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

770 feet of 72 inch pipe, at \$10.50 a foot; and 730 feet of 78 inch pipe, at \$12.50 a foot. Manufacturing started March 18th, 1918, and was completed on June 11th, 1918.

Q.—Have you the particulars and the data on which you rely to include this item in your list? A.—I have the original signed contract.

10 Q.—And, that is what you rely upon to include this item in Exhibit P-15? A.—Yes.

Q.—And, you now show the contract to me? A.—Yes.

Q.—Will you please give the particulars of the fourth item? A.—1919. Syracuse, New York. Contractor, Frank S. Sposato. 135 feet of 27 inch pipe, at \$2.50; 1920 feet of 33 inch pipe, at \$3.40; 570 feet of 36 inch pipe, at \$3.80. Manufacturing started August 11th, 1919; and was completed on September 19th, 1919.

20 Q.—Have you with you, and will you exhibit to the Court, the document on which you rely to include this item in Exhibit P-15? A.—I have.

Q.—What is it? A.—The original contract with Frank S. Sposato.

Q.—Will you for a moment come back to the first item, and will you tell me the approximate distance between Brighton and Queens County, New York? A.—Under 300 miles.

30 MR. COOK: I object to this. on the ground that the approximate distance of Brighton from New York has nothing whatever to do with the matter. It is a question of the conditions that exist in Queens and the conditions that exist in Brighton, and of the pipe sold in Brighton being the same as the pipe sold in Queens: otherwise the comparison is useless. If the witness can swear the conditions in Brighton were exactly the same, foot for foot, as the conditions existing in Queens, the comparison might be of use, but as it is the comparison is absolutely useless and evidence of this character is simply taking the time of the Court uselessly.

40 MR. HACKETT: I would suggest, my Lord, that we observe a little more regularity in the examination of witnesses. This witness has been interrupted at least three times by persons who have nothing to do with the case, and I would like to enter an objection to it.

MR. GOUDRAULT: In order to answer Mr. Cook's objection I will put a question to the witness.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

BY MR. GOUDRAULT, CONTINUING.

Q.—I understand your experience has pipe manufacturer and salesman dates as far back as 1905? A.—Correct.

Q.—Could the pipe that was sold at the places you have enumerated on Exhibit P-15 also have been sold in any of those places as well as in Queens? A.—Yes, sir. Using the same moulds in some cases.

Q.—They could be used anywhere else besides Queens? A.—Yes.

Q.—What I mean is this: could the pipe that was sold at Brighton, Milburn, East Orange, and all those localities which appear on Exhibit P-15 have been used ...

MR. HACKETT: (interrupting) I object to the form of the question. as leading and suggestive.

MR. COOK: I do not like to take time making objections, but I would like to enter an objection to this question, not only on the ground that Mr. Hackett has raised, but also on the ground that unless this witness is prepared to swear that every inch of pipe sold to the contractors by Phillips for the Borough of Queens was identical with the pipe mentioned on this Exhibit, his evidence is of no value.

HIS LORDSHIP: Of course, you will have the right to cross-examine him.

MR. GOUDRAULT: If my learned friend insists, we will go into the details and qualify the witness.

BY MR. GOUDRAULT, CONTINUING.

Q.—You know about Phillips selling pipe in Queens? A.—Yes, sir.

Q.—Do you know about Phillips having three arrangements with your Company, the Lock Joint Pipe Company, as regards the manufacturing and the selling of pipes in Queens? A. Yes.

Q.—Will you tell us, in a word, what was the first arrangement?

MR. HACKETT: I object to any verbal evidence of a written contract.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

BY MR. GOUDRAULT, CONTINUING.

Q.—Was there any written contract, to your knowledge, or any agreement between your Company and Phillips?

MR. HACKETT: I object to any verbal evidence of a written contract.

10 HIS LORDSHIP: You may ask the witness if there was a contract in writing or if it was verbal. After that point has been elucidated the legality of the evidence may be determined. Of course, if there is a written contract the contract itself would be the best proof available, and you must file it. If there is no written contract, you may raise the point that it was a commercial matter, and, being a commercial matter, verbal testimony is admissible. You may also raise the point that this being
20 a question of fraud you may make verbal evidence. At the same time, you are bound to make the best proof available, and we must first know what kind of a contract it was — whether verbal or in writing.

BY MR. GOUDRAULT, CONTINUING.

Q.—Was there any contract, verbal, or in writing, that your Company had for the first period? A.—Verbal, only.

Q.—You took part, did you not, in the negotiations? A.—Yes.

30 MR. HACKETT: I object to any evidence of a verbal contract when it is advanced by the witness. I doubt very much if in a case of this kind it is competent to my friend to make that testimony. We have in the record three contracts between those people, and I submit that my friend cannot vary the terms of those written agreements by subsequent evidence.

HIS LORDSHIP: Of course, if there is a written contract, it cannot be varied by verbal testimony. If it was a verbal contract, let us know the nature of it.

40 MR. GOUDRAULT: I cannot see how my friend Mr. Hackett can contend there was a written agreement or arrangement, when the evidence taken in New York proves there were three verbal arrangements between Phillips and the Company.

HIS LORDSHIP: The objection of Mr. Hackett and Mr. Cook is noted, and the proof will be made under reserve of the objection.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

MR. HACKETT: There is a further objection, your Lordship. According to my instructions, in the State from which this witness comes it is not possible in any event to make proof of a contract for an amount in excess of \$500 by verbal testimony.

MR. GOUDRAULT: In a commercial matter.

10 MR. HACKETT: Even in a commercial matter.

BY MR. GOUDRAULT, CONTINUING.

Q.—Was the agreement between Phillips and your Company a commercial agreement? A.—A commercial agreement.

Q.—What was the nature of this arrangement between Phillips and your Company?

WITNESS: Speaking of what period?

20 COUNSEL: Always referring to the first arrangement the period 1917 and 1918.

A.—The arrangement for 1917-18 with Mr. Phillips was he was to sell pipe, and make the collections.

BY THE COURT:

Q.—When you speak of Phillips, I suppose you are speaking of Mr. John M. Phillips? A.—Yes.

30 BY MR. GOUDRAULT, CONTINUING.

Q.—Whom you knew? A.—Yes.

Q.—And, whom you met? A.—Many times.

Q.—Did you have occasion to see him when the particular arrangement to which you are now referring was made? A. I was in the room when the arrangement was made.

Q.—Were you in the room when the other two arrangements were made? A.—Yes.

40 MR. HACKETT: I object to any evidence of agency. This is not a sale: it is a contract of agency, and it is not competent to make this evidence against Phillips.

HIS LORDSHIP: The objection is noted.

As I said before, I take it the objection is general, and applies to any questions put to the witness.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

BY MR. GOUDRAULT, CONTINUING.

Q.—Do you know what kind of pipe your Company was selling to Phillips or to contractors during the two first periods? When I say “your Company” I mean the Lock Joint Pipe Company?

10 Q.—Was it a pipe different from or similar to the one that was being sold by your Company to those various localities which appear on Exhibit P-15? A.—Exactly the same.

Q.—And, which was being sold in Queens during those first two periods by Phillips or by your Company to Phillips, and to contractors? A.—Yes.

Q.—And, it was exactly the same pipe that appears on Exhibit P-15? A.—Yes.

Q.—So, the strata, the strains and the hazards have nothing to do as regards the sales end of it? A.—No.

20 Q.—Do you know if under the third arrangement with your Company, or during that period of time, Phillips made a pipe different from that which the Lock Joint Pipe Company were selling elsewhere? A.—I do not know.

Q.—Will you refer to Exhibit P-15 again, and tell me what is the approximate distance between Brighton N. Y., and Queens County? A.—It is under 300 miles. It is just outside of Rochester, New York.

Q.—And, what would be the distance? A.—I calculate it under 300 miles.

30 Q.—Can you say approximately how many miles it would be? A.—Approximately 300 miles.

Q.—What would be the distance between Milburn, New Jersey, and Queens County? A.—About 25 miles.

Q.—And, what would be the distance between East Orange, New Jersey, and Queens County? A.—About 15 miles.

Q.—What is the distance between Syracuse, New York, and Queens County? A.—About 235 miles.

Q.—What is the next item that appears on the list Exhibit P-15? A.—Highland Park, New Jersey.

40 Q.—Will you please give the particulars? A.—Contractor, Borough of Highland Park:

400 feet, 24 inch, \$1.60;
886 feet, 27 inch, \$2.10;
1012 feet, 30 inch, \$2.40;
1208 feet, 33 inch, \$3.00;
1156 feet, 36 inch, \$3.40;

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

1190 feet, 42 inch, \$4.35;

246 feet, 48 inch, \$5.30.

Q.—Have you the particulars or the data on which you rely to include those items? A.—Yes.

Q.—What have you? A.—I have a copy of the original contract with the Borough of Highland Park.

10 Q.—I see this contract appears to have been signed by you, as Secretary of the Company. Are you in a position to state it is an exact copy of the original? A.—Yes.

Q.—And, you now hold this copy of the contract at the disposition of Counsel for the Defence? A.—Yes.

Q.—What is the distance between Highland Park, New Jersey, and Queens County? A.—About 45 miles.

20 Q.—What is the next item on Exhibit P-15, and tell us what data and what particulars you have upon which you rely to include it in the Exhibit? A.—Lyndhurst, New Jersey. Contractor Michael C. McElligot;

1193 feet, 24 inch, \$2.00;

258 feet, 27 inch, \$2.85;

455 feet, 33 inch, \$4.00;

819 feet, 36 inch, \$4.45;

449 feet, 42 inch, \$5.50;

560 feet, 48 inch, \$6.90.

Q.—Are all the prices which appear in the third column of Exhibit P-15 prices per linear foot? A.—Correct.

30 Q.—What data or particulars have you before the Court which justify you in including this item in Exhibit P-15? A.—I have the original signed contract.

Q.—What is the distance between Lyndhurst, New Jersey, and Queens County? A.—I would say 20 miles.

Q.—What is the next item on the list Exhibit P-15, and what particulars have you for this item? A.—East Providence, Rhode Island. Contractor. J. McCormick.

1030 feet, 36 inch, \$3.45;

920 feet, 42 inch, \$4.40;

780 feet, 48 inch, \$5.55.

40 Q.—On what do you rely to include this item in the Exhibit? A.—The original signed contract.

Q.—Which you have before the Court here for examination? A.—Yes.

Q.—What is the distance between East Providence, Rhode Island, and Queens County? A.—150 miles.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

Q.—Will you now take the next series of entries on Exhibit P-15, which are for the year 1921, and will you tell us what sales your Company made, first, at Niagara Falls, New York?

A.—Niagara Falls, New York, 1921. Contractor Dominick Spacone:

10 724 feet, 36 inch, \$3.65;
 160 feet, 42 inch, \$4.55;
 3056 feet, 48 inch, \$5.90.

Q.—What particulars or data have you upon which you rely to include this item in the Exhibit? A.—I have carbon copies of the original invoices.

Q.—Where would the original invoices be? A.—They would go to the customer.

Q.—And, what you have is an exact copy, or duplicate? A.—Yes.

20 Q.—And you hold it at the disposition of the Court? A.—Yes.

Q.—What is the distance between Niagara Falls, New York, and Queens County? A.—In a straight line it would be about 300 miles.

Q.—What is the next item on the Exhibit? A.—Hazleton, Pa. Contractor, Louis Jacques.

Q.—What are the items? A.—

 156 feet, 66 inch, \$12.00;
 1480 feet, 72 inch, \$14.25.

30 Q.—What particulars have you to justify the inclusion of this item? A.—A carbon copy of the original invoice.

Q.—Of which you know personally? A.—Absolutely.

Q.—Where would the original be? A.—The contractor would have it.

Q.—What is the distance between Hazleton, Pa., and Queens County? A.—About 100 miles.

Q.—Will you tell us what sales your Company made to Clifton, New Jersey, in 1922, according to this Exhibit? A.—Contractor, F. B. Beasman:

40 226 feet, 24" special pipe, \$2.00;
 4010 feet, 24" \$1.60;
 2428 feet, 30" \$2.15;
 56 feet, 27" \$2.50;

Q.—What particulars have you to justify the inclusion of this item in Exhibit P-15? A.—Carbon copies of the original billing.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

Q.—I understand what you call a carbon copy of the original billing corresponds to a duplicate? A.—Yes.

Q.—Both being made at the same time? A.—With the same stroke of the typewriter.

Q.—What is the distance between Clifton, New Jersey, and Queens County? A.—20 miles.

10 Q.—Will you give us, now, the particulars of the next item?
A.—Johnston, Pa. Contractors A. L. Anderson & Brothers, Altoona, Pa;

552 feet, 33 inch, \$2.85;

564 feet, 36 inch, \$3.00;

5624 feet, 54 inch, \$5.60;

Q.—What particulars have you to justify the inclusion of this item in the Exhibit? A.—I have carbon copies of the original invoices that went to the contractors.

20 Q.—And all those copies to which you refer would be made with the same stroke of the typewriter as the original? A.—The same typewriter stroke.

Q.—So, it is an exact reproduction? A.—Yes.

Q.—What is the distance between Johnston and Queens County? A.—Approximately 275 miles.

Q.—What is the next item? A.—M. O. Herren & Company, Philadelphia. That was on the same job at Johnston:

3303 feet, 27 inch, \$2.00;

2612 feet, 42 inch, \$3.90;

492 feet, 45 inch, \$4.15;

30 4 feet, 36 inch, \$3.00.

I have the same evidence as in the other instance.

Q.—And, what is that? A.—Carbon copies of the original bills that went to the contractors.

Q.—What is the approximate distance? A.—I think I gave that in a previous answer.

Q.—What is the next item? A.—Leonia, N. J.; contractor, H. Martin;

1268 feet, 24 inch, \$1.65;

744 feet, 36 inch, \$3.30;

40 416 feet, 39 inch, \$3.60;

1900 feet, 42 inch, \$4.25;

1112 feet, 45 inch, \$4.50;

188 feet, 48 inch, \$5.35.

We have as evidence a carbon copy of the original bill that went to the contractor.

Q.—Have you also the contract? A.—No, sir.

Q.—Just a duplicate of the invoice? A.—Correct.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

Q.—What is the approximate distance between Leonia, N. J. and Queens County? A.—20 miles.

Q.—What is the next item? A.—1923. Hartford, Conn. Contractor, City of Hartford:

10 904 feet, 24 inch, \$2.25;
 1148 feet, 30 inch, \$2.95;
 336 feet, 33 inch, \$3.70;
 356 feet, 36 inch, \$4.40;
 520 feet, 45 inch, \$5.95.

We have carbon copies of the original billing to the contractor.

Q.—What is the approximate distance between Hartford, Conn. and Queens County? A.—125 miles.

Q.—What is the next item? A.—East Orange, N. J. Contractor, Spiniello Construction Company;

20 608 feet, 24 inch, \$1.65;
 304 feet, 27 inch, \$2.05;
 1144 feet, 33 inch, \$2.90;
 304 feet, 39 inch, \$3.35;
 352 feet, 42 inch, \$4.05;
 628 feet, 48 inch, \$5.20;
 790 feet, 60 inch, \$7.55;
 764 feet, 66 inch, \$9.00.

We have carbon copies of the original invoices.

Q.—What is the approximate distance between East Orange, New Jersey, and Queens County? A.—20 miles.

30 Q.—What is the next item? A.—Monessen, Pa. Contractor, Donora Construction Company;

 1728 feet, 48 inch, \$5.70;
 664 feet, 60 inch, \$8.80;
 1048 feet, 72 inch, \$12.10.

We have carbon copies of the original billing to the contractor.

Q.—What is the approximate distance between Monessen, Pa. and Queens County? A.—Approximately 300 miles.

40 Q.—Will you now give us the sales for 1924: the first of which is Syracuse, N. Y.? A.—Syracuse, N. Y., 1924: contractor. Mondo Construction Company:

 40 feet, 24 inch, \$2.15;
 2052 feet, 30 inch, \$3.00;
 1772 feet, 42 inch, \$5.30;

I have carbon copies of the original billings that went to the contractor.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

Q.—What is the distance between Syracuse and Queens County? A.—I gave you that in regard to another contract.

Q.—Will you give us the particulars of the sales to Camden, N. J.? A.—Contractor, E. R. Morehouse Company:

1180 feet, 66 inch, \$9.25;

2756 feet, 78 inch, \$13.75;

2624 feet, 84 inch, \$15.25;

10 664 feet, 90 inch, \$18.25;

We have carbon copies of the original invoices.

Q.—What is the distance between Camden, and Queens County? A.—About 90 miles.

Q.—Will you now give us the particulars of the sales to Johnston, Pa.? A.—Contractor, G. T. Morgan:

5394 feet, 24 inch, \$2.10;

I have carbon copies of the original billings to the contractor.

20 Q.—What is the approximate distance between Johnston and Queens County, New York? A.—I have you that in another answer.

Q.—Will you now give us the particulars of the sales for 1925? The first of which is Worcester, Mass. A.—Contractor, the City:

1124 feet, 24 inch, \$1.90;

500 feet, 27 inch, \$2.45;

100 feet, 33 inch, \$3.40;

740 feet, 42 inch, \$4.50;

30 364 feet, 63 inch, \$8.65;

816 feet, 78 inch, \$12.40;

1592 feet, 84 inch, \$13.75;

532 feet, 84 inch, special, \$13.50;

I have carbon copies of the original billings to the City of Worcester.

Q.—What is the approximate distance between Worcester and Queens County? A.—About 200 miles.

Q.—Will you now give us the particulars of the Pittsburg sale? A.—Pittsburg, Pa. Contractor, R. D. Thomas;

40 6328 feet, 43 inch, \$3.80;

40 feet, 43 inch, seconds, \$1.00.

There is another contractor on the same work, named Mike Manilla:

3848 feet, 39 inch, \$3.25;

1812 feet, 42 inch, \$3.90.

I have carbon copies of the original billing to both those contractors.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

Q.—What is the distance between Pittsburg and Queens County? A.—Approximately 300 miles.

Q.—What is the next item? A.—Castle Shannon, Pa. Contractors, Buckley Brothers;

5812 feet, 30 inch, \$2.55;

824 feet, 33 inch, \$3.00.

Contractor, R. D. Thomas.

10 1908 feet, 33 inch, \$3.00;

6565 feet, 36 inch, \$3.35;

I have carbon copies of the original billings to both contractors.

Q.—What is the approximate distance between Castle Shannon and Queens County? A.—300 miles.

Q.—Will you now please give us the particulars of the sales to Bridgeport, Conn.? A.—The City of Bridgeport, Contractor.

20 5940 feet, 24 inch, \$1.80;

1372 feet, 27 inch, \$2.25;

1424 feet, 30 inch, \$2.50;

564 feet, 33 inch, \$3.10;

1180 feet, 36 inch, \$3.50;

688 feet, 42 inch, \$4.55;

780 feet, 48 inch, \$5.00;

1724 feet, 54 inch, \$6.25;

We have carbon copies of the original billing.

30 Q.—What is the distance between Bridgeport and Queens County? A.—100 miles.

Q.—Will you give us the particulars of the sale to South Amboy, N. J.? A.—Contractor, City of South Amboy:

980 feet, 60 inch, \$8.75;

36 feet, 60 inch, \$13.65. That was made up in 12 foot lengths for a particular purpose.

We have a carbon copy of the original billing to the City of South Amboy.

Q.—What is the distance between South Amboy and the Borough of Queens? A.—10 miles.

40 Q.—Will you look at the following item, the first sale for 1926, Cartaret, N. J., and give us the particulars? A.—1926: Cartaret, N. J. Contractor, Louis Jacques Construction Company:

2426 feet, 24 inch, \$1.80;

1577 feet, 30 inch, \$2.20;

332 feet, 36 inch, \$3.15;

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

892 feet, 42 inch, \$3.95;
1448 feet, 48 inch, \$4.90;
688 feet, 54 inch, \$5.90;
2460 feet, 66 inch, \$8.80;
1972 feet, 72 inch, \$9.75;
1548 feet, 78 inch, \$12.00.

I have carbon copies of the original invoices.

10 Q.—What is the distance between Cartaret, N. J., and Queens County? A.—The approximate distance is 25 miles.

Q.—Will you now take the sales of 1927, the first of which is to New Rochelle, N. Y., and will you please give us the particulars? A.—1927, New Rochelle, N. Y. Contractor, New Rochelle Construction Company.

720 feet, 30 inch, \$2.80;
1168 feet, 48 inch, \$5.80.

I have a carbon copy of the original invoice covering this.

20 Q.—What is the distance between New Rochelle, N. Y., and Queens County? A.—30 miles.

Q.—Will you give us the particulars of the sales to Mamaroneck, N. Y.? A.—Contractor, Town of Mamaroneck:

416 feet, 36 inch, \$3.50;
1780 feet, 39 inch, \$3.65;
340 feet, 42 inch, \$4.60.

We have a carbon copy of the billing; one bill covered this entire amount.

30 Q.—And, you have a carbon copy of the original? A.—Yes.

Q.—All those carbon copies of bills are, I understand, made at the same time as the original itself? A.—Simultaneously, yes.

Q.—And, that applies to all the carbon copies you have exhibited so far? A.—Yes.

Q.—What is the next item? A.—Cartaret, N. J. Contractor, George Miller:

612 feet, 24 inch, \$1.55;
528 feet, 27 inch, \$1.90;

40 This pipe was manufactured for two contractors, at the same place, and at the same time; and we have carbon copies of the original invoices to each of them, making up the total amounts to the footings that I will read.

I will start again;
612 feet, 24 inch, \$1.55;
528 feet, 27 inch, \$1.90;
1532 feet, 30 inch, \$2.10;

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

292 feet, 33 inch, \$2.70;

1808 feet, 36 inch, \$3.05;

132 feet, 36 inch, \$3.35;

1180 feet, 48 inch, \$4.80.

Q.—I think you have already given us the distance between Cartaret and Queens County? A.—Yes.

10 Q.—And, you have the copies of the original invoices? A. Yes.

Q.—Will you now please give us the particulars of the next sale? A.—Syracuse, New York. Contractor, John Raccuia:

2972 feet, 27 inch, \$2.25;

2966 feet, 30 inch, \$2.55;

I have carbon copies of the original invoices.

I have already mentioned the distance between Syracuse and the Borough of Queens.

20 Q.—What is the next item? A.—Allentown, Pa. Contractor, George H. Hardner:

396 feet, 30 inch, \$2.45;

1100 feet, 36 inch, \$3.45;

696 feet, 48 inch, \$5.30.

Q.—What is the distance between Allentown and Queens County? A.—Approximately 100 miles.

Q.—Will you give us the particulars of the sales to Sewickley, Pa.? A.—Contractor, Borough of Sewickley:

2856 feet, 30 inch, \$2.55;

1192 feet, 36 inch, \$3.55.

30 I have a carbon copy of the original billing to the Borough of Sewickley.

Q.—What is the distance between Sewickley and Queens County? A.—Approximately 300 miles.

Q.—Will you give us the particulars of the next item, Hazelton, Pa.? A.—1927. Hazelton, Pa. Contractor, Correale Construction Company:

416 feet, 48 inch, \$5.15;

224 feet, 60 inch, \$7.74;

632 feet, 72 inch, \$10.78;

40 2344 feet, 78 inch, \$13.23;

660 feet, 84 inch, \$14.21.

I have carbon copies of the original invoices.

Q.—What is the distance between Hazelton and Queens County? A.—I have already given you that in connection with another item.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

Q.—Will you now give us the particulars of the last item on Exhibit P-15? A.—Binghamton, N. Y. Contractor, Clarence W. Rose, Johnson City, N. Y.:

5540 feet, 66 inch, \$8.05. Not delivered.

10 Q.—Therefore, it was just a quotation? A.—No, sir, it was a sale. The contract originally was signed at \$8.50, but this party wanted to take his own delivery, and an allowance of 45 cents a foot was made, and the billing therefore was made in accordance.

I have a carbon copy of the original billing.

Q.—Have you a personal knowledge of all those sales which appear on Exhibit P-15? A.—Yes.

20 Q.—We have spoken of a verbal arrangement between your Company and John M. Phillips and Queens County for two periods. Have you with you, and will you exhibit to the Court and to Counsel for the Defense, the data on which you rely to prepare the statement I now offer as an Exhibit? A.—Yes, I will.

MR. GOUDRAULT: I now wish to offer in evidence, through the witness, a list of sales of the Lock Joint Pipe Company to John M. Phillips for the years 1917 and 1918, to be Exhibit P-16 at enquete.

BY MR. GOUDRAULT:

30 Q.—Will you look at this document, and say if it was prepared by you? A.—Yes, it was.

MR. COOK: Of course, the same objection applies to all this class of evidence.

MR. HACKETT: I associate myself with the objection.

HIS LORDSHIP: The objection is noted, and the evidence will be taken under reserve of it.

BY MR. GOUDRAULT, CONTINUING.

40 Q.—Have you with you the data, invoices, ledger sheets, and bills from which this Exhibit was prepared? A.—One or the other, yes.

Q.—Will you give us the particulars of each sale made to John M. Phillips, as it appears on Exhibit P-16, and will you tell His Lordship upon what you rely to include those sales, in this Exhibit. Read each item, and state what you have before the Court to justify the inclusion of each item on the Exhibit? A.—

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

I have a list marked "Lock Joint Pipe Company Sales to John M. Phillips — 1917 and 1918". This list contains various names, sizes, quantities, and prices. Each and every one of those items is covered by copies of the original contracts.

10 Q.—Will you please read into the Record each item, giving the quantity, the size, and the price? You need not refer to the contracts, as you have just stated you have a copy of the originals. A.—I have a copy.

Q.—Is it certified? A.—I do not know what you mean by certified. It has been checked by me.

Q.—It is a duplicate original? A.—Yes.

Q.—A duplicate original of each contract? A.—It is not a copy in the sense of being a carbon copy.

BY MR. HACKETT:

20 Q.—You do not mean to say those are duplicate originals, do you? A.—No, sir. Those were copied from the originals and I checked them with the originals. They are not duplicates of the originals.

BY MR. GOUDRAULT, CONTINUING.

Q.—Have you seen the original of each of those contracts? A.—Yes. I signed a good many of them myself.

BY THE COURT:

30 Q.—Do I understand you to say you signed the original of each of those contracts? A.—Many of them.

Q.—And, you have compared and checked the copies you have here with the originals? A.—Yes. I did not sign all of them, but I checked all of them.

Q.—I understood you to say you had signed all of them? A.—No, your Lordship. I signed some of them.

BY MR. GOUDRAULT, CONTINUING.

40 Q.—You have seen all the originals? A.—They would have to come to me before any work could proceed on those jobs.

Q.—And are you in a position to swear that each of those copies is an exact reproduction of the original? A.—I am.

Q.—Where would the originals be? Would they be in the possession of the contractors? A.—They would have a copy. Those contracts are all made out in duplicate. They are both

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

signed as originals. The contractor retains one, and we keep the other.

Q.—Will you read into the Record the various sales appearing on Exhibit P-16, and we will take it for granted each of those items is represented by a contract which you have before the Court. A.—This is a list of sales to John M. Phillips, 1917 and 1918:

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	Quantity	Size	Price
J. H. Johnson,	680'	24"	\$2.05
Van Wyck Ave.	290	36	3.55
Peace Bros.	300	33	4.30
Maure Ave.	350	39	4.10
	120	42	4.65
A. Paino,	1262	36	3.35
Polk & 40th			
Ajax D. Co.			
47, Hays & Jackson	138	24	2.05
	621	30	2.90
	576	39	4.00
Ajax D. Co.	286	24	2.05
50th St.			
	250	30	2.90
	250	39	4.00
	782	45	5.05
	457	48	5.25
Green Construction Co.			
Elmhurst	300	24	2.10
H. J. Mullen			
Woodhaven Avenue	240	42	4.55
Peace Bros.			
No. Villa	476	30	2.95
	652	33	3.45
Green Const. Co.	248	24	2.10
Sackett St.	252	30	2.95
Peace Bros.	276	24	2.10
Buckman			

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

	H. J. Mullen	36	27	2.75
	Diamond St.	250	30	2.90
	A. Paino, Kimball	270	30	2.90
10	Peace Bros. Horton	168	27	2.75
	Peace Bros. 72nd Ave.	2095	24	2.10
	Peace Bros. Junction	620	36	3.70
	Murphy Bros. Myrtle	596	30	2.95
		298	39	4.10
20		597	42	4.60
	Richard Carvill Maspeth	326	24	2.10
	Kenmore Const. Co.	1317	24	2.10
		1158	42	4.60
	Rotti Bros. Grand St.	1511	27	3.35
	Green Const. Co. No. R. A. From N. J.	1518	24	2.25
30				
	A. Paino, Broad St.	478	24	2.25
		243	30	4.00
		510	36	5.00
	Ajax Drain N. J. Alburtis Ave. N. J.	348	24	2.50
		232	33	5.00

40 Q.—Are you in a position to state that the merchandise was delivered by your Company through the contractors whose names appear on this Exhibit? A.—Yes.

Q.—I understand you have had thirty years experience in pipe construction? A.—From 1905 to 1932.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

Q.—Does the second column of Exhibit P-16 represent the prices the Lock Joint Pipe Company charged to Phillips? A.—Yes.

Q.—In your experience as a pipe manufacturer and salesman do you consider those prices as fair and reasonable? A.—For that period.

10 Q.—Will you look at the document I now show you, and will you state what it is? A.—This is a list of Lock Joint Pipe Company sales to John M. Phillips, 1919 to 1921.

Q.—Do I understand that is the period covered by the second verbal arrangement your Company had with Phillips for sales of pipe in Queens County? A.—That is correct.

Q.—You have a personal knowledge of that? A.—Yes.

20 MR. GOUDRAULT: Plaintiffs now offer in evidence, as Exhibit P-17. at enquete, a list of sales made by the Lock Joint Pipe Company to John M. Phillips for the years 1919-1921 inclusively.

BY MR. GOUDRAULT, CONTINUING.

Q.—Referring to Exhibit P-15, would you consider the prices charged by your Company, in your experience as a manufacturer . . .

30 MR. HACKETT (interrupting) I object to the question as far as it has gone. Manifestly it cannot be otherwise than suggestive.

BY MR. GOUDRAULT, CONTINUING.

Q.—Have you any knowledge as to the comparison in prices for precast pipes? A.—I get them for every contract I make or sign.

40 Q.—How do you figure out your prices, or your quotations, which appear in the third column of Exhibit P-15? A.—Each job is considered as a separate proposition. I usually go to the engineer, and find out the sizes, the quantities, where the work is to be done, the way the work is to be done, and pick out a manufacturing site on or near it, get prices on sand, stone, cement, labor, etc., in that particular place; and then make up the figures.

Q.—And, in those figures you include a profit? A.—The figures quoted have that, yes.

Q.—Do you consider the prices which appear in Exhibit P-15 as fair, reasonable market prices?

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

MR. HACKETT: I object to the question as suggestive.

A.—I can answer that in this way: that we would not have signed a contract if they were not fair.

BY MR. GOUDRAULT, CONTINUING.

10 Q.—Were all those sales which appear on Exhibit P-15 actually made by your Company? A.—Actually made.

Q.—And, the same answer applies to Exhibit P-16?

WITNESS: Do you mean as regard a fair value?

COUNSEL: No; as regards the sale having been made to those contractors, or to Phillips, by your Company. A.—Yes.

Q.—What period does Exhibit P-17 cover? A.—1919 to 1921.

20 Q.—By what arrangement your Company had with Phillips was that period covered? Was is the first, or the second, or the third arrangement? A.—The second.

Q.—Will you tell the Court the various sales your Company made to John M. Phillips during that period of time — 1919 to 1921, inclusively — and will you state the quantities, the sizes, and the prices? A.—This is Exhibit P-17. Lock Joint Pipe Company sales to John M. Phillips, 1919 to 1921 inclusive.

	H. J. Mullen — Ozone Park	788'	24"	\$2.65
	Liberty Avenue			
30		16	27	3.22
		228	30	3.40
	O'Rourke Const. Co.	16	30	3.45
	A. Paino — Lott Ave.	540	24	2.00
	Shipped to Ozone Park			
		240	27	2.48
		224	30	2.85
40	A. Paino — Broadway and	832	96	18.40
	Maurice			
	F. Spiniello — Jay St.	388	27	2.50
		264	30	2.90
		428	36	3.65
	F. Spiniello — Metropolitan	220	24	2.00
	Sewer			
		565	39	4.25

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

	Rotti & Co. Flushing Ave.	448	30	3.50
	Litchfield — Central Ave.	1220	60	6.50
		644	84	25.00
		12	84	13.75
10	On this Litchfield contract John M. Phillips furnished the sand, stone and cement.			
	Another Litchfield job:	480	30	2.85
	Spiniello — South St.			
	Jamaica	1928	24	2.40
	Clauncey	500	30	3.50
	Green-Ferguson & 51st O. P.	256	30	2.85
		268	36	3.41
20		296	39	3.75
		212	48	5.65
		820	66	9.00
	A Paino — Myrtle Avenue	1912	96	21.00
	J. J. Cream — Linden St.	468	96	21.00
	F. Paino — Laurel Hill Blvd.	584	24	2.40
		1244	27	3.15
		248	36	4.75
		36	48	8.00
30		1716	51	8.50
		502	54	9.75
	C. Petracca — Ormond St.	2024	24	2.40
		260	27	3.15
		260	30	3.45
		250	33	4.35
		504	51	8.45
		1222	60	11.85
40	Seaside Const. Co.	660	24	2.00
		216	27	2.48
		104	30	3.41

Q.—I understand all those prices are per linear foot? A.
Yes, always.

Herman F. Ahrens, Jr. for plaintiffs (examination in chief).

Q.—Where did you get your data and particulars for the preparation of Plaintiffs' Exhibit P-17? A.—From the original contracts, copies of contracts or copies of the original bills.

Q.—Which you have with you? A.—Yes.

Q.—Have you any knowledge of those papers personally? A.—Yes.

10 Q.—A thorough knowledge? A.—Yes.

Q.—I understand those represent sales by your Company to John M. Phillips during that period of time? A.—Yes.

Q.—Under the second arrangement? A.—Yes.

AND IT BEING 12.15 O'CLOCK, THE FURTHER TESTIMONY OF THE WITNESS IS CONTINUED TO TWO O'CLOCK IN THE AFTERNOON.

AND FURTHER DEPONENT SAITH NOT.

20 J. H. KENEHAN,
Official Court Reporter.

AND AT TWO O'CLOCK IN THE AFTERNOON PERSONALLY CAME AND REAPPEARED THE SAID WITNESS HERMAN F. AHRENS, JR., AND HIS TESTIMONY WAS CONTINUED AS FOLLOWS:—

30 BY MR. GOUDRAULT:

Q.—Looking at the third column of Exhibits P-15, P-16 and P-17 I notice certain prices of sales appear. Basing yourself on your experience and knowledge would you state the amounts therein shown represent the fair prices and market value?

MR. HACKETT: I object to the question as leading, suggestive, and illegal.

40 MR. GOUDRAULT: I will withdraw the question, and put it otherwise.

MR. HACKETT: The harm is done. It is the practice to which I object.

HIS LORDSHIP: It is an elementary principle, which lawyers should know, that a witness should not be led. Of course, with a witness like Mr. Ahrens there is no danger. At the same time, the principles are there.

Herman F. Ahrens, Jr. for plaintiffs (cross-examination).

BY MR. GOUDRAULT:

Q.—Will you look at Exhibit P-16 at enquete, and particularly at the third column thereof which shows the prices at which those pipes were sold; and will you tell us what you think of those prices? A.—The prices shown on Exhibit P-16 are fair market prices for the pipe at that period and at those places.

10 Q.—What have you to say as regards the third column of Exhibit P-17? A.—The prices on this Exhibit, of 1919-21, are fair market prices for those sizes in those localities.

Q.—I understand the prices in Exhibits P-16 and P-17 are prices the Lock Joint Pipe Company charged Phillips for those various contractors? A.—That is correct.

Q.—And does your statement as regards the fairness of the prices shown on the Exhibits apply to each and every one of those contracts? A.—Yes.

20 MR. GOUDRAULT: I have no further questions to put to the witness.

MR. HACKETT: Subject to the objections which have been made by the Defendants, I will cross examine.

MR. COOK: We associate ourselves with the statement of Mr. Hackett.

30 CROSS EXAMINED BY MR. HACKETT, K. C., OF COUNSEL FOR CROWN TRUST COMPANY.

Q.—As a manufacturer of cement pipe during the period under review you had competition? A.—Yes. Reinforced concrete pipe.

Q.—Who else besides the Lock Joint Pipe Company, which you represent, were manufacturing a similar product? A.—The United Concrete Pipe Company, of 29 Broadway; the Independent Concrete Pipe Company, of Indianapolis; a part of the time; the Cord Joint Pipe Company of Burlington, New Jersey; the Newark Concrete Pipe Company, of Newark, N. J.

40 That is for those territories.

Q.—And, you think there were other manufacturers of the same product? A.—Yes.

Q.—There was a time when the sewer styled in this case “monolithic” was used much more than it is today? A.—I would not say so.

Herman F. Ahrens, Jr. for plaintiffs (cross-examination).

Q.—Is it your testimony that pipe of large dimensions has always been used to the extent it is used today for sewer purposes? A.—No, sir.

Q.—Then, there was a time when the monolithic type of sewer was more frequently constructed than it is today? A.—No, sir.

10 Q.—When did the reinforced concrete pipe — referring to dimensions from 24 inches to 10 feet or more — come into use? A.—24 inches to 96 inches. It came into use — and I mean universal use — perhaps a year or two before we went into business.

Q.—How were sewers built before that? A.—Mostly of brick.

Q.—That is what is called here a monolithic sewer? A.—I did not know that.

20 Q.—A sewer which is actually constructed in the ground, of brick, or mortar, or concrete, has been called a monolithic sewer, for the purposes of this Record in any event. You are not aware of that? A.—No, sir. We designate it as brick.

A monolithic sewer means poured in place, of concrete; not brick.

Q.—And, the use of pipe has replaced, to some extent, the sewer which was formerly built in the ground, has it not? A.—Of brick, yes.

Q.—You do not agree that the pipe has replaced the concrete, or monolithic, type of sewer to any extent? A.—Oh, yes, to some extent.

30 Q.—I just wanted to know whether or not you agree with Mr. Hirsh, who, I understand is your President. He was asked:

“There was a time when sewers were constructed of what is called here the monolithic type almost exclusively?”

A.—In some sections.

Q.—His answer was:

“The monolithic type of sewers preceded the present type”.

Do you find any fault with that? A.—No, sir.

40 Q.—You do not contradict it? A.—No.

Q.—You agree with it? A.—Yes, sir.

Q.—He was also asked:

“Q.—Like crinolines and short skirts, it has gone out of fashion?”

and he answered: . . .

A.—“Lingerie”.

Herman F. Ahrens, Jr. for plaintiffs (cross-examination).

Q.—So, you admit that the pipe of the type manufactured by your Company has become increasingly more popular in the construction of sewers in the past few years? A.—In some parts of the country.

Q.—May I ask you to tell me whether you disagree with this statement of Mr. Hirsch, made at page 1151 of his testimony:

10 “Q.—And, like most improvements they had to be introduced, and prejudice overcome?”
to which he answered:

“A.—Yes.”

A.—That is true.

Q.—He was also asked:

“Q.—And your Company was one of the first to engage in the manufacture of precast pipe for sewer purposes?”

20 to which he answered:

“A.—Yes.”

Q.—So, you agree that the use of sewer pipe has come gradually to replace the monolithic type of sewer? A.—To some extent, yes.

Q.—Do you or do you not agree with Mr. Hirsch? A.—I agree with Mr. Hirsch there, if he was asked the same questions I am being asked.

BY THE COURT:

30 Q.—You said you agreed to a certain extent. What is that extent? To what extent do you agree? A.—In the Borough of Queens pipe did replace the monolithic construction to a large extent; but that would not hold good for the United States.

BY MR. HACKETT, CONTINUING.

Q.—Mr. Hirsch was asked:

“Q.—Sewers, regardless of size are now exclusively built of precast pipe?”

40 and he answered:

“A.—They are built to a much greater extent than formerly of precast pipe.”

A.—That is absolutely correct.

Q.—And, you agree with that? A.—Yes.

Q.—You do not limit it to Queens, then, as you did when you answered His Lordship? A.—No.

Herman F. Ahrens, Jr. for plaintiffs (cross-examination).

Q.—You do not limit it to Queens, as you did in your answer to His Lordship a moment ago? A.—It is a very broad question.

Q.—No, it is not a broad question. You told His Lordship a moment ago that your answer referred to the Borough of Queens, and now you state it does not. It is not a broad question. It is merely a question of fact, and I ask you if you are
10 changing your evidence. A.—I am not changing my evidence, no.

BY THE COURT:

Q.—I do not know if you misunderstood me. You said: “I agree, to a certain extent”, and when you said that I asked you to qualify those words, in order to have a full answer on your views in the matter. You made an answer to explain the words “To a certain extent”. Now Mr. Hackett asks you if you give
20 the same answer to the last question he put. He wants you to qualify your agreement with your President. If you do not understand his question, you may ask him to put it again.

WITNESS: Will you please repeat the question?

BY MR. HACKETT, continuing.

Q.—My question is simply this: I ask you if you are changing your testimony? A.—No, I am not changing my testimony.

Q.—Will you look at Exhibit P-15, and say if all pipe of
30 all sizes are sold at all times at the same price? A.—No, sir.

Q.—Why not? A.—Because of varying conditions.

Q.—What are the varying conditions? A.—Cost of raw materials. The price we pay for land on which the pipe is manufactured. Labor. The distance of haul of materials from where we get them to the manufacturing site. The distance of haul of the pipe from that site to the ditch. What we have to pay for water.

Q.—If you were manufacturing this pipe in the middle of the Sahara Desert it would be a rather expensive proposition, would it not? A.—It would.
40

Q.—So, there are many conditions which go to make up a price, are there not? A.—There are.

Q.—And they are constantly changing, in different localities? A.—Yes.

Q.—Labor conditions, for instance. Labor was very high at the end of the war, was it not? A.—No, sir.

Herman F. Ahrens, Jr. for plaintiffs (cross-examination).

Q.—Is it your testimony that in 1918 labor was not high?

A.—In 1918, yes, it was high.

Q.—Very high? A.—I inferred you meant right after the war.

Q.—1918-1919? A.—In 1919 labor slackened up very much, because there was a surplus of men coming back.

10 Q.—Will you look at Exhibit P-15, and consider the 36" pipe for a moment. If I have correctly read the Exhibit I find some of this pipe sold for \$3.00 a lineal foot. Do you find that?

A.—Yes, sir: Johnston, Pa.

Q.—What is the highest price you find for that pipe? A. \$4.45 at Lyndhurst, New Jersey.

Q.—There is a spread between those two prices, of \$1.45, or just about 50%, is there not? A.—Yes.

20 Q.—Will you look at the prices of the 48" pipe, and say what is the lowest price you find you sold it for? I think it is \$4.80, is it not? A.—That is correct.

Q.—And, the highest price is \$6.90, is it not? A.—That is about right.

Q.—And, the spread is \$2.10? A.—Yes.

Q.—And, the fluctuation is about 45%? A.—Yes.

Q.—Will you look at the 72" pipe, and say what was the highest price? I think it was \$14.25? A.—That is right. At Hazleton, Pa.

Q.—And, the lowest was \$10.50? A.—Yes.

Q.—The spread is \$3.75? A.—Yes

30 Q.—And, the difference is 47 1/2%? A.—About that.

Q.—I will not worry you with the rest of your prices, but there is a substantial fluctuation in prices, and I asusme there is a very excellent reason for it as you have said you never charge anything but fair prices. A.—Yes, sir.

MR. HACKETT: I have no further questions.

MR. COOK: I have no cross-examination.

AND FURTHER DEPONENT SAITH NOT.

40

J. H. KENEHAN,
Official Court Reporter.

Mrs. John V. Mooney for plaintiffs (examination in chief).

MR. GOUDRAULT: I would now like to examine Mrs. Mooney.

MR. HACKETT: Mrs. Mooney has been examined in New York already. We spent several weeks in New York for the privilege of examining those witnesses.

10

J. H. KENEHAN,
Official Court Reporter.

DEPOSITION OF MRS. JOHN V. MOONEY, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF.

20 On this seventh day of October, in the year of Our Lord One thousand nine hundred and thirty-two, personally came and appeared MARY E. RYAN, residing at No. 700 West End Avenue, New York City, wife of John V. Mooney, Secretary and Treasurer Harry S. Hart Incorporated, a witness produced and examined on behalf of the Plaintiffs, who being duly sworn deposes as follows:

EXAMINED BY MR. GOUDRAULT, K. C., OF COUNSEL FOR PLAINTIFF:

30 Q.—You recollect being examined in this same case, in New York? A.—Yes.

Q.—I produced in New York, as exhibit C-167, A to O inclusively, fifteen books of quotations. Do you remember testifying on those books? A.—Yes.

MR. HACKETT: Without stating my objection at length, I would like to have it entered in the same terms as the objection made to the evidence of Mr. Ahrens.

We associate ourselves with the objection.

40 HIS LORDSHIP: The objection is noted, and the evidence taken under reserve.

BY MR. GOUDRAULT, K. C., CONTINUING:

Q.—At the suggestion of Mr. Hackett and Commissioner Fales, at pages 1417 and 18 of the Commission, we were asked to put in those 15 books without giving the particulars. Do you remember that? A.—Yes.

Mrs. John V. Mooney for plaintiffs (examination in chief).

Q.—Have you had occasion to review these books since our trip to New York? A.—Yes.

Q.—Will you look at the document I now show you, and which plaintiffs desire to offer in evidence, and will you state what it is?

10 MR. HACKETT: I object to the production of this document.

BY MR. GOUDRAULT, CONTINUING:

Q.—Will you please look at the document, and say what it is? A.—It is a list of the prices quoted, at the sales made, and some of the estimates in the Metropolitan area — which we consider the area within a distance of about 50 miles of the City Hall in New York City.

20 Q.—From where were the data and particulars appearing on this document taken? A.—From the books, exhibit C-167.

MR. GOUDRAULT: Plaintiffs offer in evidence, as exhibit P-18, the statement or list prepared by the witness.

30 MR. COOK: On behalf of the defendants I object to the production of the document. In the first place, the witness was examined in New York, and gave very clear evidence concerning all those contracts. She produced the 15 volumes of books and agreements, regarding which she testified, and it is highly improper to bring her forward now to make a synopsis of the evidence she previously gave in New York, and have her produce this document which neither myself nor Mr. Hackett have ever seen.

In addition to this, I submit the witness having already been examined, she cannot be called again to repeat the same evidence as she gave at our expense in New York.

MR. HACKETT: I associate myself with the objection of my friend Mr. Cook.

40 MR. GOUDRAULT: This exhibit, C-167, was filed in New York.

MR. COOK: There must be some finality to this. The 15 volumes were testified to by the witness for, I do not know how long in New York. To re-open the whole question now before your Lordship seems a little too much for our counsel for defence to bear, apart altogether from what the Court has to bear.

Mrs. John V. Mooney for plaintiffs (examination in chief).

MR. GOUDRAULT: We have the evidence in the record, and it is properly in the record. To enable the Court to understand this complicated matter more easily without being obliged to burrow through those fifteen large volumes, we are offering this statement. The statement is the statement of the witness, and the figures are her own. I asked Mrs. Mooney, just to enlighten counsel for the defendants, (who need it) if she would
10 kindly extract from the books the data required, and put it on this document. That is all there is to it.

MR. COOK: You might as well ask your witnesses to prepare the judgment.

HIS LORDSHIP: If it is done to shorten the work of the court, it will be very welcome, and that is the only reason for which I am inclined to accept the evidence, under reserve of the objection.

20 When you produced those books, was this witness examined on each item?

MR. GOUDRAULT: No, your Lordship, because my friend Mr. Hackett said he did not want to go into each one.

At page 1417 the Commissioner said "Mr. Goudrault, can you see your way clear to continue after asking the lady the omnibus question covering the various estimates, after she has refreshed her recollection?" That was the suggestion of Commissioner Fales, at the invitation of Mr. Hackett. In order to oblige those gentlemen, as Mrs. Mooney was the last witness, I
30 asked her to tell me how she prepared the estimates and books, and she did so, and we put the books in as one exhibit.

HIS LORDSHIP: And, the result of her work is exhibit P-18?

MR. GOUDRAULT: Exactly. If this document is ruled out, your lordship will have to go through the various pages of all those books to find the quotations.

40 MR. HACKETT: I do not know whether your Lordship is interested in how I feel on this matter, but I sat here for two hours this morning while documents were being read into the record. If the lady was my witness I would simply show her the document, ask her if it was true and correct, and leave it at that.

MR. GUERIN: But, that would not cover it. My friend Mr. Hackett makes an objection, and we would not want to have

Mrs. John V. Mooney for plaintiffs (examination in chief).

argue later that he had objected to the production of the document. If there is an objection, I do not see any other way for it but to have the witness go through the books item by item. We did that this morning, and my friends objected to every question. If they are prepared to say they will admit that if the witness were asked in regard to each item her answer would be exactly what is contained on this statement, that would be the end of it.

10

HIS LORDSHIP: You might perhaps put the general question: "Looking at this document, are you in a position to swear that each and every one of the items in it is in accordance with the books?" And if she says "Yes", it will be taken as granted that the document is a true and correct representation of the books. You may then leave to your adversaries the burden of cross-examining the witness. If the witness is prepared to swear, as a general answer, that the whole list, and each item of it, is correct, you might leave it at that, and leave the burden of demonstrating it is not correct on the shoulders of your adversaries, and if they do not make any contrary proof in cross-examination, then the document will be taken as correct.

20

MR. GUERIN: But if they say that we cannot file a list, and that it is absolutely illegal to file a list, then we will be obliged to make our proof for each item, stating that such an item comes from such a book, and so on. It will be necessary for us to have an answer from the witness for each item.

30

HIS LORDSHIP: Not necessarily. If she swears the list she has prepared is a true extract of the 15 books already filed, and that each item of it is correct, and if your adversaries do not cross-examine her upon it, it will be taken as correct.

BY MR. GOUDRAULT, CONTINUING:

Q.—Will you look at plaintiff's exhibit P-18, and tell us from where you took each and every item appearing thereon?

A.—The items have been taken from those books, exhibit C-167 A to O inclusively, and every item stated on the list is in the books.

40

Q.—Are they true? A.—Yes.

Q.—Do you mean to say that every item appearing in the books is on the list? A.—No, not every item. Every item on the list is taken from the books.

Q.—What items from the books exhibit C-167 A to O inclusively are omitted from the list? A.—I have left out the estimates on all sizes of pipe up to 24 inch size, plain, and reinforced.

Mrs. John V. Mooney for plaintiffs (examination in chief).

Q.—Were any other quotations left out? A.—Other quotations that we would consider outside the Metropolitan district.

Q.—What had you in mind when you prepared this statement, and considered only the Metropolitan area? A.—I considered the Metropolitan area the district lying within 50 miles of City Hall in New York City, exclusive of New Jersey.

10 Q.—And, if I understand correctly, you have the quotations and sales with the dates, the sizes of the pipe, and also the make of the pipe? A.—The manufacture.

Q.—And the prices per lineal foot? A.—Yes.

Q.—And, whether it resulted in a sale, or was just a quotation? A.—Yes.

Q.—All sales appearing in exhibit C-167 A to O inclusively, within the Metropolitan area? A.—Yes.

Q.—Exclusive of all pipe of sizes 24 inches and under? A.—Yes.

20 Q.—Will you explain how you came to put in those prices which appear in the second last column? In other words, how did you build up your estimates? A.—The estimate prices were figured, first on a base price given us by the manufacturer; plus whatever we considered necessary to cover sales, office overhead, and any other miscellaneous expense.

Q.—And, the difference was your profit? A.—Yes.

Q.—You have been in the pipe sales business, as Secretary to Mr. Hart's company for many years, I understand? A.—Yes.

30 Q.—About how many years? A.—I have been with Mr. Hart about 8 years.

Q.—Would you mind telling us what was your occupation with Mr. Hart, or his incorporated company, Harry S. Hart, Incorporated? A.—I was originally with Mr. Hart, as Secretary, when he was an officer of the Standard Concrete Pipe Company. From that Mr. Hart branches out, and sold...

MR. HACKETT (Interrupted): I call your Lordship's attention to the fact this is all in the record already.

40 WITNESS: (Continuing) Mr. Hart sold individually the sales agent for different manufacturers until July, 1928, when he incorporated.

BY MR. GOUDRAULT, CONTINUING:

Q.—And, you are still with him? A.—Yes.

Q.—Who prepared the estimates and quotations which appear in exhibit C-167?

Mrs. John V. Mooney for plaintiffs (examination in chief).

MR. HACKETT: I object to this, as already covered by the evidence of the witness under Commission.

BY MR. GOUDRAULT, CONTINUING:

Q.—Will you give us your appreciation of the prices that appear in the second last column?

10 MR. HACKETT: Same objection. I also object inasmuch as the witness has not been qualified as an expert in those matters.

MR. GOUDRAULT: I am prepared to qualify her, if my friend wishes.

MR. COOK: I associate myself with the objection taken by my friend Mr. Hackett.

20 BY MR. GOUDRAULT, CONTINUING:

Q.—You told us you have been with Mr. Hart since 1924?
A.—I have been with Mr. Hart since he branched out for himself. Before that I was with him in another concrete pipe company.

Q.—In the same kind of business as you are now? A.—Yes.

Q.—And, you are still in the business? A.—Yes.

Q.—You were asked to state if you personally prepared the estimates and quotations which appear in exhibit C-167, and you were interrupted by Mr. Hackett. Will you please answer the question now? A.—Yes, I did.

30 Q.—Personally? A.—Yes.

Q.—Did Mr. Hart have anything to do with the preparation of the estimates? A.—No.

Q.—Basing yourself upon your thorough knowledge of the pipe prices, would you mind telling us how these figures of yours compare with those various contracts for the different years — and I refer now to exhibit P-18. How do they compare with the market prices for those years in the same Metropolitan area? A.—The prices were the average prices at the time, or we would not have been able to have completed the sales that we did.

40 MR. GOUDRAULT: I have no further questions to ask the witness.

MR. HACKETT: Relying upon the objections I have made, I shall not cross-examine Mrs. Mooney.

Mrs. John V. Mooney for plaintiffs (cross-examination).

CROSS-EXAMINED BY MR. COOK, K. C., OF COUNSEL FOR THE HEIRS PHILLIPS:

Q.—The prices varied according to the place where delivery of pipe had to be made, did they not? A.—Yes.

Q.—I see you have deliveries at Staten Island, New Rochelle, White Plains, Yonkers, the Bronx, Greensboro, Bronxville, Long
10 Island City, Helen Manor, Croton, Queens, and so on? A.—Yes.

Q.—And, those different places would probably mean varying prices in so far as the Harry S. Hart Company Incorporated was concerned? A.—Yes.

Q.—So, it is really impossible to form any distinct estimate from the statement exhibit P-18 as to the price of the material, except in the way you have indicated, taken from the books you have examined? A.—That is right.

MR. GOUDRAULT: I had a question to ask the witness,
20 but my friend Mr. Hackett interrupted me, and the witness. With your Lordship's permission I would like to ask it now.

BY MR. GOUDRAULT:

Q.—I notice certain letters in the third column, which I understand represent the names of the manufacturers. As they are only initials, I would ask you to tell us what they stand for?
A.—The letters "C-J" stand for the name of the Cord Joint Concrete Pipe Company, which was one of the manufacturers that we
30 represented in the Metropolitan territory.

BY MR. HACKETT:

Q.—You were just a sales organization? A.—Yes.

Q.—You did not make pipe? A.—Not then.

BY MR. GOUDRAULT:

Q.—"Newark" would mean what company? A.—The Newark Concrete Pipe Company.

40 AND FURTHER DEPONENT SAITH NOT.

J. H. KENEHAN,
Official Court Reporter.

Charles E. Schneider for plaintiffs (cross-examination).

CONTINUATION OF TESTIMONY OF CHARLES E.
SCHNEIDER, ON BEHALF OF THE PLAINTIFF.

On this seventh day of October, in the year of Our Lord
One thousand nine hundred and thirty two personally came and
appeared CHARLES A. SCHNEIDER, already sworn, who con-
10 tinued his testimony as follows:

BY MR. HACKETT, K. C.:

Q.—You have made several reference to the Charter of
New York styled “City Home Rule Law”. Will you produce a
copy of the Charter as Exhibit P-19? A.—Yes.

Q.—Yesterday we were discussing the composition of the
Board of Estimate and Apportionment, and we agreed that the
Mayor and the Comptroller and the President of the Board of
20 Aldermen and the five borough presidents, with a varying number
of votes, constituted this Board of Estimate and Apportionment?
A.—We did, yes.

Q.—And you said that at least on some occasions the
Comptroller did have an inspector and an engineer on sewers
which were in process of construction? A.—Yes, I think that is
a fair statement.

Q.—As a matter of fact, section 419 of Chapter 10 of
Statute indicates that: “every contract when made and entered
into as before provided for shall be executed in duplicate and
shall be filed in the Department of Finance.” Is the comptroller
30 the officer in charge of the Department of Finance? A.—Yes.

Q.—Mr. Goudrault showed you yesterday a sewer contract,
which is one of the exhibits in the case, which he described as a
typical contract. I am referring to the contract of Angelo Paino,
exhibit C-206. Will you please tell his Lordship if contracts
similar to this were, in the ordinary courses, forwarded to the
Department of Finance? A.—Yes. They were required under
the statute to be filed within a period of five days after execution.

Q.—And, the Department of Finance is one of the depart-
40 ment of the City? A.—One of the executive departments of the
City.

Q.—Of which the boroughs are the component parts? A.—
That is correct.

Q.—So, within five days after the execution of the Paino
contract and all similar contracts, the Department of Finance
should have one of the duplicata referred in the charter, section
419? A.—That is correct.

Charles E. Schneider for plaintiffs (cross-examination).

Q.—I turn to this typical contract, and ask you if you remember who is Mr. Charles Graham, chief engineer? A.—No, I do not know the gentleman.

Q.—I may have to prove it by somebody else; but I am instructed he was the engineer in the Comptroller's department. You do not know that as a fact? A.—No, I do not.

10 Q.—Will you take communication of a report, which forms part of exhibit C-206, addressed to Charles H. Graham, Chief Engineer, by an assistant engineer; and will you say if the reports made by the comptroller's engineer are generally made in his form? A.—In each instance where an inspector, or engineer or assistant engineer, is assigned by an appropriate superior officer, or in accordance with the regular course of his duties, to make an inspection of work done under a contract, he forwards to his superior officer a report. The report, of necessity, varies with the conclusions that he has formed in his mind in consequence of
20 his examination or inspection. The one to which you call my attention represents one form of report. From the necessities of the case, and from the observations made by the engineer or assistant engineer or inspector, the material would differ. This represents the run of a report, save only for differences in conclusions.

Q.—There is a chief engineer in the employ of the City of New York? A.—There are a number of them. May I help you along by saying this: each department has officers bearing like titles. You will find in the department of Finance a chief engineer, because part of the work requires the services of a man
30 of that type. You will find a chief engineer in the Street Cleaning Department — now called the Department of Sanitation. You will find a chief engineer in the Department of Hospitals. You will find a chief engineer in the Department of Highways. Each department requires the services of a chief engineer.

Q.—Those are all federal officers, as distinct from borough officers? A.—These are all borough officers. The word "federal" is apparently a misnomer as applicable to them. If a man is in the employ of the comptroller's office, or the Department of
40 Finance, he is known as a City employee. If he is in the employ of the borough president, he is also a City employee, save, however, his appointment is derived subject to civil service laws, through the borough president.

Q.—I will read to you the letter forming part of exhibit C-206, addressed to Charles H. Graham, Chief Engineer, under date February 24th:

Charles E. Schneider for plaintiffs (cross-examination).

10 “In relation to estimate No. 4, amounting to \$97,594.88, tickler No. 39442, for the construction of sanitary sewer on Farmers Boulevard from Judith street to 143rd Road in the Third Borough of Queens, contract No. 1, Angelo Paino contractor under contract No. 76068, the work is being performed in substantial conformity with the contract, and the quantities of work enumerated in the quantities of work enumerated in the voucher are correct, with the following exceptions: 2360 lineal feet of 5 foot 6 inch reinforced concrete pipe precast Type B \$148.30 amounting to \$349,988. Owing to the fact that the asphaltum concrete pavement and certain macadam pavement have not yet been restored and certain levelling has not yet been completed, because it is impractical to do such work “of restoration at this stage, a certain deduction should be made to cover the work in question. I estimate
20 that the amount returned, namely 2360 feet should have been reduced by 32 feet from the voucher. 32 x 148.30 x 85 per cent amounts to \$4,033.76. I recommend that \$4,033.76 be deducted from the voucher, and the balance, \$93,561.12 be paid to the contract.”

Inasmuch as payment was made by the comptroller, it is quite patent, is it not, that the report was made for the benefit and guidance of the comptroller? A.—I am assuming that report is part of the regular practice in the comptroller’s office respecting work to be done under contract.

30 Q.—So, wherever work is being done in any borough a copy of the contract is lodged with the Finance Department, and with the comptroller, within five days, I think you said? A.—Yes.

Q.—And, the course of the work is followed by an inspector and/or by an engineer, for the purpose of verifying both the way the work is proceeding and the amount that is payable for the work? A.—Generally that is the practice.

40 Q.—Will you look at the contract itself. It contains details of the rate at which the work has been undertaken by the contract. For instance, one sees opposite page 2 in exhibit C-206: Type B, that is the precast type — 4850 lineal feet of 5 foot 6 inches reinforced concrete pipe sewer (precast type B) per lineal foot, \$148.30? A.—I observe that.

Q.—And, that is the rate per lineal foot at which the computation was made in the letter I have just read and which forms part of this same file? A.—Yes. That represents the bid, ultimately reduced to an award.

Q.—And, constitutes the contract? A.—Yes.

Charles E. Schneider for plaintiffs (cross-examination).

Q.—And, the practice of inserting details of unit prices in the contract was the universal practice in the execution of those contracts, was it not? A.—Frankly, I cannot say. I am not especially familiar with that phase of it.

10 Q.—I will pick half a dozen contracts for you, so that you may satisfy yourself it is so. Will you look, for instance, at exhibit C-221. You find, do you not, that the detail is given under the heading “Type B”, just as it is in exhibit C-206? A.—Yes. Following the same form, save for the variation of material, or size, or some other distinction.

Q.—But unit prices are given? A.—That appears to be so from my observation.

20 Q.—So, from the day the contract is decided, the City, represented by its Finance Department, and by its Comptroller, as distinct from the borough and its officers, is familiar with the detail of the unit prices at which any sewer contract is to be performed? A.—Well, I do not know that I can subscribe to the word “familiar”. I should say the City is officially apprized of the making of a contract by the filing of the instrument with the department of Finance. Whether or not some human being thereafter becomes familiar, or lacks familiarity, frankly I cannot say.

Q.—But, in the ordinary course of routine, a document containing this detailed information is sent to the Finance Department of the City? A.—That is correct.

30 Q.—Will you look at page 2 of the contract which Mr. Goudrault asked you to examine as typical and which has been produced as exhibit P-206, and say if you note the following paragraph appearing in the printed form:

“The engineer’s estimate of the quantities as advertised, and the nature and extent of the work and materials or supplies required, though stated with as much accuracy as it is practicable in advance, are approximately only, and are not to form a basis of comparison for testing bids, and are not guaranteed to be accurate and are not considered as a binding feature of the contract.”

I just ask you to note that is a paragraph of the contract?

40 A.—It is an accurate reading of that paragraph; but it is not of the contract: it is of the bid or estimate.

Q.—But, the acceptance of the bid or estimate by the municipality constitutes the contract, does it not? A.—I am compelled to say I did not know that was the practice. I was under the impression another instrument is thereafter executed, known as a contract. In other words, an award is made, or there is an acceptance of the bid, and another instrument known as a con-

Charles E. Schneider for plaintiffs (cross-examination).

tract (as distinguished from the automatic character of the acceptance or award) is then entered into — namely, a separate instrument: the contract.

Q.—We have produced over one hundred of those documents, and they have been treated by Mr. Goudrault, by the Commissioner and by every body associated with the case, as contracts.

10 MR. GOUDRAULT: That is correct.

BY MR. HACKETT, CONTINUING:

Q.—If the quantities are not to be taken as definite, there is bound to be a fluctuation in the price — in the estimate of cost — is there not? A.—Yes. A greater number of feet would result in a greater price; and the converse would also be true.

Q.—There is, as you have told us, a board of Estimate and Apportionment? A.—That is correct. There is such a Board.

20 Q.—And, there is a chief engineer of the Board of Estimate and Apportionment, is there not? A.—I believe there is such official.

Q.—Will you look at a report of the chief engineer of the Board of Estimate and Apportionment of the City of New York, for the year 1926, and will you say if it has the appearance of authenticity? A.—It has.

30 A.—Are you in a position to say if the chief engineer of the Board of Estimate and Apportionment of the City of New York is a gentleman by the name of Arthur S. Tuttle? A.—That is correct.

Q.—Having regard to the work we are dealing with, would you think the letter which we read together a few moments ago, addressed to Mr. Charles H. Graham, was addressed to the Chief engineer of the Comptroller, or can you not say? A.—I cannot say. He may have been the chief engineer of one of the sub divisions of the borough president's office.

40 Q.—I would ask you to look at page 328 of the Report of the Chief Engineer of the Board of Estimate and Apportionment of the City of New York, and to take communication of table 24, in which the chief engineer points out that the actual cost per cent of estimated cost for the construction of sewers in the borough of Manhattan from the first of January 1902 to the first January 1927 was 102 per cent? A.—I so note from that report.

Q.—And, of Brooklyn? A.—91.5 per cent.

Q.—And the Bronx? A.—97.9 per cent.

Q.—Queens? A.—99.8 per cent.

Q.—And, Richmond? A.—110.6 per cent.

Charles E. Schneider for plaintiffs (cross-examination).

Q.—Will you look at page 145 of the same report, and note what is said with regard to the sewer work in the borough of Queens, and will you say if I read the extract correctly:

10 “In the borough of Queens a large number of trunk sewers of more than usual importance were authorized, among these being the sewer in Baisley Boulevard from Byron Street to South Conduit Avenue, with provision for constructing a storm water ditch in Byron Street from the head of Cornell Basin to Baisley Boulevard where under the original plan a masonry sewer had been designed. The cost of the project which related to the dredging of the ditch and to the provision of timber bulkheads was estimated to be \$203,200. Other sewers of an important character were authorized in Brinkerhoff Avenue from 180th street to 193rd street, at an estimated cost of \$205,500, this comprising the main sanitary outlet for upwards of 2800 acres where more than 4000 buildings had been erected; the continuing upstream sanitary sewer in Farmers Boulevard and a number of adjoining streets at an estimated cost of \$131,900; a tributary sanitary sewer in Foch Boulevard from Farmers Boulevard to Springfield Avenue, an estimated cost of \$488,200; the continuing tributary sewer in Springfield Boulevard from Foch Boulevard to Hempstead avenue, at an estimated cost of \$440,000 the continuing tributary trunks in Hempstead avenue, 220th street, 99th avenue and 222nd street, at an estimated cost of \$208,400; and the continuing tributary trunk in Jamaica avenue, and Little Neck Road, at an estimated of \$520,500. In each of the last four projects the final estimate revealed a substantial increase over the preliminary estimate, the increase to a large extent being due to the fact that bids received in a number of contracts involving similar construction difficulties due to the presence of ground water, indicated much higher prevailing prices for work of this nature.”

20
30
40 As a matter of fact, do you know anything of the topography of Queens? A.—No, I am not especially familiar with it.

Q.—Do you know that the fourth and fifth Wards are practically at sea level? A.—I cannot in truth say I am at all familiar with the topography.

Q.—You know that Rockaway is in the Fourth Ward, and Jamaica in the Fifth? A.—I can say both are in Queens, but I am not familiar with the Ward divisions. A ward division is a subdivision of a county for the purpose of land registration. It

Charles E. Schneider for plaintiffs (cross-examination).

is not a political subdivision. It is solely a device for the better enabling of land registration and title. I am not especially familiar with that phase.

(THE REPORT OF THE CHIEF ENGINEER OF THE BOARD OF ESTIMATE AND APPORTIONMENT OF THE CITY OF NEW YORK, 1926, IS FILED AS DEFENDANT'S
10 EXHIBIT D-1.)

Q.—You can say the staff in the office of the chief engineer comprises a long list of men, beginning with the name of the chief engineer, Mr. Arthur S. Tuttle? A.—Yes.

Q.—Followed by the deputy chief engineer, Mr. Herman S. Smith? A.—There appear to be about fifty names prefaced by a title "Staff: Office of Chief engineer", contained on pages 5 and 6 of that report. Amongst the list is shown the name of one Clifford Seaver, described as "Assistant Engineer (Sewer Design)".
20

Q.—Do you recognize the volume which I hand you, and which is styled "Board of Estimate and Apportionment. Minutes of Meeting of Board of Estimate and Apportionment held in room 16 City Hall, Thursday June 17th, 1926." A.—I recognize it as an official publication of that body.

Q.—The minutes of the Board of Estimate and Apportionment are printed and bound, and circulated, I suppose to those who may be interested in the archives and activities of the Board? A.—That is true.
30

Q.—Will you look at page 5256 of this document, at which there appears to be a report of Mr. Arthur S. Tuttle, chief engineer, incorporated in a minute referring to Brinkerhoff avenue, on June 10th, 1926, in which I find the following:

"In the construction of the outlet sections of this sewer large volumes of ground water were encountered, and on the basis of the conditions there disclosed the bids for the continuing upstream sections have been based on the assumption that similar conditions would here obtain with the result that the cost of the project has been very substantially increased as compared with the original estimates, it is the belief of your engineer that the volume of ground water to be encountered in the sections now under consideration, should be very much less than in the sections where improvements have already been carried out, and in order that prospective bidders may be given as
40 much information as practicable upon which to base a

Charles E. Schneider for plaintiffs (cross-examination).

reasonable bid I would also recommend that the borough president be requested to open test pits along the line of the proposed sewer before advertising the contract in order that the elevation of the water table may be fully disclosed and to make this information available to all of the bidders.

Respectfully,

10

Arthur S. Tuttle,
Chief Engineer."

That was a report of the chief engineer to the Board of Estimate and Apportionment? A.—That appears to be a transcript of the report.

Q.—Referring to water conditions in Queens? A.—Along the line of that sewer improvement.

Q.—And, I think you have already told us that the Board of Estimate and Apportionment was a City or a Metropolitan Board? A.—It is a sort of a central or federated body of public officials, three of whom are elected throughout the City and five of them are elected in the several boroughs composing the City of New York.

20

Q.—I have here what purports to be a minute of the Board of Estimate and Apportionment of October 23rd, 1928, taken from page 7676 of the minutes of the Board of that year. Will you produce this document as defendant's exhibit D-2, subject to verification by reference to the authentic minute?

30

MR. GOUDRAULT: I wish to record my objection to the production of this document. While I admit the relevancy of it, I call your lordship's attention to the fact that it is dated October 23rd, 1928, and our action is limited to the period covered between 1921 and 1927, and our action is based on facts anterior to July 9th, 1928.

MR. HACKETT: The minute is of October 23rd, 1928, as my friend has said, but it contains a report which is dated September 23rd, 1925, and for that reason I think it is relevant.

40

MR. GOUDRAULT: My friend Mr. Hackett is correct in regard to that.

My second ground of objection to the production of the document is that it is not the best evidence. It is just an ordinary office copy, not authenticated.

Charles E. Schneider for plaintiffs (cross-examination).

MR. HACKETT: That is true, and it was equally true of the documents produced by my friend yesterday. It will have to be certified.

HIS LORDSHIP: I will take it under reserve of the objection.

10 BY MR. HACKETT, CONTINUING:

Q.—Will you produce this minute of the Board of Estimate and Apportionment as defendant's exhibit D-2? A.—Yes.

Q.—Will you produce, as exhibit D-3, a letter of December 16th, 1927, addressed to Mr. Richard Gibson, or Gidson, signed by Mr. Arthur S. Tuttle?

20 MR. GOUDRAULT: I object, on the same ground as I objected to the introduction of the preceding document, namely, that it is not the best evidence, and that the production of a copy without identification or certification, is absolutely irregular and illegal.

MR. HACKETT: It emanates from the chief engineer of the Board of Estimate and Apportionment of the City of New York. We will endeavour to have it authenticated.

HIS LORDSHIP: It will be filed subject to your objection, Mr. Goudrault.

30 BY MR. HACKETT, CONTINUING:

Q.—Purely as introductory, I draw your attention to exhibit C-107, which is a contract of the Riverdale Construction Company, for the construction of a sanitary sewer on Farmers Boulevard, and I ask you to note that the detail, of unit prices is contained in this contract? A.—I do so observe.

Q.—And the same item in the printed part of the contract, bearing upon the uncertainty of estimated quantities, also appears on page 2? A.—That is so.

40 Q.—I ask you also to note that on this particular job there is in the contract a letter from the assistant engineer addressed to Mr. Charles H. Graham, the chief engineer, dated May 4th, 1928, in the following terms:

“Under date of April 10th, 1928, a progress report was transmitted, together with a voucher in favor of Carmine Petracca, in the amount of \$3,694.82 on contract No. 80342, tickler No. 52290, recommending that the amount

Charles E. Schneider for plaintiffs (cross-examination).

of the voucher be however retained as security for proper restoration of the street surface over a certain sewer trench under the contract in 90th avenue between 202nd and 204th streets, in the borough of Queens. On re-examination was disclosed the fact that proper repairs had been made. All work being in good order the contractor is entitled to the retained money in the amount above stated."

10 A.—That is an accurate reading.

Q.—It is drawn to my attention that when we were considering the report of Mr. Arthur S. Tuttle, chief engineer of date June 10th, 1926, (page 5256 of the minutes of the Board of Estimate and Apportionment) I overlook certain minutes on page 5258, and to save the time of the Court in reading them, I will file the volume.

MR. GOUDRAULT: I think it would be better to put in the whole volume.

20 MR. HACKETT: Then, we will file the volume as exhibit D-4.

BY MR. HACKETT, CONTINUING:

Q.—Will you file, as exhibit D-5, Hagstroms Map of Queens, New York City, House Number and Transit Guide? A.—I do.

30 Q.—Will you define with a red pencil the area where Rockaway and Jamaica are? A.—I have affixed the letter "A" to that portion heretofore described as the Rockaway Peninsula, and I have affixed the letter "B" within the area represented by an irregular red crayon line labelled "Jamaica". The former represents what is commonly known in the borough of Queens as the Rockaways, and it is sometimes called the Rockaway Peninsula. The latter is what is locally and commonly known as the Jamaica district of the borough of Queens, all of which is contained on the map which has been offered as exhibit D-5.

40 Q.—I understand that where no figure is given as to the elevation it is five feet or less? A.—I do not know that.

Q.—Will you produce the map now before you, being topographical map of the City of New York, borough of Queens, showing proposed street systems, dated January 20th, 1913. To be exhibit D-6.

MR. GOUDRAULT: I object to the production of this exhibit D-6, as it is not the best evidence. I also object to it on the ground that the witness is not competent to produce it. Fur-

Charles E. Schneider for plaintiffs (cross-examination).

ther objection is taken on the ground that it is not relevant, inasmuch as it is dated 1913, whereas the matters at issue here are covered by the period 1917-1928. I also object to it, because it is not properly authenticated or certified.

10 HIS LORDSHIP: I will accept it under reserve of the objection, and under the undertaking of Mr. Hackett to prove its authenticity and accuracy by completing the evidence.

MR. HACKETT: Mr. Schneider can establish the authenticity. He knows these documents emanate from the City of New York. The same thing applies to the map I now offer as exhibit D-7.

HIS LORDSHIP: The same objection being taken to the production of the map exhibit D-7, the same decision applies.

BY MR. HACKETT, CONTINUING:

20 Q.—What can you say as to the source of those maps, and their preparation? A.—They appear to be copies of maps prepared under the direction of the president of the borough of Queens, and his engineers. Exhibit D-6 is a printed copy, and what you propose to offer as exhibit D-7 is a photostatic copy emanating from the same office, indicating that it is a final map of section 110 of the borough of Queens, and bears the date January 21st, 1909. This map differs from an official map in the respect that the official map bears the signatures of certain
30 officials whose names are required to be affixed to a map when that map is adopted by the City as a map of streets.

If I might be permitted to venture an opinion, I should say this is a preliminary map, which may or may not have been adopted. When adopted it is required to have the names of the secretary of the Board of Estimate and Apportionment, the signature of the president of the borough of Queens, and the signature of the engineer in charge.

BY THE COURT:

40 Q.—So, you presume it has not been adopted? A.—There is no indication that this has been adopted.

Q.—If it bore the signatures, would that mean it was adopted? A.—By reason of the absence of names, I cannot say whether it has been adopted or not.

The names of the officials I have mentioned are, however, contained on exhibit D-6.

Charles E. Schneider for plaintiffs (cross-examination).

Q.—Exhibit D-7 is a photostat? A.—Yes, your Lordship.

Q.—And, there is no signature on it? A.—No, your Lordship.

10 MR. GOUDRAULT: I wish to enter an objection to the production of the map offered as exhibit D-7, for the same reasons I mentioned in objection to the production of exhibit D-6, with the further objection that exhibit D-7 bears no signature at all.

HIS LORDSHIP: The last reason mentioned by Mr. Goudrault in respect of his objection is noted, and the objection is reserved.

BY MR. HACKETT, CONTINUING:

Q.—Will you produce, as defendant's exhibit D-8, a map of the Fourth Ward of the County of Queens?

20 MR. GOUDRAULT: Same objection as to the production of exhibits D-6 and D-7.

HIS LORDSHIP: It will be accepted under reserve of the objection.

WITNESS: Yes.

BY MR. HACKETT, CONTINUING:

30 Q.—Will you produce as Defendant's exhibit D-9, a letter addressed to Maurice Connolly, president of the borough of Queens, dated December 14th, 1927, signed by Mr. Burr?

MR. GOUDRAULT: I object to the production of this document. It is a photostatic copy of an alleged letter, unsigned. It does not arise out of the examination in chief of the witness, and is absolutely irrelevant.

HIS LORDSHIP: The objection is maintained, and the production of the letter refused.

40 AND IT BEING FOUR O'CLOCK, THE FURTHER HEARING OF TESTIMONY IN THIS CASE IS CONTINUED TO TUESDAY NEXT, OCTOBER 11th, AT 10.15 O'CLOCK IN THE FORENOON.

J. H. KENEHAN,
Official Court Reporter.

Charles A. Schneider for plaintiffs recalled (cross-examination).

DEPOSITION OF CHARLES A. SCHNEIDER, RECALLED
FOR FURTHER CROSS EXAMINATION ON BEHALF
OF THE PLAINTIFFS.

On this thirteenth day of October, in the year of Our Lord
one thousand nine hundred and thirty two personally came and
10 appeared CHARLES A. SCHNEIDER, already sworn, who con-
tinues his cross-examination as follows:—

BY MR. HACKETT, K. C.:

Q.—You have already given testimony in this matter?

A.—Yes.

HIS LORDSHIP: And, you will answer upon the oath
you have already taken?

20 WITNESS: Yes.

BY MR. HACKETT, CONTINUING:

Q.—When you went away the other evening you were told
you would come back, and continuing your cross-examination I
would ask you if you will look at the two documents I show you,
dated December 8th, 1927, and January 11th, 1928, and state if you
can identify them?

30 MR. BERTRAND: That is not cross-examination, because
it does not arise out of the examination in chief in any way.

These documents my friend is submitting to the witness
are not originals, but that is not the main point. Mr. Hackett is
trying to introduce a letter signed by J. F. McDonald, to Maurice
E. Connolly dated December 8th, 1927. I do not know what his
object is, but, in any event, it is not alleged, and I do not see any
relation between those letters and the case now before your Lord-
ship.

40 HIS LORDSHIP: Is it in relation to the examination in
chief of the witness?

MR. BERTRAND: No, your Lordship, it has no bearing
at all upon it. It seems Mr. McDonald, Assistant Secretary of
the Municipal Civil Service Commission, apparently asked Mr.
Connolly to retain an engineer to go through the sewers and make
a certain report.

Charles A. Schneider for plaintiffs recalled (cross-examination).

HIS LORDSHIP: Have you not tried already, Mr. Hackett, to produce those documents?

MR. HACKETT: Not these, your Lordship.

10 HIS LORDSHIP: Of course, if it does not flow from the examination in chief it would not be proper cross-examination. You might call Mr. Schneider as your own witness and if the evidence is objected to we will then deal with it.

MR. HACKETT: Very well, my Lord.

AND FURTHER DEPONENT SAITH NOT.

J. H. KENEHAN,
Official Court Reporter.

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**C. — EVIDENCE ON BEHALF OF THE
DEFENDANTS THE HEIRS OF THE
LATE JOHN M. PHILLIPS
AT ENQUETE.**

10

MONTREAL, OCTOBER 11th, 1932.

(Court re-convened at 10.15 a. m., pursuant to adjournment).

20

HIS LORDSHIP: I understand your case is closed, Mr. Goudrault?

MR. GOUDRAULT: Yes, my Lord.

MR. COOK: My friend, Mr. Goudrault, has declared his case closed, and my case in answer to the Action of the People of the State of New York will be very short.

30 HIS LORDSHIP: I suppose the defendants have already made a Case in New York?

MR. COOK: Yes, your Lordship, but I have some evidence that I wish to put in, in conjunction with my friend Mr. Hackett.

40 This case is a complicated one. I do not think the issue between Mr. Goudrault and myself is so particularly difficult, and as far as I am concerned after a very short enquete I will be prepared to declare my defence to the main Action closed, but there are other aspects of the case which are not quite so clear and so pleasant, and I would consequently ask your Lordship, with a view to saving time, to adjourn the case now until, say, two o'clock, to give us an opportunity of presenting in a more succinct and shorter way the issues that are raised between my friend Mr. Hackett and myself.

On the main issue I would like to say to the court that I have retained the services of accountants to make an analysis of exhibit P-1, the chief exhibit filed by my learned friend Mr. Gou-

drault. This exhibit is a document containing a tabulation of approximately 350 contracts in the borough of Queens, from 1907 to 1928. The Estate Phillips or the late Mr. Phillips was only interested in approximately 50 of those contracts.

10 I have handed this document to my accountants with a view to having it analysed, so that the accountants may in ordinary language explain the significance of the document and the Court may be saved the trouble of working it out, as an arithmetical proposition. Unfortunately my accountants tell me this morning they are not yet in a position to make a final report in connection with the exhibit. When their report is ready, and when I have filed the result of their work, together with a little formal evidence as to the correctness of certain exhibits (which are correct, but to which my learned friend objected on the ground that they are not properly certified) my evidence on the issue between myself and the People of the State of New York will be completed, and my case, good, bad or indifferent, will stand.

20 As between Mr. Hackett and myself, I have agreed with Mr. Hackett that I will have the issues prepared, in so far as I can so that this issue may also be decided by your Lordship when you decide the main case. Here, again, I am in a quandary, because I am not yet in a position finally to join issue with my friend Mr. Hackett, in view of the fact that I am asking for particulars, and until I get them I am not able to join issue. My friend Mr. Hackett has very kindly told me in a general way that he intends to do, but I have not the particulars yet.

30 HIS LORDSHIP: That is in regard to the ownership of the money?

MR. COOK: Yes, your Lordship.

HIS LORDSHIP: Is that issue of the case before the Court: and are the pleadings in the record?

MR. COOK: It is practically completed, your Lordship.

40 HIS LORDSHIP: I suppose you commenced the issue, Mr. Hackett?

MR. HACKETT: Yes, your Lordship.

HIS LORDSHIP: So, it is for Mr. Cook to join issue?

MR. HACKETT: Yes, your Lordship.

HIS LORDSHIP: And, that has not been done yet?

MR. COOK: Not yet, your Lordship. I have told my friend Mr. Hackett I will do it, and I hope to do it during the course of the day. I am in the hands of your Lordship and of my friend Mr. Hackett as regards the decision of that issue.

10 In the meantime, if Mr. Goudrault and Mr. Hackett have no objection, I would like an adjournment of the case, and I think matters will be facilitated by an adjournment, and instead of losing time we will actually save time. By tomorrow I will be in a position to put the matter regularly before your Lordship, and we will know exactly where we are.

I cannot say I wish to examine witnesses outside of the Jurisdiction, but I may wish to do so. That necessarily depends upon what the issues are finally raised between my friend Mr. Hackett and myself.

HIS LORDSHIP: Have you been served with Mr. Hackett's proceedings?

20 MR. COOK: Yes, your Lordship. I have served my Declaration on him, and he has served his Plea. I have moved for Particulars on Paragraph 6, which I understand he has no objection to giving. Then I will answer Mr. Hackett's Plea, and the issues will be joined, and we will be ready to proceed. There is no question of delay between Mr. Hackett and myself.

HIS LORDSHIP: And, as I understand it, you wish to have an adjournment until 2 o'clock this afternoon?

30 MR. COOK: I would like an adjournment until tomorrow morning, if Your Lordship does not object. I would like to have the whole day to devote to getting my case ready for tomorrow. I think matters will be facilitated by the delay I am asking for.

I would like to emphasize the fact that I am tied to my friend Mr. Hackett by the agreement I made with him, so that I actually in his hands.

HIS LORDSHIP: So, tomorrow morning you will be in a position to close the main issue?

40 MR. COOK: Either to close it, or to make further evidence. I think I will be in a position to close it.

HIS LORDSHIP: What is your view, Mr. Hackett? I suppose you have some evidence to make?

MR. HACKETT: Yes, your Lordship.

HIS LORDSHIP: Are you ready to proceed?

MR. HACKETT: No, I cannot proceed until Mr. Cook closes his issue.

MR. GOUDRAULT: We have no objection to the adjournment asked for.

HIS LORDSHIP: Then, I will adjourn the hearing of the case to tomorrow morning, at 10.15.

10

AND THE HEARING THEN ADJOURNED.

MONTREAL, OCTOBER 12th, 1932.

MR. COOK, K. C.: May it please your Lordship: after a great deal of discussion I have come to the following arrangement with Counsel as to our procedure in this matter:

With reference to Mr. Goudrault's case, in which he is acting for The People of the State of New York, my case is closed, but I do not declare it is closed with absolute formality because I have an understanding with Mr. Goudrault that certain of the Exhibits which have not been properly attested — although they have been produced — and certain Statements of accountants, etc., which may be necessary for the convenience of the Court and Counsel, may be put in notwithstanding my declaration as to the closing of the case.

30

That gets rid of the issue between Mr. Goudrault and myself — that is to say, between The People of the State of New York and The Heirs of Mr. John M. Phillips: excepting, of course, the Heirs of Francis Phillips, who have severed their defence.

In regard to the position of the Heirs of Francis Phillips, I will ask my friend Mr. Hackett to make his own statement. My understanding in regard to Mr. Hackett's case is — and I do not like to speak for Counsel when he is present — that the arrangement arrived at this morning was that Mr. Hackett intended closing his case in answer to the case of The People of the State of New York, and when he had closed his case in answer to the People of the State of New York then I was to proceed with my issue as to who is the owner of this money, in the event of your

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Lordship declaring that the People of the State of New York cannot succeed.

HIS LORDSHIP: That is to say, the case bearing No. C 110169?

MR. COOK: Yes, your Lordship.

10 I have one witness, who was examined by my friend Mr. Goudrault, Mr. Norris Constable. I wanted to ask him a question before my enquete was closed.

HIS LORDSHIP: Would that be in cross-examination?

MR. COOK: No, your Lordship; as my own witness. I also have one question to ask Mr. Cassidy.

HIS LORDSHIP: Then, your case will be closed with the examinations of Mr. Constable, and Mr. Cassidy?

20 MR. COOK: That is correct, your Lordship.

30

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Norris Constable for defendants (examination in chief).

DEPOSITION OF NORRIS CONSTABLE, A WITNESS
EXAMINED ON BEHALF OF THE DEFENDANTS
THE HEIRS PHILLIPS.

On this twelfth day of October, in the year of Our Lord
one thousand nine hundred and thirty two, personally came and
10 appeared NORRIS CONSTABLE of the City and District of
Montreal, already sworn and examined on behalf of the Plain
tiffs, who, being called as a witness on behalf of the Defendants
The Heirs Phillips, deposes as follows:—

EXAMINED BY MR. COOK, K. C., OF COUNSEL FOR
THE HEIRS PHILLIPS:

Q.—Do you know Mr. Cassidy? A.—Yes.

Q.—Have you seen him here today? A.—Yes, I saw him
20 here this morning.

Q.—Is he the gentleman who went to the office of The
Montreal Safe Deposit Company on December 19th, 1927? A.—
He is.

Q.—Was he in company with the gentleman whose photo-
graph you saw the other day? A.—Yes.

Q.—You do not know who the other gentleman was? A.—
No.

Q.—And, Mr. Cassidy was the man who came in later, on
January 23rd, 1928, with Mr. Francis Phillips? A.—Yes, sir.

30 Q.—That is correct? A.—That is correct.

Q.—And, you have no doubt about it? A.—No, sir, none
whatever.

Q.—And, you saw Mr. Cassidy in Court this morning? A.—
Yes.

BY THE COURT:

Q.—And, he is the same man? A.—Yes, your Lordship.

BY MR. COOK, CONTINUING:

40 Q.—And, the gentleman whose photograph is Plaintiff's
Exhibit P-7 is the gentleman who was with him? A.—Yes, sir.

BY THE COURT:

Q.—Is that a photograph of Mr. Cassidy? A.—No, sir, it
is a photograph of the gentleman who was with Mr. Cassidy.

Norris Constable for defendants (cross-examination).

MR. GOUDRAULT: On behalf of the Plaintiffs, I state we admit that Exhibit P-7 is a photograph of Mr. John M. Phillips.

CROSS EXAMINED BY MR. HACKETT, K. C., OF COUNSEL FOR THE CROWN TRUST COMPANY:

- 10 Q.—You have testified earlier in this case? A.—Yes.
Q.—I find at page 40 of your deposition the following:
“Q.—Both Mr. Cassidy and the other gentleman who came in on December 19th, 1927, told you the box they required was for the purpose of putting books in? A.—Yes.
Q.—You swear that? A.—Yes.
Q.—And, you think one of the gentleman was the man represented by the photograph? A.—Yes.
Q.—But, you are not quite sure of it? A.—I am not
20 positive”.
- Which is correct: the testimony you have given today, or the testimony you gave at page 40? A.—The first testimony I gave.
- Q.—That is, when you said that you were not positive the photograph Exhibit P-7 was the photograph of the man who came in with Cassidy, that statement was correct? A.—It is correct.
Q.—And, you are unable to identify Exhibit P-7 as the man who came in with Cassidy? A.—As the man.
Q.—You are unable to do that? A.—I am unable to do
30 that.
- Q.—Will you please turn to the book which you have before you, and look at the entries made for June 2nd, 1928. Do you find that Francis Phillips visited the Montreal Safety Deposit Vaults on that day? A.—Yes, sir.
Q.—That was a Saturday morning? A.—Saturday, June 2nd, 1928.
Q.—Mr. Phillips entered your place of business at ten o'clock precisely? A.—Yes.
Q.—And, he left at 10.45? A.—Yes.
40 Q.—He was in the building three quarters of an hour?
A.—Yes.
Q.—The man who was in the building after him came in at 10.07 and left at 10.16? A.—Yes.
Q.—The one after that came in at 10.07 and left at 10.16?
A.—Yes.
Q.—The next came in at 10.19, and left at 10.23? A.—Yes.

Norris Constable for defendants (cross-examination).

Q.—And, the next came in at 10.28, and left at 10.31? A.—
Yes.

Q.—The man who came in immediately before him came
in at 9.59 and left at 10.17? A.—Yes.

Q.—And the one before that came in at 9.56, and left at
9.57? A.—Yes.

10 Q.—And, the one before that came in at 9.52, and left at
9.53? A.—That is correct.

Q.—On Saturday, May 26th, Mr. Thomas F. Grimes and
Mr. Francis Phillips were in the office of your Company from
10.46 to 11.15? A.—Yes.

Q.—That was the day on which the first box leased by
Francis Phillips was broken open? A.—Yes.

Q.—Phillips had lost the keys, and you had to call in the
assistance of a locksmith, or whoever comes in, to force the box?
A.—To force the box, yes.

20 Q.—Were Mr. Phillips and Mr. Grimes in again later on
in the day? A.—Yes.

Q.—What time? A.—11.44. They left at 11.48.

BY THE COURT:

Q.—What did they return for the second time? A.—To
go to the box.

Q.—To the box that was broken open? A.—No: to the new
one.

30 Q.—After having opened the old one they needed another?
A.—Yes.

Q.—And, it was to open the other one they came back?
A.—Yes.

BY MR. HACKETT, CONTINUING:

Q.—Have you with you the record of January 23rd, 1928?
A.—Yes, I have.

40 Q.—According to this record, on January 23rd, 1928,
(which, according to Exhibit P-1, was the day that Francis Phil-
lips leased the box) Dr. T. M. Cassidy and Francis Phillips
visited the Montreal Safe Deposit Company, and were there from
11.25 to 11.36? A.—Yes.

Q.—They were in the building 11 minutes? A.—11 minutes.

Q.—On December 19th, Colonel C. F. Smith and two friends
appear to have been in the office of the Montreal Safe Deposit
Company from 10.53 to 11.03? A.—Yes.

Thomas M. Cassidy for defendants (examination in chief).

MR. HACKETT: I have no further questions to ask the witness.

MR. GOUDRAULT: I have no cross-examination.

MR. COOK: I have no re-examination.

AND FURTHER DEPONENT SAITH NOT.

10

J. H. KENEHAN,
Official Court Reporter.

DEPOSITION OF THOMAS M. CASSIDY, A WITNESS
EXAMINED ON BEHALF OF DEFENDANTS
THE HEIRS PHILLIPS.

20 On this twelfth day of October, in the year of Our Lord one thousand nine hundred and thirty two personally came and appeared THOMAS M. CASSIDY residing at Garden City Hotel, Garden City, Long Island, in the State of New Jersey, horse owner, aged 52 years, a witness produced and examined on behalf of the Defendants The Heirs Phillips, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. COOK, K. C., OF COUNSEL FOR
THE HEIRS PHILLIPS:

30 Q.—Will you look at the photograph I show you, which has been filed by the Plaintiffs as Exhibit P-7, and will you state whose photograph it is? A.—John M. Phillips, senior.

MR. COOK: I have no other question.

MR. GOUDRAULT: I have no cross-examination.

MR. HACKETT: I have no cross-examination.

HIS LORDSHIP: Does this close your case, Mr. Cook?

40

MR. COOK: My enquete is finally, definitely, and irrevocably closed, subject to the filing of the documents my learned friend has agreed I should file.

AND FURTHER DEPONENT SAITH NOT.

J. H. KENEHAN,
Official Court Reporter.

Fred R. Curran for defendants (examination in chief).

**D. — EVIDENCE ON BEHALF OF THE
DEFENDANT THE CROWN TRUST CO.
AT ENQUETE.**

10

DEPOSITION OF FRED R. CURRAN, A WITNESS
EXAMINED ON BEHALF OF THE DEFENDANT
THE CROWN TRUST COMPANY.

20 On this twelfth day of October, in the year of Our Lord one thousand nine hundred and thirty two personally came and appeared FRED R. CURRAN residing at No. 3533 87th Street, Jackson Heights, New York City, newspaper reporter, aged 39 years, a witness produced and examined on behalf of the Defendants The Crown Trust Company, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. HACKETT, K. C., OF COUNSEL
FOR THE CROWN TRUST COMPANY:

30 Q.—You were called as a witness in this case by the Plaintiffs? A.—Yes, sir.

HIS LORDSHIP: In New York, before the Commissioner?

MR. HACKETT: Yes, your Lordship.

BY MR. HACKETT, CONTINUING:

Q.—What is your occupation? A.—I am a newspaper reporter.

Q.—You told us in New York that you had been secretary to Mr. Phillips? A.—I was, yes.

40 Q.—When did you enter his employ? A.—In May, 1925.

Q.—We are speaking, of course, of Mr. John M. Phillips?
A.—Yes, sir, John M. Phillips.

Q.—Had you known him before that date? A.—Yes, I knew Mr. Phillips before then.

Q.—How long did you remain in his employ? A.—I was in his employ for three years — up to the time he died.

Fred R. Curran for defendants (examination in chief).

Q.—He died on July 3rd, 1928? A.—That is my recollection, yes.

Q.—What kind of a man was Mr. Phillips, as to his general attitude towards other people? A.—Mr. Phillips was a rough and ready fellow: very kindly and generous. He was an affectionate father, as I observed him; and he had a great affection for his son Francis. He was also somewhat of a genius as a builder and in construction work.

BY THE COURT:

Q.—How old was he when he died? A.—I think he was about 56 years old.

BY MR. HACKETT, CONTINUING:

Q.—Just what do you mean by saying he was somewhat of a genius as a builder? A.—I mean he had great success as a builder in Queens County, and through New York City. He had carried on important construction work, and erected important buildings, and he was engaged in a pipe business that was very extensive.

Q.—You made reference to a son, Francis Phillips? A.—There was a son, Francis Phillips, yes.

Q.—Had John M. Phillips other children? A.—He had a daughter, Helen, who was a year younger than Francis.

Q.—How old was Francis Phillips when you entered the employ of John M. Phillips in 1925? A.—I judge he was about seventeen or eighteen. About seventeen, I think.

MR. BERTRAND: That is not quite correct.

MR. HACKETT: No, as a matter of fact, the boy was born in 1910, according to the certificate.

BY MR. HACKETT, CONTINUING:

Q.—What was the relationship between the father and the son? A.—Very affectionate.

Q.—What was the son's state of health? A.—His health was never very good, as long as I knew him.

MR. GOUDRAULT: Plaintiffs object to this line of evidence, because my friend Mr. Hackett is trying to prove indirectly allegation No. 4 of his Plea, which is a donation.

Fred R. Curran for defendants (examination in chief).

We object to this line of evidence on the ground that Paragraph 4 of Defendant's Plea severing in their defence is a contestation of the Allegation contained in our affidavit of claim for attachment before Judgment, whereby we declare the money is the property of the Estate of John M. Phillips. Article 945 of the Code of Civil Procedure, captioned "Attachment After Judgment in Hands of Third Party" says that Article 922 applies.

10

Article 922 is:

"If the contestation is founded upon the falsity of the allegations and upon the Defendants being exempt from arrest, issue must be joined upon the Petition of the Defendant independently of the contestation upon the Principal Demand. The contestation is subject to the same rules and delays as summary matters."

20

The Defendants in their Plea simply denied this Allegation of our Affidavit for seizure, and it is our contention it should have been a contestation, which would have come under Article 922.

30

MR. HACKETT: My friend's argument might avail him if we were discussing the validity of the seizure. It is true that where custody pending suit is an issue that certain proceedings have to be followed in order to possess or repossess one of the parties of the property. My friend, however, was waived all that long before I came into the suit, as the result of an agreement between Mr. Cook representing all the Estate Phillips and Mr. Goudrault and his associates representing The People of the State of New York.

40

This money was taken from the strong box of the Montreal Safe Deposit Company, and is on deposit in the Royal Trust Company. The question of procedure, the question of possession, and all the mechanics incidental to procedure were wiped out by one stroke of the pen before I came into the case, and we are now proceeding on the question as to who is the owner.

HIS LORDSHIP: On the merits.

MR. HACKETT: Absolutely, your Lordship.

MR. BERTRAND: The money was deposited with the Royal Trust Company so that it might be invested and draw interest. We did not consent to any informality my friends might commit, and there was never any Petition to quash the seizure.

Fred R. Curran for defendants (examination in chief).

HIS LORDSHIP: What is Paragraph 4 of the Plea?

MR. GOUDRAULT: It simply denies Paragraph 42 of our Declaration, in which we declare that the money is the property of the Defendants The Heirs of John M. Phillips. They say:

10 “Defendants admit that Francis Phillips rented in his own name a safety box in the Montreal Safe Deposit Company, in Montreal, and declared that any property placed therein by the said Francis Phillips was his own.”

It is nothing more or less than a contestation of our affidavit.

HIS LORDSHIP: Your Saisi Arret was not set aside?

MR. GOUDRAULT: No, your Lordship.

20 MR. GUERIN: This Action is an Action in Damages. We are before your Lordship with an Action in Damages, and we have a provisional measure by which we seized the money. We say the Heirs of John M. Phillips owe the State of New York a certain sum of money, and they reply: “We do not owe you anything”. Our provisional measure is the Saisi Arret before Judgment. We say: “You owe us a certain sum of money” and in our affidavit we say that the Defendants are proprietor of the money.

HIS LORDSHIP: Representing The Heirs Phillips?

30 MR. GUERIN: If we had not said they were the proprietors, we could not have exercised our provisional right.

If the Defendants wanted to attack our Saisi Arret, the Code of Procedure specifies the method — by an ordinary contestation — a contestation absolutely different from the Pleadings here.

HIS LORDSHIP: If your Saisi Arret was not set aside, it is in the Record and you can avail yourself of it.

40 MR. GUERIN: But, they are endeavoring to prove that the money did not belong to the Heirs, but belonged to Mrs Phillips. That is an allegation against our provisional recourse. Article 922 provides the method of contestation, and it is an entirely different method.

We say: “You owe us \$3,000,000, and we ask Judgment for that amount”. The provisional measure says: “You, the Heirs,

Fred R. Curran for defendants (examination in chief).

are equal proprietors of that money". We ask that that money be seized. The Heirs have two methods of contesting: first, au fond — if you say the money is illegally seized because you are not the proprietors, say so by another contestation. But, the last contestation must pass before the other.

10 HIS LORDSHIP: There is a contestation as to the form, and a contestation on the merits. It was not contested as to the form?

MR. GUERIN: No, your Lordship. They say our Saisi Arret is badly founded because the money belongs to Francis Phillips and not to the Heirs. Article 922 provides an entirely different procedure.

20 MR. HACKETT: I was not in the Record at the time, but I have noticed my friend Mr. Goudrault has taken pains to produce before your Lordship the Petition made to the Court to open this box, and we have the proces verbal of the Notary, and evidence of the deposit of the money in the hands of another Tiers Saisi, the Royal Trust Company. It is my submission that my friends Mr. Goudrault and Mr. Cook, in whose name this money now stands with the Royal Trust Company (with my own) have done away with any seizure that may have been taken, or any contestation on a seizure.

30 If my friend will read carefully the sections of the Code he is quoting he will find (Article 919) "Upon a Petition presented to the Judge, may have a capias quashed in the following cases..."

40 We did not ask to have the seizure quashed, because we agreed that the money should remain in escrow in the hands of the Royal Trust Company. We are not today contending for the provisional possession of this property. We are on the merits. We are discussing, first, whether or not Phillips owes money to the People of the State of New York, and, secondly, who owns the money that is in Montreal. There is no question before the Court as to provisional possession, because that has been determined by agreement.

HIS LORDSHIP: According to Article 919 it seems the burden of proof is put on the shoulders of the Plaintiff, to establish the truth of its own allegation; so, the Plaintiff has no interest to complain about it.

Fred R. Curran for defendants (examination in chief).

MR. HACKETT: None whatever. The Plaintiff would have a complaint if we were trying to take the money out of the jurisdiction, or if it was being dissipated, or, perhaps, for some other reasons. It has been agreed, however, that the money should be put into the hands of a trustworthy third party, and there it remains pending the decision of this tribunal.

10 HIS LORDSHIP: As I understand it, by your Plea you are contesting the validity of the seizure, inasmuch as you say, in effect: "Even if you prove that you are entitled to damages, you are not entitled to this money because the money does not belong to the Estate, but belongs to Francis Phillips." That is your contention?

MR. HACKETT: That is correct.

20 HIS LORDSHIP: So, you go upon the merits of the pretension of the Plaintiffs?

MR. HACKETT: I have not asked to be relieved provisionally from the seizure. We have suffered by being out of physical possession of our property for three or four years, but we have borne it.

30 HIS LORDSHIP: On a Saisi Arret before Judgment the Defendant is not obliged to contest the sufficiency of the Saisi Arret. In the circumstances I will admit the proof under reserve of the objection; without prejudice, of course, to the contestation between Mr. Hackett and Mr. Cook as to the ownership of the money.

BY MR. HACKETT, CONTINUING:

Q.—Did you know of any protracted illness of the boy?

MR. GOUDRAULT: I object to this line of evidence as irrelevant.

HIS LORDSHIP: Is there any allegation covering it?

40 MR. GOUDRAULT: No, your Lordship; it is not pleaded.

HIS LORDSHIP: Why is it irrelevant?

MR. GOUDRAULT: Because it is not pleaded.

MR. HACKETT: I have asked the question if the boy was ill, and I want to fix the period of the gift by the illness.

Fred R. Curran for defendants (examination in chief).

HIS LORDSHIP: Is there any such allegation in your Plea?

MR. HACKETT: There is an allegation that the father was fond of the boy.

10 HIS LORDSHIP: A father may be fond of his child. but that would not show that the child was ill.

The allegation must be very clear to enable you to make evidence of facts such as this.

MR. GOUDRAULT: I also object, on the ground that my friend Mr. Hackett is trying indirectly to prove a donation, if there was one.

MR. HACKETT: What do you mean by indirectly?

20 HIS LORDSHIP: Was that ground entered upon in the evidence taken under Commission at New York?

MR. GOUDRAULT: Not at all, your Lordship. There is no such allegation here.

HIS LORDSHIP: Is there any allegation in your Plea, Mr. Hackett, that it was a gift to the son?

MR. HACKETT: Yes, your Lordship.

30 MR. GOUDRAULT: Where is it? There is no such allegation.

HIS LORDSHIP: Donation or gift is not susceptible of proof by verbal testimony.

MR. HACKETT: It is, your Lordship.

40 HIS LORDSHIP: If it is a don manuel, it might be. If it was a gift made in New York, there must be a law in the State of New York governing it, and you must go by that law. Of course, if you do not, then you have to take the law of this Province as the law, and there are rules in our Civil Code in regard to donations: they must be made by authentic Deeds, with the exception of the don manuel.

The fact of proving the child was ill would not, of itself, prove a donation was made. According to our law a donation must be proved by a Deed.

Fred R. Curran for defendants (examination in chief).

MR. GOUDRAULT: A donation is not even alleged. They simply say the money found in the safety deposit box is the property of Francis Phillips.

MR. HACKETT: And that is what I am proceeding to prove. If my friend was not satisfied with the allegation, he should have asked for particulars.

10 HIS LORDSHIP: But, having said that Francis Phillips was the owner of the money, you must establish how he was the owner. You may say that it was in virtue of a gift made to him by his father; but, how was the gift made? Was it by a document in accordance with our law, or was it in virtue of a don manuel? Verbal evidence can be made of a don manuel but the gift must be alleged before you can prove it.

20 MR. HACKETT: I have alleged that the money in the box belonged to Francis Phillips, and that the box was rented by Francis Phillips.

HIS LORDSHIP: Have you also alleged that the money was put into the box by Francis Phillips?

MR. HACKETT: No, I have not.

30 HIS LORDSHIP: Of course, that would create a presumption that it was his own property. If Francis Phillips rented the box, and had a key, and if he put the money into it himself, it would create a presumption that it was his own money.

MR. HACKETT: I think I am entitled to prove that on my allegation. If my friend wanted further information he could have examined somebody for Discovery, or he could have asked for particulars, or he could have obtained the information in one of twenty different ways.

HIS LORDSHIP: Let us assume you say this money is your client's money. Now, you have to try to prove it, and if there is an objection I will decide it.

40 BY MR HACKETT, CONTINUING:

Q.—Did you know of any protracted illness of the boy?

HIS LORDSHIP: If you have not alleged that, you cannot prove it, and the objection will be maintained.

Fred R. Curran for defendants (examination in chief).

BY MR. HACKETT, CONTINUING :

Q.—Do you know if Francis Phillips was the owner of certain bonds?

MR. GOUDRAULT: I object. We have alleged no seizure or attachment of bonds. It is a question of money seized in the Montreal Safety Deposit box: 312 bills of \$1000 each.

HIS LORDSHIP: Ready cash?

MR. GOUDRAULT: Ready cash, your Lordship.

HIS LORDSHIP: I do not know if there is an allegation pending to show that the security was converted into money.

MR. GOUDRAULT: None whatever, your Lordship.

HIS LORDSHIP: I draw your attention, Mr. Hackett, to Article 776 of Our Civil Code.

MR. HACKETT: I am familiar with the Article, your Lordship, and I think with a little patience we will probably arrive at our goal.

HIS LORDSHIP: But first we must see what kind of donation you have alleged.

MR. HACKETT: I did not allege a donation. I have alleged it was the property of Francis Phillips.

HIS LORDSHIP: You have alleged he was the owner?

MR. HACKETT: Yes, your Lordship.

HIS LORDSHIP: Of course, you must show he was the owner.

MR. HACKETT: And, that is exactly what I am trying to do. I have to begin somewhere.

MR. GOUDRAULT: The owner of the bonds: not of the money.

BY MR. HACKETT, CONTINUING :

Q.—Do you know if Francis Phillips was the owner of certain bonds?

HIS LORDSHIP: That is vague. What bonds?

Fred R. Curran for defendants (examination in chief).

MR. HACKETT: That will be my next question, if your Lordship will allow me.

MR. GOUDRAULT: I have made my objection.

HIS LORDSHIP: Is it alleged that he was the owner of some bonds?

10 MR. HACKETT: I have alleged that the money in the Box in Montreal was the property of Francis Phillips. The money was put there by somebody, and it came from a certain source.

HIS LORDSHIP: I would allow you to prove the money was put in the safety deposit box by Francis Phillips, or that he charged somebody to put the money there.

20 MR. BERTRAND: It is already in the record that the money was put there by Mr. Cassidy.

MR. HACKETT: There are many things in the Record that may not be taken as final by the Court.

30 HIS LORDSHIP: I understand the difficulty of your position, Mr. Hackett. You may prove this was the money of Francis Phillips through a written agreement between himself and his father, and you may prove that after the donation took place he brought the money here and put it in the safety deposit box, or charged somebody with putting it there. At the same time, there must be a "Commencement" — some lien — to prove your allegation. For the time being, the question is too vague. Perhaps you might modify it.

BY MR. HACKETT, CONTINUING:

Q.—Do you know anything of the ownership of the \$350,000 of American Bills which were brought to Montreal in January, 1928?

40 MR. GOUDRAULT: I object to the question, because according to Article 776 of the Code verbal evidence of a donation cannot be made except under two conditions: That there was such a transition of money, and that the transition was money was made. The second condition for the donation to be legal would be that it was accepted by the donor and the donee. The third condition would be that the party testifying must have been present when the actual transition was made.

Fred R. Curran for defendants (examination in chief).

HIS LORDSHIP: I think the objection is premature. I think the question put by Mr. Hackett is only a preliminary question. If he goes further, we will see what is to be done.

MR. GOUDRAULT: Then I will modify my objection, in this sense. I wish my objection to remain in the Record, with the qualification that I object to this line of evidence tending to show by verbal evidence a don manual without delivery.

HIS LORDSHIP: The decision of the Court on the objection is suspended, as the Court considers the question simply a preliminary one.

MR. COOK: I suppose it is unnecessary for me to say anything until we advance a little further, but I wish to make my position clear when the time comes.

MR. HACKETT: I have alleged that this money was the property of Francis Phillips, and I submit with the utmost deference that on that allegation it is open to me to prove how it became his property.

HIS LORDSHIP: Let us suppose that instead of money it was a horse that was seized, and you say "That horse belongs to me." There is a way in which you must prove the property. You might bring a writing showing that you bought the horse from somebody, and you might identify the horse in question as being the same horse. In this case you say: "That money is mine," and you must show it is yours, but must do it by legal evidence.

I will allow the witness to answer the question because I consider it to be a preliminary question.

MR. HACKETT: If my friend was not satisfied with my allegation, he should have asked for Particulars.

MR. GOUDRAULT: Not at all.

BY MR. HACKETT, CONTINUING:

Q.—Do you know anything of the ownership of \$350,000 of American bills which were brought to Montreal in January, 1928? A.—I do.

Q.—Whose property was it?

Fred R. Curran for defendants (examination in chief).

MR. GOUDRAULT: All my grounds of objection to the previous question are the same as to this, and before the answer of the witness is entered in the Record I would ask for a ruling.

MR. HACKETT: My friend Mr. Cook is on the sideline, and he is very anxious to say something. I am sure I would be very glad to hear from him. At the same time, I would point
10 out to Your Lordship that there is no issue in this case between Mr. Cook and myself. Mr. Cook is a defendant, and the only person he knows in this action is the Plaintiff.

MR. COOK: Mr. Hackett is right in certain things he says. The issue is between the Plaintiff and myself as representing the Heirs Phillips. The Plaintiff has alleged that at the time of the death of Mr. John M. Phillips he was the owner of the money, and I have admitted that he was. Mr. Hackett comes
20 forward in this case and says — not to me, but to Mr. Goudrault — “Mr. John M. Phillips was not the owner of the money. The money was owned by Francis Phillips.” I do not admit that, but there is no issue between Mr. Hackett and myself, and I am powerless to object except by way of drawing your Lordship’s attention to the fact that evidence of this nature cannot possibly be evidence of any value directly or indirectly against the estate Phillips, and such evidence cannot possibly influence your Lordship’s judgment as to the issues between the People of the State of New York, represented by Mr. Goudrault, and the Estate Phillips, as represented by myself.

30 I have nothing to say beyond what I have just stated, excepting that I am not in this issue, and this evidence will certainly react against me in the other case I have with Mr. Hackett as to the actual ownership of this money. In the other case I can talk as long as I like as to who is the owner of the money, because I am properly in the Record, but in this case there is no issue between Mr. Hackett and myself, and I am powerless.

MR. GUERIN: There is also the objection based on Article
40 583. The plaintiff cannot ask the witness who is the owner.

MR. COOK: I have tried to make my position quite clear.

HIS LORDSHIP: And I think it is clear.

MR. COOK: My position without any pleadings interests me very much. There is no issue between Mr. Hackett and myself.

Fred R. Curran for defendants (examination in chief).

HIS LORDSHIP: You have only to say for the time being that you protest against the evidence, but that you are ready to let it go in but it must not be interpreted against you.

MR. COOK: I object to it entirely as being absolutely illegal and improper as far as I am concerned.

10 MR. HACKETT: My question was "Who owns the property?" And my friend Mr. Goudrault objected to the question.

MR. GOUDRAULT: Your Lordship reserved your decision on my first objection, until the next question was put. When the following question was put I said my objection to the previous question also applied to the question then put. Then my friend Mr. Guerin added another ground of objection, that ownership has to be proven according to the dispositions of Article 583 of our Code.

20 Another reason of objection is that the answer of the witness, if taken, would be just a matter of opinion, and not a matter of fact.

MR. COOK: The question of ownership is a legal question, and it is not for the witness to say who is the owner.

30 MR. HACKETT: I reiterate that I have set forth that this property was the property of Francis Phillips. There are several ways of acquiring property. It may be acquired by gift, or succession, or in other ways. When I said that property was mine, my friends were either content with what I said, or they should have taken objection to the form of the Allegation. It behooved them to ask for Particulars, and if they failed or neglected to do so, they left me in the position to make the proof. That is the reason we have written allegations.

40 The only thing I want to prove is that the property is mine, and I have a right to do that. If my friends were curious enough to wish to know how it became my property, they should have asked for the information. They did not do this, and it is now too late.

In the second place that property is in my possession and my friend Mr. Goudrault has put into this Record a contract showing that the money was in a box rented by me, and he was admitted in his Pleadings that this box was rented by me, and that the money was taken therefrom. "Possession vaut titre".

Fred R. Curran for defendants (examination in chief).

I submit there is a presumption of ownership, which, in the absence of anything else, is sufficient to permit me to establish how this property became mine.

10 MR. GUERIN: We do not object to Mr. Hackett proving his allegation, but he must prove it in a legal way. Mr. Hackett says "Francis Phillips is the owner of the money." If it is a donation, let him prove it in a legal way. If it is by prescription let him prove it in a legal way. Our submission is that he has no right to ask the witness who is the proprietor of this money. That is a matter for the decision of the Court, and is exactly what we are here for. In the second place the way to prove a donation is provided for in Article 583.

If it is a donation, don manuel, let my friend prove it, but before he can do so, he must allege it.

20 MR. HACKETT: It is open to me to prove ownership by any avenue.

HIS LORDSHIP: But, you must not forget you must make legal evidence of the facts you intend to prove, and you must not forget Article 1233, which says that you cannot make verbal evidence of any amount more than \$50, except in commercial matters. This is a matter of over \$300,000, and to make legal evidence establishing it is your property you must follow the provisions of Article 583.

30 If the witness has a deed of donation before a Notary Public, and says he can prove the ownership because he has the title before him, we will hear the evidence.

40 Article 776 says that sometimes a donation may be proved by verbal testimony, but the first thing to do is to allege the donation or the don manuel. If you want to prove you are the owner of the money in virtue of a deed of gift or a deed of donation, you must allege it. If you want to prove it has been given to you from hand to hand, Article 776 allows you to make that evidence under certain circumstances, but you must allege it. You cannot prove it without proving the way you acquired it.

According to Article 583 there are different ways of acquiring it, but the condition *sine qua non* is to allege the fact that you want to prove. If you do not allege it, you cannot prove it.

Fred R. Curran for defendants (examination in chief).

MR. HACKETT: Your Lordship gave an example a moment ago. You said if Mr. Curran held a deed of donation in his hand...

HIS LORDSHIP: But you have to allege it.

10 MR. HACKETT: There is no point of reiteration. I have alleged this money was the property of Francis Phillips. My friends all knew that he could acquire that property in one of several legal ways. If they wanted to know how he acquired it, they should have asked me, or have asked that my allegation be struck out of the Record. If the allegation was struck from the Record it would be of no value at all. My friends knew it could only become his property by inheritance, or gift, or purchase or prehension or occupation, or by acquisition. They simply said "We do not care how you got it."

20 HIS LORDSHIP: I suppose you reproach your adversary for not having asked for Particulars?

MR. HACKETT: Of course I do.

HIS LORDSHIP: Would it not have been safer for you to have alleged all those facts? If there was anyone who knew how the property came to Francis Phillips, it would be his lawyer.

30 MR. HACKETT: I come back to this: there is only one thing I want to prove, and that is that Francis Phillips was the owner.

HIS LORDSHIP: I am sure if you had a deed of donation of gift you would have alleged it.

MR. HACKETT: I do not know whether I would or not. I have said it was the property of Francis Phillips, and that is all I want to prove. Knowing we could have acquired it in half a dozen different ways, if my friend were curious as to how we did acquire it, they could have asked for the information.

40 HIS LORDSHIP: But, that does not mean you were not bound to allege it if you want to prove it.

MR. HACKETT: Your Lordship says that if I had a deed of donation in my hand today, executed in the presence of two notaries, I could not prove it?

HIS LORDSHIP: You would not need this witness.

Fred R. Curran for defendants (examination in chief).

10 MR. HACKETT: To carry the argument to its logical conclusion: if I had said Francis Phillips was the owner of this property, and I came into court with a notarial deed — and I hope your Lordship will not think I am offensive — I would not be allowed to produce it, because I had not said I had a notarial deed. That would mean, if your Lordship maintains this objection, you will read out of the Record the entire fourth paragraph, simply because my friends were not as curious as they might have been or should have been.

20 HIS LORDSHIP: I do not say you were wrong when you alleged you were the owner, but it is one thing to have the right to allege it, and it is quite another thing to prove it. In order to prove it you must follow the rules of evidence, and if you do not follow the rules of evidence, your adversary will object to the evidence, and it is the duty of the Court to maintain or reject the objection.

In the circumstances I cannot permit any verbal evidence of the ownership of the money unless it be proved in the regular way as exactly by the Code. Verbal testimony will not do.

30 Of course the fact of having alleged that you were the owner of the money entitles you to establish the fact before the Court by legal evidence, in the way of filing a deed of donation — although you did not allege it: or that it was a don manuel. If it was a don manuel, you should have alleged a don manuel, and Article 776 allows you to make that proof under certain circumstances.

In the circumstances, I must decide finally I cannot permit any verbal evidence of donation unless it be made in the proper way exacted by the rules of evidence. As this is a matter of over \$50.00, it falls under Article 1233 of our Civil Code, and also under the terms of Article 583 of the Civil Code.

40 MR. HACKETT: If your Lordship will permit me, I will take respectful exception to your ruling.

BY MR. HACKETT, CONTINUING:

Q.—You have lived in the Borough of Queens for some years? A.—I was born there.

Q.—Will you take communication of an Index map for the Jamaica Hollis & Queens Village Truck Sewer Contracts, and state if you are familiar with the area shown on this plan?

Fred R. Curran for defendants (examination in chief).

MR. GOUDRAULT: I object to the question on the ground that the witness is not a competent witness. I also object to the production of the document as not being a legal document of any sort, and the witness is not in a position to identify this copy.

10 MR. HACKETT: I am simply asking him to identify the layout of the sewers.

HIS LORDSHIP: On its face is it an official map?

MR. GOUDRAULT: It does not appear to be an official map at all. There is no certificate on it.

MR. HACKETT: I submit I am entitled to produce it by the witness, and if he does not know anything about it, his evidence will not be of any value.

20 MR. GOUDRAULT: It is a very informal map, unsigned. We do not know by whom it was prepared, and in the second place the witness is a journalist, and he is in no position to give scientific or topographical evidence.

HIS LORDSHIP: Inasmuch as the document shown to the witness has no legal value on its face, the objection is maintained.

30 MR. HACKETT: Counsel for the defendant Francis Phillips, takes respectful exception to the ruling of the Court, inasmuch as no attempt was made to prove anything official, the idea being simply to establish the layout of the streets on which sewers had been constructed.

MR. COOK: We associate ourselves with Mr. Hackett in the offered testimony, and the exception.

BY MR. HACKETT, CONTINUING:

40 Q.—Do you know whether the Borough of Queens, or that portion of it in which Brinkerhoff Avenue, Farmers Boulevard and 150th Avenue are situated are on high or on low land?

MR. GOUDRAULT: I object to this, as not the best evidence.

HIS LORDSHIP: I will allow the evidence. I have no objection to the witness assisting himself by the plan, but the plan cannot be filed.

Fred R. Curran for defendants (examination in chief).

MR. GOUDRAULT: But, the witness is not a competent witness, and this is not the best evidence.

HIS LORDSHIP: You may establish his competency in cross-examination.

WITNESS: It is all low land.

10 BY MR. HACKETT, CONTINUING:

Q.—Will you look at exhibit D-5, and point out where the Borough of Queens is situated? A.—This is a map of Queens.

Q.—What is the section marked “A”? A.—That is what we call the Rockaways; a peninsula.

Q.—Is that on high, or on low ground? A.—It is low ground. It is right on the ocean.

20 MR. GOUDRAULT: I take it all the answers of the witness are accepted subject to our objection that the witness is not a competent witness?

HIS LORDSHIP: The objection is noted, and the evidence allowed, with the exception of the filing of the plan.

BY MR. HACKETT, CONTINUING:

Q.—Will you say whether that portion of Queens which is called Jamaica is high, or low, land? A.—It is low land.

30 Q.—From personal observation, can you state what the water conditions or construction conditions are in that locality? A.—There is considerable water in that locality.

Q.—How far below the surface of the soil? A.—Probably down forty feet; the extreme depth.

Q.—How far below the surface do you have to go to get water? A.—The depths vary. You will probably get water at four feet, and then you will go gradually down and get it at various depths, — ten feet. I have observed it at those depths.

Q.—Throughout this district? A.—Throughout what we call the Jamaica area. It is a low lying plain.

40 Q.—In what aldermanic district is it? A.—In what we call the fourth Assembly District.

Q.—And, in what district would the portion marked “A” be? A.—That would be in the fifth assembly district.

Q.—Is an assembly district the same as a ward? A.—It follows the lines of what we call the aldermanic districts. There were only four wards originally; now there are six aldermanic districts.

Fred R. Curran for defendants (examination in chief).

Q.—Will you take communication of exhibit P-8, and will you tell his Lordship who is Mr. George U. Harvey mentioned therein? A.—He is the borough president of Queens.

Q.—Since when? A.—Since 1926, I think.

Q.—Was he the successor of Connolly? A.—No. Bernard M. Patton was successor to Connolly.

10 Q.—Connolly appears to have resigned on April 3rd, 1928. Will you take communication of what purports to be the resignation of Connolly, dated April 3rd, 1928, and file it as defendant's exhibit D-9? A.—Yes.

Q.—Who succeeded Connolly? A.—Bernard M. Patton served his unexpired term.

Q.—How long was that? A.—About a year or so.

Q.—Then who followed? A.—George U. Harvey; by election.

20 AND IT BEING FOUR O'CLOCK THE FURTHER HEARING OF TESTIMONY IN THIS CASE IS CONTINUED TO THURSDAY OCTOBER 13th, AT 10.15 O'CLOCK IN THE FORENOON.

AND FURTHER FOR THE PRESENT DEPONENT SAITH NOT.

J. H. KENEHAN,
Official Court Reporter.

30

AND ON THIS THIRTEENTH DAY OF OCTOBER, IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND THIRTY-TWO, PERSONALLY CAME AND REAPPEARED THE SAID WITNESS, FREDERICK R. CURRAN, AND HIS TESTIMONY WAS CONTINUED AS FOLLOWS:

40 BY MR. HACKETT, K. C.:

Q.—The Records of the Montreal Safe Deposit Company show that Mr. Cassidy and Francis Phillips were in Montreal on Monday, January 23rd, 1928. Will you say when you saw them last before that date? A.—The night before.

Q.—That would be the Sunday night? A.—That would be a Sunday night.

Fred R. Curran for defendants (examination in chief).

Q.—Where did you see them? A.—I saw Francis Phillips first at the Elks Club, in Elmhurst, Long Island. I saw Dr. Cassidy at the Grand Central Station in Manhattan.

Q.—Who was with Francis Phillips at the Grand Central Station? A.—His father.

Q.—John M. Phillips? A.—John M. Phillips. Also Thomas Grimes, and myself.

10 Q.—Did anybody go away on the train that night? A.—Yes.

Q.—Who? A.—John M. Phillips, Francis Phillips and Dr. Cassidy.

Q.—Where did they go? A.—They boarded a Montreal train.

Q.—What for? A.—To go to Montreal.

Q.—For what purpose? A.—The father told me...

20 MR. GOUDRAULT: I object, inasmuch as the answer would be hearsay evidence.

MR. COOK: I object to any conversations between the deceased Phillips and the witness.

HIS LORDSHIP: I cannot yet say whether it will be hearsay or not. If the answer is to prove indirectly what I have already refused to be proven directly, of course it cannot be allowed. We will see what the witness says, and if it tends to establish indirectly what I have already ruled out, I will order the answer to be struck. The answer will be under reserve.

30 WITNESS: (Continuing answer) ... to place \$350,000 cash in a Montreal Safe Deposit box.

HIS LORDSHIP: The decision of the Court is to strike the answer, as it is hearsay evidence.

MR. HACKETT: Before your Lordship rendered your decision, I was going to ask you to allow me to argue the point, because there are certain types of hearsay evidence which are admissible.

40 HIS LORDSHIP: It is your right to argue.

MR. HACKETT: We are dealing now with the declarations of a deceased person. The record made in New York is filled with the declarations made by different witnesses of statements imputed to the deceased Francis Phillips and to his father, the late John M. Phillips.

Fred R. Curran for defendants (examination in chief).

I submit the rule by which admissibility of declarations of a deceased person is to be judged, is whether or not they are against interest; otherwise there would be no means of proving what the deceased person has said.

10 I have authorities on the point, and would be glad to submit them if your Lordship wishes, I would suggest to your Lordship, with great deference, that in view of the importance of the matter at issue, and in view of the fact that those purported declarations of the deceased have been introduced by many witnesses brought by the plaintiff, and were admitted in the record under reserve, it would be well for your Lordship to allow this evidence under reserve.

20 HIS LORDSHIP: It is a pity there was not a judge present to decide the objections on the spot. In any event, I have to decide the objection now, and I do not see any ground for allowing the evidence.

MR. COOK: I would like to say a word in connection with this. It is quite true a great deal of evidence was taken in New York which I considered, as did my friend Mr. Hackett, absolutely illegal and improper; but the Commissioner in the exercise of the discretion he presumably had, said he was not going to rule on the subject but would leave it for the Court to declare whether the evidence was legal or illegal.

30 HIS LORDSHIP: Were objections made at the time?

MR. COOK: All through the evidence, from beginning to end, objection after objection was made to this class of evidence on the ground that it was absolutely improper and illegal. Your Lordship will see there are dozens and dozens of objections to this class of evidence. We are not before a Commissioner now, and it is my respectful submission that evidence of this character is not competent.

40 HIS LORDSHIP: This is the time for the Judge hearing the case to exercise his duty and his right, and decide the objection.

As far as I know up to now, hearsay evidence cannot be received. If Mr. Hackett has some authority to the contrary I would be glad to hear it.

Fred R. Curran for defendants (examination in chief).

MR. HACKETT:

10 “A statement made by a deceased person establishing a fact against his pecuniary or proprietary interest is admissible proof of the matter stated. The interest prejudiced by the fact stated must be either a pecuniary or a proprietary interest, and not a penal interest. A statement of a fact by a deceased person which would expose them to criminal prosecution only is not admissible under this exception.”

Sussex Peerage Cases, 1844; 11 C. L. & F. 85, page 109.

Then there is the Ontario Case of Clergue vs Plummer, 1916 (37 Ontario Law Reports, page 432; at page 441):

20 “The statement is admissible in suits between strangers not merely in suits in which a representative of the deceased or person claiming under him is a party.”

That is affirming a judgment *Ferry vs Jones*, (1851, 8 Upper Canada, Queens Bench, page 192, at page 199.)

“Such evidence is admissible not only against but in favor of his own personal representatives or others claiming under him.”

Confederation Life vs O'Donnell, Wigmore, section 1460.

36 That is the principle, your Lordship.

MR. BERTRAND: “The interest prejudiced by the fact must be either a pecuniary or a personal interest”. In this case it is not a prejudicial interest my friend is making in favor of Francis Phillips. He wants to make hearsay evidence in favor of Francis Phillips. In *Sussex Peerage Cases*, it was against the interest, so it would be an avowal.

40 MR. HACKETT: My friend is wrong in that. At the moment I am not attempting to prove an admission by Francis Phillips. I am attempting to prove a statement or a declaration against interest by the father — against the father's interest.

MR. BERTRAND: But, the father is dead, and there is only one interest, which is the heirs of John M. Phillips, and Francis Phillips is one of them. It is the one and the same interest today.

Fred R. Curran for defendants (examination in chief).

HIS LORDSHIP: Having heard Mr. Hackett, after having allowed him to make his argument and also his reasons for the dismissal of the objection, which I had previously maintained, I again maintain the objection. It would be very dangerous to admit hearsay evidence by a third party, when the dead man is not here and cannot be cross-examined upon it. It would be very easy to make up a case under such circumstances.

10

As far as I can see it is my impression that counsel wants to go further and try to prove indirectly what the Court decided could not be proved directly. This being so, the Court again maintains the decision already rendered; and this after having heard Counsel upon his demand to be heard.

MR. HACKETT: With your Lordship's permission, I would like to take respectful exception to the ruling.

20

BY MR. HACKETT, CONTINUING:

Q.—Mr. Cassidy, over the objection of Counsel, produced in the record at New York cheques (which are referred to at page 1544 of his testimony, aggregating \$725,142.50, and he said that the money represented by those cheques was the proceeds of certain New York City bonds. Will you state if you delivered any New York City bonds to Mr. Cassidy for conversion into cash?
A.—I did.

MR. BERTRAND: It is understood this comes under the same objection. It is not alleged in any way.

30

MR. COOK: I join in the objection.

HIS LORDSHIP: Under reserve.

BY MR. HACKETT, CONTINUING:

Q.—Will you state who was the owner of those bonds?

MR. GOUDRAULT: We object, for the reasons given yesterday, to wit, that this is tending to prove the ownership of a donation.

40

HIS LORDSHIP: Is it alleged?

MR. GOUDRAULT: No, your Lordship, it is not. This fact is not alleged in the pleadings at all.

Fred R. Curran for defendants (examination in chief).

MR. BERTRAND: The witness cannot say to whom the bonds belonged. He may be able to say that so and so gave bonds to so and so, but it is not for him to say who owned the bonds.

MR. HACKETT: In paragraph 43 of the Plaintiff's Declaration, it is alleged:

10 “That the moneys and properties seized in this case and actually in the hands and possession of the tiers-saisi are the property and were the property at all times of the estate of John M. Phillips.”

I have alleged in my Answer to Plea our contention in regard to this.

Paragraph 42 is in the following language:

20 “That Francis Phillips, one of the Heirs of John M. Phillips, has rented in his own name a safety box at the Montreal Safe Deposit Company, at Montreal, District of Montreal...”

MR. BERTRAND: “To hide, secrete and make away with moneys and properties belonging to the estate of his father, John M. Phillips.”

HIS LORDSHIP: Would you mind reading the whole of paragraph 42, Mr. Hackett?

30 MR. HACKETT (Reading): “That Francis Phillips, one of the heirs of John M. Phillips, has rented in his own name a safety box at the Montreal Safe Deposit Company, at Montreal, District of Montreal, to hide, secrete, and make away with moneys and properties belonging to the Estate of his father, John M. Phillips.”

HIS LORDSHIP: What is alleged in paragraph 42 is in harmony with paragraph 43.

40 MR. HACKETT: I am not saying it is not.

HIS LORDSHIP: But, I ought to have the whole thing before me, to decide.

That is allegation 4 of your Plea?

Fred R. Curran for defendants (examination in chief).

MR. HACKETT: My allegation is:

10 “That as regards paragraph 42 of Plaintiff’s Declaration the Defendants admit that Francis Phillips, a son of John M. Phillips, did rent in his own name a safety box at Montreal Safe Deposit Company, at Montreal, and declare that any property placed therein by the said Francis Phillips was his own property.”

HIS LORDSHIP: Paragraphs 42 and 43 do not say that. If I understood correctly paragraph 42 is to the effect that a safety box was rented by Francis Phillips for the benefit of his father, to hide and secrete the money of Phillips or of his Estate.

20 MR. HACKETT: What I am trying to point out to your Lordship is that the language used by the Plaintiff to controvert the presumption of ownership, which is in favor of my client, because the money was in his possession...

HIS LORDSHIP: He might be the agent, or the mandataire of the father. That would not constitute a presumption the money was the property of Francis Phillips. What is done by the agent or mandataire is supposed to be done by the principal or mandat.

MR. HACKETT: But the Court has no right to suppose a mandate.

30 The contract is filed in this record as Exhibit P-1. It shows a box was leased to Francis Phillips, and that he was the only person who had access to it. The books of the Safe Deposit Company have been produced here, and it has been established that Francis Phillips, on January 23rd, May 26th, June 2nd, and again on July 8th, was the only person who visited that box with a right to access.

That entitles me to the benefit of article 2268:

40 “Actual possession of a corporal moveable by a person as proprietor creates a presumption of lawful title. A party claiming such moveable must prove beside his own right the defects of the possession or in the title of the person who claims prescription or who under the provisions of the present title is exempt from doing so.”

Fred R. Curran for defendants (examination in chief).

Article 2194 provides :

“A person is always presumed to possess for himself and as a proprietor if it be not proved that his possession was begun for another.”

10 My friends have alleged in their Declaration, in the very terse language of paragraph 43 :

“That the moneys and properties seized in this case and actually in the hands and possession of the tiers-saisi are the property and were the property at all times of the estate John M. Phillips.”

20 HIS LORDSHIP: The burden of the proof of that allegation rests on the Plaintiffs. If they have not made their case, then you have not anything to say. If they have *not* made their case it is in your favor.

MR. HACKETT: Under that allegation they have made proof, or have introduced evidence, as to how this money came to Montreal. They have alleged that Dr. Cassidy received bonds, that he converted them into cash, and that the money was brought up here. I have alleged that this money in Montreal was the property of Francis Phillips and was in his possession.

30 HIS LORDSHIP: You are entitled to prove your allegation, but you must prove it according to the law of evidence of this Province.

I decided yesterday that you have to prove it according to article 1233; by written evidence or by a confession or admission of the party himself — not by verbal testimony.

40 According to Article 583 you have to choose one of the ways and means to prove that you are the owner. If you are not prepared to bring that evidence before the Court, I must (with regret, but to do my duty and to apply the law as I see it) maintain any objection that is made to any objection that is made to any verbal evidence either direct or hearsay.

MY HACKETT: The Court of Appeals have held in the case of Filiatrault vs Goldie, that possession avails as a *commencement de preuve*, and entitles the possessor to make verbal evidence of his title.

Fred R. Curran for defendants (examination in chief).

HIS LORDSHIP: Article 2268 is with reference to a matter of prescription, is it not?

MR. HACKETT: Yes, your Lordship.

HIS LORDSHIP: This is not a question of prescription.

MR. HACKETT: Your Lordship will find the case of
10 *Filiatrault vs Goldie* in 2 K. B. page 369.

Then there is a case of *Lefebvre vs Bruneau*, (14 L. C. J. page 268).

“Que la possession en fait de meubles et qui équivaut à un commencement de preuve par écrit suffise pour permettre au possesseur d’expliquer sa possession par une preuve testimoniale.”

That, as I recall it, is the finding in *Filiatrault vs Goldie*.

20 On the second point, as to the sufficiency of allegation 4, which is that after having stated the property is mine, I am entitled to make proof of the way it became mine, I would refer your Lordship to the case of *Hebert vs Bourguignon*, (1 Practice Reports, page 1).

“Qu’il suffit dans une déclaration sur saisie revendication d’alléguer que le demandeur est propriétaire de l’objet revendiqué sans qu’il soit nécessaire de spécifier son titre.”

30 HIS LORDSHIP: But he is bound to prove his title.

MR. HACKETT: Yes.

HIS LORDSHIP: And he must prove it according to the laws of Procedure. If it is a matter of over \$50. he cannot prove it by verbal testimony.

MR. HACKETT: Unless it be a type of acquisition that
40 is susceptible of proof by verbal evidence. If the *don manuel*, being one of the ways of acquiring property, is susceptible of proof of verbal testimony, then I submit it is competent to me to make that proof.

HIS LORDSHIP: You allege only that he was the owner of the money. You do not allege any *don manuel*.

Fred R. Curran for defendants (examination in chief).

MR. HACKETT: No, your Lordship, I did not. I alleged he was the owner of the money, and that it is open to me to adduce any evidence which will support that finding.

Dr. Cassidy was brought to show that the money was the proceeds of certain bonds. I have denied that, and I submit it is open to me to prove my denial.

10 MR. GUERIN: I understand this is the third appeal of my learned friend to try to upset a Judgment of your Lordship which was rendered yesterday.

MR. HACKETT: This is another question.

MR. GUERIN: That is the reason I ask to intervene. We made an objection yesterday, and after a long argument by my learned friend our objection was maintained. Before we ad-
20 journed yesterday afternoon my friend was doing his best to try to upset your Lordship's Judgment, for the second time, and your Lordship maintained our objection a second time. This morning my friend again tries to upset the Judgment. This is the third time.

I do not think that is the proper way to proceed. We will never finish if my friend tries to upset your Lordship's decisions two or three times after they have been rendered.

MR. HACKETT: The case of Filiatrault vs Goldie is re-
30 ported in 2 K. B. page 368, and the portion to which I refer will be found at page 373:

“Le titre 2268 du code civil a levé tout doute. Il y est dit que la possession fait présumer le juste titre. C'est au réclamant à prouver outre son droit les vices de la possession et du titre du possesseur.

L'appelant en invoquant la possession obligeait les intimés à prouver leur titre et les vices du titre et de la possession de l'appelant.

40 Cette preuve se trouve au dossier, elle résulte des faits allégués dans les plaidoiries.

L'appelant a soutenu que son titre était valide parce que d'après lui la vente que lui a consentie Legries était une affaire de commerce, et il a cité à l'appui de sa prétention les articles 1488 et 2268 du code civil auxquels il aurait pu ajouter l'article 2260.”

Fred R. Curran for defendants (examination in chief).

HIS LORDSHIP: At first sight I do not think there is any analogy between the present case and the case of Filiatrault vs Goldie.

MR. HACKETT: There is not any analogy between the facts of the two cases.

10 HIS LORDSHIP: And we have only to read the "Jugee" of the case to see it is not ad rem. In the Filiatrault case there was a sale, a writing, and so on.

MR. BERTRAND: It is not the same point at all.

HIS LORDSHIP: There was a conveyance — a contract, and following that contract there was possession. The circumstances were all different, and we know that circumstances alter cases. I do not think there is any similarity between the case of Filiatrault vs Goldie and the present case.

20 MR. HACKETT: There is no similarity as regards the facts.

HIS LORDSHIP: In the case of Filiatrault vs Goldie there was a title, which was discussed, but nevertheless there was a title, and there was possession — there was delivery.

MR. HACKETT: There is possession here.

30 HIS LORDSHIP: But, it is not the kind of possession which would entitle you to make proof of the ownership by verbal testimony.

Article 2268 is an Article concerning prescription — when a Pleading is outlawed. That is a different thing altogether.

MR. HACKETT: If your Lordship holds it is not competent to the Defendant Francis Phillips to make any testimony of his title by verbal evidence — if is that what I unerdstand your Lordship's decision to be?

40 HIS LORDSHIP: Yes, that is my decision. I will not allow any verbal evidence tending to show that Francis Phillips is the owner of that money. If he wants to prove he is the owner of that money he must prove it according to the law of evidence of our Province: for instance, he must bring a written title, or he must bring any title mentioned in Article 583 of our Civil Code.

Fred R. Curran for defendants (examination in chief).

Moreover, according to Article 1233 of the Civil Code, verbal testimony cannot be allowed in any matter involving over \$50.00.

10 MR. HACKETT: A very heavy responsibility rests on me at the moment, and a decision has to be taken which is a rather momentous one for me. I wanted to ask your Lordship if you would be good enough to tell me if I have correctly understood the ruling with regard to testimony of the declaration of a deceased person...

MR. GUERIN: I do not think that is the way to proceed. Mr. Hackett has put a question, and he is provoking a discussion before your Lordship, and is arguing your Judgment. We all know what he wants to do. He wants to have a Judgment on a technical question, and then if he wishes to appeal he will appeal on his discussion. This is absolutely illegal, and I think we should object to this manner of proceeding.

20 MR. HACKETT: Perhaps my friend will not object if I ask your Lordship a question. Neither my friend nor I can dictate the answer.

HIS LORDSHIP: If you have a question to put, make it short; because I do not want to have to maintain my decision four or five times. Of course, I must be agreeable to you, but, at the same time, if you have a question to put, put it straight, and I will give you my answer.

30 Perhaps I should say here, Mr. Hackett, that I appreciate your difficulty, and I would like to congratulate you upon the way you proceed before the Court.

MR. HACKETT: Will your Lordship rule out a question addressed to this witness concerning the declarations of John M. Phillips, even though they are against his interest?

40 HIS LORDSHIP: Yes, I will rule it out, and I will maintain the objection. The only way for you to correct my decision, if it is wrong, is by an appeal.

MR. HACKETT: I thank your Lordship for being so categorical.

HIS LORDSHIP: The Judgment of the Court has been rendered. Of course, if you have some other ground to follow you are at liberty to follow it.

Fred R. Curran for defendants (examination in chief).

BY MR. HACKETT, CONTINUING:

Q.—Is it to your knowledge that Francis Phillips had in his own name a strong box in which he kept bonds?

MR. BERTRAND: The best proof of that would be the officers of the Safety Deposit Company.

10 MR. GOUDRAULT: And, it is not alleged.

On behalf of the Plaintiffs we object to the question, first, because it is not alleged, and, in the second place because this would not be the best evidence.

20 HIS LORDSHIP: As I see it, it does not matter much if Francis Phillips had or had not a strong box to put his papers in. For the time being, the question has no bearing on the case, and the objection is maintained on the ground that the question is useless.

BY MR. HACKETT, CONTINUING:

Q.—Were you with Francis Phillips at any time when \$350,000 worth of bonds were taken from his strong box for the purpose of conversion into cash?

MR. GUERIN: That is exactly the same question, and the same objection applies. Because that \$350,000 was deposited elsewhere it is not relevant to the case.

30 HIS LORDSHIP: As the Court sees in this method of examining the witness a new way of trying to upset the decision and an endeavor to try to prove indirectly, or otherwise, the proposition put by Mr. Hackett, the Court maintains the objection.

I hope I will not have to maintain another objection of this kind. We have to finish the case, and I think my decision is very clear on the point. This Court will never allow Counsel to prove indirectly what cannot be proved directly.

40 If you are not satisfied with my decision, Mr. Hackett, the only thing you can do is to appeal to a higher Court.

MR. HACKETT: I respectfully except to the ruling of the Court.

At this point I will ask your Lordship for an adjournment, and I may state to your Lordship I am asking it for the purpose

Fred R. Curran for defendants (cross-examination).

of ascertaining whether the views which I entertain on this subject are views which may commend themselves more elsewhere than here.

HIS LORDSHIP: I suppose we could proceed with the cross-examination of the witness.

10 Do you declare you have no more questions to put to the witness? If you do, we will then have a declaration from your adversaries as to whether they have any cross-examination.

CROSS EXAMINED BY MR. BERTRAND, K. C., OF COUNSEL FOR PLAINTIFFS:

Q.—You examined a map that was produced? A.—Yes.

Q.—You are not an architect? A.—No, sir.

Q.—Or a civil engineer? A.—No.

20 Q.—Or a land surveyor? A.—No.

HIS LORDSHIP: No map was produced by the witness.

MR. BERTRAND: But he said something about the water.

HIS LORDSHIP: An effort was made to file a map or sketch, to which objection was taken, and I maintained the objection. That being so, you cannot examine the witness on the map, because it is not in the Record. You may cross-examine him upon what he said in connection with the plan Exhibit D-5, if you wish,
30 but you have not the right to cross-examine him on the other plan which was offered but which was not produced.

BY MR. BERTRAND, CONTINUING:

Q.—You told us you are not a land surveyor, an architect, or a civil engineer? A.—No, I am not.

Q.—What is your occupation? A.—A newspaper reporter.

Q.—You told the Court that the land in Jamaica and Rockaway is low land, and that the water was very near the surface?
40 A.—Yes.

Q.—You never measured it?

WITNESS: Never measured the depth of it, you mean?

COUNSEL: Yes.

A.—I have walked through it.

Fred R. Curran for defendants (cross-examination).

MR. HACKETT: I will serve the necessary papers to appeal from your Lordship's decision, because there is nothing further to do. If I have misinterpreted the law, my clients cannot succeed.

HIS LORDSHIP: I suppose you have the right to appeal from my decision, but that means the whole case will go before
10 the Court of Appeals.

MR. HACKETT: I am only appealing on your Lordship's rulings as to the admissibility of the evidence I offered. If your Lordship felt you could take the evidence under reserve, we might proceed.

HIS LORDSHIP: No, I cannot do that.

MR. HACKETT: In any event, it is my intention to appeal from your Lordship's ruling. The Court of Appeals opens
20 on Saturday, and I shall endeavor to get my record through in time.

HIS LORDSHIP: I may be in error, but I think my decision is well founded.

MR. HACKETT: All I ask now is for the opportunity to prepare a Petition for leave to appeal. I think in a case of this importance it is customary to let it go almost as a matter of course.

30 MR. BERTRAND: I think we should finish the case, and my learned friend will argue his case, and if we have not established our pretensions the action will be dismissed, and my friend will not need en appeal.

HIS LORDSHIP: Have you finished with the cross-examination of the witness?

MR. GOUDRAULT: Yes, your Lordship.

40 HIS LORDSHIP: Have you any other witnesses, Mr. Hackett?

MR. HACKETT: No, your Lordship, I have no other witnesses I care to put in if I cannot make the testimony I had hoped to make through this witness.

Fred R. Curran for defendants (cross-examination).

HIS LORDSHIP: So, you are ready to declare your enquete closed, with the reserve of your right to appeal from my decision?

MR. HACKETT: My application is to be allowed the customary delay to make an application for appeal.

10 HIS LORDSHIP: Can you state the Article of the Code which authorizes you to make this demand?

MR. HACKETT: I have the right to appeal from an Interlocutory Judgment. Of course, I cannot dictate the appeal while I am before your Lordship; but I submit it is a matter of practice that I should be afforded an opportunity of appealing from this decision.

HIS LORDSHIP: What is the Article you invoke?

20 MR. HACKETT: Article 46:

“An appeal also lies from any Interlocutory Judgment on matters susceptible of appeal, in the following cases:

When it in part decides the issue...”

AND THE FURTHER HEARING OF THE CASE AD-
JOURNED TO THREE O’CLOCK IN THE AFTERNOON,
30 OCTOBER 13th, 1932.

J. H. KENEHAN,
Official Court Reporter.

Charles A. Schneider for defendants (examination in chief).

DEPOSITION OF CHARLES A. SCHNEIDER, A WITNESS
EXAMINED ON BEHALF OF DEFENDANT THE CROWN
TRUST COMPANY.

10 On this thirteenth day of October, in the year of Our Lord
one thousand nine hundred and thirty-two, personally came and
appeared CHARLES A. SCHNEIDER, already sworn and exam-
ined on behalf of the Plaintiffs, who being called as a witness on
behalf of the Defendant The Crown Trust Company, deposes as
follows:—

EXAMINED BY MR. HACKETT, K. C., OF COUNSEL
FOR CROWN TRUST COMPANY:

20 Q.—Will you look at excerpts from the Minutes of the
Board of Estimate and Apportionment of the City of New York,
two dated June 10th, 1926, and one dated June 9th, 1926, and will
you say if you can identify them?

MR. BERTRAND: These are supposedly authentic docu-
ments, inasmuch as they are certified to by some officer. They
appear to be the report of a man named Arthur S. Tuttle. Surely
my friend will not slide these documents into the Record with-
out giving us a chance of cross-examining Mr. Tuttle on his report.
I have never seen the documents before, but they seem to be a
report as to the sewers in Queens County.

30 We do not want to have Mr. Tuttle decide the case as to
whether those sewers were good, or whether the prices were right.
There is no allegation under which these documents could be put
into the Record, and they are not in the Record and cannot get
into the Record in this way. This is a very important matter to
us, and we object to the question.

40 MR. HACKETT: I have alleged that the area in which
those sewers were being built was extremely wet, and that the
construction of the sewers was difficult. My friend Mr. Bertrand
was not here the other day when I established the fact that Mr.
Tuttle was the Chief Engineer of the State of New York, the
Plaintiff in this Action. These are Minutes of the Board of
Estimate and Apportionment of the City of New York, which
is the Executive. These documents are merely in the nature of
an admission by the Plaintiff itself, which appears in the Minutes.
It is relevant evidence. It is the report of the chief officer, and

Charles A. Schneider for defendants (examination in chief).

possibly upon further consideration my friend Mr. Bertrand may see it in a different light.

HIS LORDSHIP: You say you have alleged the area was wet?

MR. HACKETT: Yes, your Lordship.

10 HIS LORDSHIP: What was the purpose of alleging that?

MR. HACKETT: To show there was difficulty in the construction of those sewers.

HIS LORDSHIP: Which meant more expense and heavier disbursements?

MR. HACKETT: Yes, your Lordship.

20 My friends have produced a great many documents showing many contracts in this area, and your Lordship will see part of my Plea is that the construction was difficult. I am now merely attempting to put proof of that fact in the Record, and I am doing this by a report of the engineer of the City, which is bound in the public records of the City.

30 MR. BERTRAND: We have taken an Action in Damages, alleging that Connolly, Phillips, Seely and others have conspired together to defraud the City by selling pipes in excess of their normal prices. My friend Mr. Hackett has denied that, and now he wants to put into the Record, without alleging it, a certain report made by a man named Tuttle, Chief Engineer of the City of New York. If this report goes in I will be obliged to cross-examine this Engineer. He might have been in the conspiracy with the others — I do not know. I know the City has been defrauded, and I cannot allow a document prepared by a man named Tuttle to go into the Record without having a chance of cross-examining Mr. Tuttle. That is one of the essentials of procedure before any Court.

40 It may be an authentic document, but my friend should have alleged it in his Defence.

HIS LORDSHIP: The first thing to do would be to allege it, and the second thing would be to prove it. The allegation must be proved by the man who made the report, and he must be subject to cross-examination.

Charles A. Schneider for defendants (examination in chief).

MR. BERTRAND: My friend might bring Mr. Tuttle here, and if Mr. Tuttle does not now agree with the report that will be the end of it. If he agrees with the report that will be the end of it. If he agrees with the report, I will have the right to cross-examine him and I can tell your Lordship I will have quite a number of questions to ask Mr. Tuttle.

10 HIS LORDSHIP: Were those reports alleged in your Plea, Mr. Hackett?

MR. HACKETT: Not specifically, your Lordship, but I have alleged that which I wish to prove by the report. I submit it is not the duty of Counsel to say "I wish to prove this particular fact by such a document, or by such a witness". I allege the fact, and I bring the proof.

HIS LORDSHIP: What is the allegation?

20 MR. HACKETT: Paragraphs 6 and 7 of my Defence:

"6) That the construction of the sewers in the Borough of Queens was exceedingly difficult and hazardous to a supplier of pipe because of the wet and shifting nature of the soil, the great depth beneath the surface of the ground and the level of the sea at which the pipes were laid, and the consequent stress and strain to which they were exposed, as well as the necessity for them to be absolutely water tight:

30 7) That any plans and specifications for the construction of sewers in the Borough of Queens or for materials to be used therein were prepared by competent engineers, with the approval of the governing bodies of the Borough of Queens as well as the City of New York, and the work done was likewise carried out under the supervision of the City Engineers and governing bodies."

40 I am merely showing by those reports that the City was conversant with those conditions.

HIS LORDSHIP: Our system of procedure was designed to avoid the possibility of surprise to any of the parties in a case. Do you not think your opponents were entitled to know how you would prove your allegation?

Charles A. Schneider for defendants (examination in chief).

MR. BERTRAND: These documents do not fall within Section 1220, and are not documents which are authentic, therefore they have to be proved in the proper way.

MR. HACKETT: The witness can identify them and say they came from the records of the Plaintiffs.

10 MR. BERTRAND: Who is the Plaintiff?

MR. HACKETT: The People of the State of New York, who in this instance are acting for the City of New York.

MR. BERTRAND: The Plaintiff is the People of the State of New York — the Attorney General of the State of New York, who is displacing the City and taking the Action on his own behalf in virtue of a law which allows him to take the place of a corporation when the Corporation does not do when it should do. These are apparently documents of the City of New York, and the Plaintiff is the State of New York. The State of New York is acting because there was something rotten in the City.

These are not documents from the Plaintiff.

HIS LORDSHIP: I notice these documents are signed "Joseph Higgins, Assistant Secretary". Who is Mr. Higgins, and what is he Assistant Secretary of?

MR. HACKETT: Of the Board of Estimate and Apportionment of the City of New York.

30 HIS LORDSHIP: As I am not in possession of all the facts of the case, I will permit the filing of these three documents, under reserve of the objection. When I take cognizance of the whole case, I will put this evidence aside if it is not regular.

MR. BERTRAND: And reserve my right to have Mr. Tuttle here for cross examination, if necessary.

40 HIS LORDSHIP: I have rendered my decision on the objection as it is made. Of course, if you make an application in regard to cross-examining Mr. Tuttle I will deal with it when it comes up.

BY MR. HACKETT, CONTINUING:

Q.—Will you look at excerpts from the Minutes of the Board of Estimate and Apportionment of the City of New York, two dated June 10th, 1926, and one dated June 9th, 1926; and

Charles A. Schneider for defendants (examination in chief).

will you say if you can identify them? A.—I confess I do not quite comprehend the question.

Q.—Can you say if those documents which you have before you, and which I file as Defendant's Exhibits D-10, D-11, and D-12 (under reserve of the objections) are Minutes of the Board of Estimate and Apportionment for the dates they bear? A.—
10 The printed portion appears to be similar in type and in format to that employed by the City of New York in the publication of the Minutes of the Board of Estimate and Apportionment as they appear in the City Record.

BY THE COURT:

Q.—What document are you speaking of now? A.—I am speaking generally as to the three Exhibits offered, D-10, D-11 and D-12.

20 The subscription at the foot of those Exhibits offered at D-10, D-11 and D-12 purport to bear the signature of one Joseph F. Higgins, who signs directly below that name, with the words "Assistant Secretary". I cannot in truth state I know that to be the signature of Joseph F. Higgins, nor do I know Joseph F. Higgins to be an Assistant Secretary of the Board of Estimate and Apportionment.

BY MR. HACKETT, CONTINUING:

30 Q.—You have not any serious doubt have you, as to the authenticity of the Minutes themselves? A.—They appear to be in the format and style similar to the Minutes, but I cannot say they represent the Minutes of the Board with respect to the subject matter in its final form. If you will permit me to illustrate: it is conceivable that at a subsequent meeting of the Board of Estimate and Apportionment there might have been another report offered which would alter the views of the Chief Engineer.

40 Q.—Can you, on your return to New York, verify the accuracy of those copies, from the original documents? A.—I believe that could be done. I could make the effort to make a comparison between the documents you now offer as Exhibits D-10, D-11 and D-12, with the original. I could undertake to do it, and I believe I would be successful in doing it.

Q.—Would you be willing to undertake to do it?

HIS LORDSHIP: You might bring the documents with you, compare them with the originals, and, if they are correct,

Charles A. Schneider for defendants (examination in chief).

you might put a certificate on them to the effect that they are correct.

WITNESS: I would be glad to do that.

10 HIS LORDSHIP: The Court will leave the documents in your possession. You know what is required. If you will compare them with the original, and certify to them as being correct, it will be accepted.

WITNESS: I will be very happy to aid the Court in that respect.

HIS LORDSHIP: Of course, that is always subject to the objection which has been taken.

MR. BERTRAND: And then I would like to cross-examine Mr. Tuttle, who wrote the reports.

20 MR. HACKETT: I close my enquete.

HIS LORDSHIP: And, I understand Mr. Cook has closed his?

MR. COOK: Yes, your Lordship.

MR. BERTRAND: I have no rebuttal to offer in response to the Defence made by my friend Mr. Hackett.

30 MR. COOK: There is another matter in dispute, which I now ask your Lordship to consider: that is the question as to the ownership of this money, in the event of the State of New York not succeeding in obtaining it. I have alleged that it is the money of the Estate Phillips. My friend Mr. Hackett alleges it is the money of the Estate of Francis Phillips.

HIS LORDSHIP: I suppose that will come in your Action against the Estate of Francis Phillips?

40 MR. HACKETT: It might be well to dispose of this Action before we begin the other.

MR. COOK: Oh, no, that is not the understanding. I understand this Action is disposed of, because my friends have just said they have no rebuttal.

HIS LORDSHIP: Then we will take the second Action, but we do not want to mix the evidence in this Action with the evidence in the other Action.

Charles A. Schneider for defendants (examination in chief).

MR. COOK: I would like to explain the position in regard to that, because it raises a different issue.

HIS LORDSHIP: I understand by your Action you have taken the lead in proving the ownership?

MR. COOK: I have alleged I am the owner of that money.

10 MR. HACKETT: Before we proceed to the other Action let us find out what we are going to do about this one.

HIS LORDSHIP: You will argue your case, and then we will take up the other Action.

We will adjourn the case of The People of the State of New York against The Heirs of the late John M. Phillips for argument, and you will proceed with your case, Mr. Cook.

20 AND FURTHER DEPONENT SAITH NOT.

J. H. KENEHAN,
Official Court Reporter.

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Andrew Zorn for plaintiff (examination in chief).

**E. — EVIDENCE TAKEN OUT OF
ANOTHER CASE BY ORDER OF
HON. MR. JUSTICE MERCIER.**

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DEPOSITION OF ANDREW ZORN, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF.

This evidence was taken in the case No. 110169 of the Superior Court records of the district of Montreal, the Bank of Rockville Centre Trust Co. es-qual. vs. Chase National Bank of the City of New York, and was allowed to be filed in the case herein to form part hereof, in virtue of a judgment of Mr. Justice Mercier of the 9th of February, 1933.

20

On this fourteenth day of October, in the year of Our Lord One thousand nine hundred and thirty-two personally came and appeared, ANDREW ZORN residing at No. 3072 Thirtieth Street, Long Island City, New York, salesman, aged fifty-six years, a witness produced on behalf of the Plaintiff, who, being duly sworn, deposes as follows:

30

MR. O'DONNELL: Before proceeding to the examination of the witness, I would like to file certain authentic documents from the Surrogate's Court of Nassau, County. They are the Letters of Administration of the Estate Francis Phillips, and the Estate John M. Phillips. They are certified under the Seal of the Court, and I would like to file them as exhibits P-5 and P-6; Exhibit P-5 being the Letters Testamentary, the Decree discharging executors, Decree appointing administrators, and Letters of Administration in the Estate of John M. Phillips, under the Seal of the Clerk of the Surrogate's Court of the County of Nassau, in the State of New York, Exhibit P-6 is a Petition for Letters of Administration, Letters of Administration, and Petition for the appointment of an Appraiser in the name of the Estate of Francis Phillips deceased, in the Surrogate's

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Andrew Zorn for plaintiff (examination in chief).

Court of the County of Nassau, in the State of New York, also under the hand and Seal of the Clerk of the Surrogate's Court.

MR. HACKETT: I have not had an opportunity of looking at the documents yet, so I will simply make a formal objection to their production.

10 MR. O'DONNELL: I may say the documents are produced in connection with Paragraph 3 of Plaintiff's Declaration. The Answer made to that in Defendant's Plea is contained in paragraph 2 of the Plea, in which my learned friend says the documents speak for themselves.

EXAMINED BY MR. O'DONNELL, OF COUNSEL FOR PLAINTIFF:

Q.—Where do you live? A.—3072 Thirtieth Street, Long Island City, New York.

20 Q.—Did you know the late John M. Phillips? A.—Yes, I did.

Q.—How long did you know him? A.—Over forty years.

Q.—Where had you lived, and where had Mr. Phillips lived during those forty years? A.—We both lived on the same block, on Academy street, Long Island City.

Q.—I understand at one time you were a member of the Assembly? A.—Yes.

30 Q.—Will you please explain to his Lordship what that office was? A.—It is the lower house in the State of New York.

Q.—How many terms did you serve as an Assembly man. A.—Four terms: elected every year. We have to run every year.

Q.—What years would they be? A.—1909, 1910, 1911 and 1912.

Q.—Did you at any particular time over the forty years you say you knew Mr. Phillips become more closely associated with him than you had been previously? A.—I was always very closely associated with him.

40 Q.—Did you ever have any business deals with Mr. Phillips? A.—I had business dealings with him for over thirty years.

Q.—What was the character and the nature of those business dealings? A.—Before Mr. Phillips got into the contracting business of the kind he was engaged in for the last ten years, he had been in the building business, — building houses, and

Andrew Zorn for plaintiff (examination in chief).

building schools for the City of New York — himself and his brother.

Q.—Did you ever have any connection with Mr. Phillips with regard to political activity? A.—Very much.

Q.—Mr. Phillips was interested in politics? A.—Very much.

10 Q.—In and about Long Island City? A.—Long Island City and the Borough of Queens.

Q.—And you were also? A.—In the same place.

Q.—What was the nature of your business connection with Mr. Phillips? When did you first become connected with him in a business way? A.—I would say about 12 years before he died — 1916 or 1917.

20 Q.—How did that come about? A.—I had been connected in that line of business. I had been a salesman for the Atlas Portland Cement Company, and in that capacity you have to look to contractors to get orders. As Mr. Phillips started out beginning this new enterprise which we started around 1917, I think it was, I knew he would use a large amount of cement, and that brought me into closer contact with him than I had been before.

Q.—You were endeavouring to sell him your cement? A. I was.

Q.—And eventually I understand, Mr. Phillips used large quantities of your cement? A.—Very large.

Q.—Did you have an office or place of business in Long Island City? A.—I did.

30 Q.—Where? A.—49 Jackson avenue.

Q.—Did Mr. Phillips frequent your office from time to time? A.—Every time he was in Long Island City.

40 Q.—Will you please tell the Court what your relations with Mr. Phillips eventually came to be, as to your intimacy with him, and as to your being a confidential man or enjoying his confidence? A.—Prior to 1924—that is from 1917 up to 1924,—this office belonged to my son-in-law, and I put my son-in-law in the insurance business—the bonding business—and of course the office was there for anybody who was in the contracting line who needed a bond or cement — they came to that office. Of course, Mr. Phillips was there at the same time, most of the time, and all those secretaries and cashiers; why, that was my job for Mr. Phillips up to 1924. Mr. Campbell, Mr. Franz, Mr. Curran — the jobs they fulfilled after 1924 were my jobs before that.

Andrew Zorn for plaintiff (examination in chief).

Q.—Before 1924 you helped Mr. Phillips with his business? A.—For about seven or eight years.

Q.—And, after that, those other gentlemen you have named... A.—(Interrupting) The business got larger, and of course we needed more help, and each one was assigned to a different capacity.

10 Q.—What was Mr. Curran's job with Mr. Phillips? A.—Mr. Curran came in later on — around 1926. I believe he came in about the end of 1926. He came in through a political campaign.

Q.—What was his particular work for Mr. Phillips? A. Mr. Phillips had a habit of picking out a favorite candidate every year, and laid great stress on having one elected, and he always went through an extensive campaign.

20 MR. HACKETT: Under what allegation is this evidence being made?

MR. O'DONNELL: Mr. Curran was called to testify.

MR. HACKETT: Mr. Curran has not been called in this case.

MR. O'DONNELL: But there is a consent that the evidence applies.

BY MR. O'DONNELL CONTINUING:

30 Q.—You have a knowledge of the matters in issue in this case? A.—I have.

Q.—Can you tell his Lordship as to any interviews or communications you may have had with Mr. John M. Phillips in or about December, 1927? A.—In 1927 I met him every day, pretty nearly, when he was in town. What you want to know is when he started to talk about the bonds. I was called up on a Saturday night to go out and see him on the Sunday.

BY THE COURT:

40 Q.—In what month, and what year? A.—He called me on a Saturday night, on the telephone.

Q.—When? A.—In 1927.

BY MR. O'DONNELL CONTINUING:

Q.—What month? A.—I think it was after Thanks giving.

Andrew Zorn for plaintiff (examination in chief).

Q.—In 1927? A.—Yes. I could not tell you exactly what Sunday, but it was after the Thanksgiving Holiday.

Q.—And, what transpired as a result of that call? A.—We landed in Freeport around eleven or half past eleven, and we were ushered upstairs.

BY THE COURT:

10 Q.—Were you alone? A.—No: Mr. Campbell and myself.

BY MR. O'DONNELL CONTINUING:

Q.—Was this in the morning, or at night? A.—About eleven or half past eleven in the morning.

We went upstairs. Mr. Phillips was resting in bed. Mr. Cassidy was there. We started to talk about conditions, and what was going on. At the time an investigation was in sight, and, of course, we had a lot of things to talk about.

20 Q.—He was having trouble with the Income Tax people at the time? A.—We had trouble with the State Income Tax people, and the Federal people at the same time.

Q.—And, at Mr. Phillips' request you went over to his place? A.—That happened pretty nearly every Sunday, or sometimes once or twice a week.

Q.—Where was Mr. Phillips living then? A.—In Freeport.

30 Q.—And, where were you living? At the same address as you have given us? A.—Yes.

Q.—How far is Freeport from where you lived? A.—About 25 miles.

Q.—What happened when you went to Freeport? A.—After we got there we were talking about the conditions that existed at the time, and Mr. Phillips said, — he did not say it to me, but he said it in general ...

BY THE COURT:

40 Q.—Did you hear it? A.—I was sitting there. He was addressing himself to Mr. Cassidy.

MR. HACKETT: I make the same objection to this that I have previously made to evidence of this character.

HIS LORDSHIP: It will be taken under reserve of your objection, Mr. Hackett.

Andrew Zorn for plaintiff (examination in chief).

BY THE COURT:

Q.—You were in the room? A.—Yes.

Q.—Yourself, Mr. Cassidy, Mr. Phillips and Mr. Campbell? A.—Yes.

Q.—What did you hear, and what happened? Speak only of your own personal knowledge? A.—After the rest of the conversation, they talked about the bond. The bonds were wrapped up, and Mr. Cassidy went away about half an hour later.

Q.—What kind of bonds? A.—City Bonds.

Q.—New York City bonds? A.—Yes.

BY MR. O'DONNELL CONTINUING:

Q.—Where did the bonds come from? Were they in the room when you got there? A.—They were in some black valise like — a small valise.

Q.—Where was the valise? A.—Underneath the bed.

Q.—Did you see the bonds? A.—I did see the bonds, yes.

Q.—And, then what happened? A.—The wrapped up a bundle, and Cassidy took them away.

Q.—Who went with Cassidy? A.—None of us.

Q.—Who remained there with Mr. Phillips? A.—Mr. Campbell and myself.

Q.—You do not know where Cassidy went? A.—No.

Q.—He left the room with the bonds, or some of them? A.—Yes.

Q.—Did he take all the bonds you saw? A.—No.

Q.—Some remained there? A.—Some remained there.

Q.—Do you know how many bonds were taken away? A. No, I do not.

Q.—Was it a small bundle or a large bundle? A.—A pretty fair size bundle.

Q.—Do you know the denominations of the bonds? A.—They were all \$1000 bonds.

Q.—And, they were wrapped up there, and taken away by Dr. Cassidy? A.—Yes.

Q.—What did you do after Dr. Cassidy left the room? A. We had luncheon. We left about three o'clock or half past three.

Q.—Whom do you mean by "we"? A.—Mr. Campbell, Mr. Phillips and myself.

BY THE COURT:

Q.—Cassidy was gone? A.—Yes, your Lordship.

Andrew Zorn for plaintiff (examination in chief).

BY MR. O'DONNELL CONTINUING:

Q.—Did you have any conversation with Mr. Phillips later on in the month? A.—We had conversations pretty nearly every day.

Q.—Was there ever any discussion between you and Phillips as to a trip to Montreal, or to Canada, about that time? A.
10 Yes, there was.

Q.—Will you tell His Lordship what it was?

MR. HACKETT: It is understood the same objection stands.

HIS LORDSHIP: Yes.

WITNESS: I had been to Montreal with Mr. Phillips about a dozen times. Every time he came here he wanted somebody to come along with him, and I had been with him about a
20 dozen times in the last ten or fifteen years. There was not a year that we did not make one or two trips up here. Sometimes in the summer and sometimes in the winter.

This particular time he told me Mr. Cassidy was going with him. I said "If Cassidy goes along, leave me out, on account of business conditions. It is hard to get business in the last two or three years, and the company would like me to be around every day and talk it over with them." I did not feel like going, and I did not go along.

30 BY THE COURT:

Q.—You did not accompany Mr. John M. Phillips and Mr. Cassidy to Montreal? A.—No.

BY MR. O'DONNELL CONTINUING:

Q.—Mr. Curran stated, at page 164 of his deposition —, speaking of yourself — "He was with Mr. Phillips at all times. As I understand it he was a confident of Mr. Phillips." Is that
40 a fair statement? A.—If Mr. Curran says so.

Q.—As a matter of fact, were you or were you not very friendly and very confidential with Mr. Phillips? A.—Absolutely. I stated that before.

BY THE COURT:

Q.—Of course you understand if you were really a confident of Mr. John M. Phillips you must say so. A.—I was.

Andrew Zorn for plaintiff (examination in chief).

BY MR. O'DONNELL CONTINUING:

Q.—Did Mr. Phillips ever discuss personal business affairs with you? A.—Many a time. All the time.

Q.—He trusted you with his confidence? A.—Yes.

Q.—Did you ever have any interviews with Phillips after his return from Florida? A.—I had interviews — that is talks
10 over the telephone with him — while he was in Florida, every other day. His doctor, who was connected with the operation and who was the leading spirit in the operation in Florida, was a particular friend of mine. He was Mr. Phillips private physician. He could not go to Florida. Every day he called my house, and the Doctor was there, and I answered him on the telephone.

Q.—Did you see Mr. Phillips after his return from Florida? A.—I did:

Q.—Did you see him while he was in Atlantic City before he died? He died on July 3rd, 1928. A.—I did.

Q.—Did you see him a short time before he died? A.—
20 I saw him ten days before he died.

Q.—Where did you see him? A.—In Atlantic City.

Q.—Will you tell his Lordship what transpired on that occasion between you and Mr. Phillips? A.—About ten days before he died. I got a phone call from him in the morning. He said “Can you take a run down? I want to see you”. I said “I cannot do it today, but I will be down tomorrow.” He said
30 “Bring the wife with you, and give her a day’s outing.” I started off in the morning at nine o’clock, and got down there in the afternoon. I stayed there until the next morning.

BY MR. COOK:

Q.—Did you stay at Mr. Phillips’ country house? A.—
In his cottage, yes.

We sat down together, and the women went out for a walk on the board walk, and we started to talk about conditions; how it looked around the County, as to politics and business conditions. He asked me what I thought about conditions, and I said
40 “Well, it does not look so very healthy just at the present time. There is a lien and restriction from the Government on every contract we are connected with, and we cannot get any money until those liens are off.”

Andrew Zorn for plaintiff (examination in chief).

BY MR. O'DONNELL CONTINUING :

Q.—Those were Income Tax liens? A.—They were sent out from the Income Tax people. There was a lien on any property that would belong or had anything to do with Phillips.

Q.—And, the Government had tied up . . .

10 MR. HACKETT: I object to any evidence of liens unless they are produced. This is not the best evidence.

WITNESS: I can bring along the letter they sent me, if you want to see it.

MR. HACKETT: I object to any testimony as to liens and ask that it be stricken from the record.

20 HIS LORDSHIP: Let us confine ourselves to what is pertinent to the case. All those conversations have no bearing on the case.

MR. HACKETT: But my friend has made the witness say there was a seizure on Mr. Phillips' property, and I ask that that evidence be stricken from the Record, and that the best evidence be furnished.

MR. O'DONNELL: It is simply preliminary. It goes to the very root of the money that is here, and as far as the plaintiff is concerned, is the explanation of the money being here.

30 I simply want to elicit from the witness what the conditions were about the time he saw Mr. Phillips in Atlantic City.

BY MR. O'DONNELL CONTINUING :

Q.—Was there any discussion with Mr. Phillips as to any moneys which might be in Canada?

MR. HACKETT: I object to the form of the question as leading and suggestive.

40 WITNESS: Yes.

BY MR. O'DONNELL CONTINUING :

Q.—What was the remainder of the conversation you had with Mr. Phillips at that time in Atlantic City? A.—It wound up by him saying: "Just as soon as I will be in shape to go to Montreal we will have some money, so if anything should come

Andrew Zorn for plaintiff (examination in chief).

along in our line of business that we would be able to finance it.”

Q.—And, that was all that transpired at that time? A.—Yes.

Q.—Did you ever see Mr. Phillips alive after that? A.—No.

10 Q.—When did you next see him? A.—I saw him about five hours after he died.

Q.—Where was his body? A.—In the same place.

Q.—Atlantic City? A.—Yes.

Q.—You went to Atlantic City as soon as you heard of his death? A.—Yes.

Q.—Whom did you see there at that time? A.—I saw Frankie Phillips.

Q.—That is Francis Phillips? A.—Yes.

Q.—The son of John M. Phillips. A.—Yes.

20 Q.—Did you have any interview or conversation with him? A.—Very short.

Q.—Please tell his Lordship what it was? A.—I asked Francis Phillips — I said “How are you fixed for money? Have you any money around?”

MR. HACKETT: Under what item in the pleadings is this conversation with Mr. Francis Phillips being put into the record?

30 MR. O'DONNELL: My friend made the statement this morning to the effect that he would object to conversations which were not against interest. I am asking this witness to tell your Lordship what was said between my friend's client and this gentleman. There is nothing unfair in that.

HIS LORDSHIP: I will allow the question.

MR. HACKETT: The point is, it is not alleged.

40 MR. O'DONNELL: It is not necessary that every conversation and every detail should be alleged.

BY THE COURT:

Q.—About whom were you speaking in your answer? A.—Francis Phillips.

Q.—Under reserve of the objection made by counsel, what transpired between Francis Phillips and you then? A.—He

Andrew Zorn for plaintiff (examination in chief).

said "Andy I have not any money here, but after the funeral is over you know I have money in my name, we have money in our name — and I can go and get it after the funeral."

Q.—Did you understand then that he was meaning he would fall heir to the estate of his father, and that would procure him some money? A.—I do not know what he meant, but that is what he told me. I knew the money was there, and he
10 knew I knew it.

BY MR. O'DONNELL CONTINUING :

Q.—And, that money was where? A.—Up here in Montreal.

Q.—Whose money was that? A.—Phillips' money.

Q.—Which Phillips? A.—John M. Phillips.

MR. HACKETT: I object to verbal proof of the ownership of this money, in a matter exceeding \$50.
20

HIS LORDSHIP: I do not know why you want to make any verbal evidence of the ownership. You have alleged in your Declaration that you were the heirs, and you have produced the Will. That is a good title. It is a proof according to Article 583 of the Civil Code. Why go further and try to disprove your Will?

It must be taken for granted that according to the Will if Francis Phillips was the heir of his father, any money that was the property of the Estate of John M. Phillips would, in part at least, become the property to Francis Phillips. Of course
30 if you want to abandon your title, which you urge in your Declaration under the Will, and if you open the door to verbal evidence on the question of ownership, then I will tell Mr. Hackett that the door is open, and invite him to go in.

MR. O'DONNELL: We have alleged that we are the owners of said money. Mr. Hackett admits that at one time we were the owners.

HIS LORDSHIP: As I understand the case up to now, I think you are trying to show that the \$312,000 deposited in
40 Montreal was the property of John M. Phillips.

MR. O'DONNELL: That is the point exactly, your Lordship. We allege we own the property.

Andrew Zorn for plaintiff (cross-examination).

HIS LORDSHIP: I will allow you to prove that the money deposited with the Montreal Safe Deposit Company was the property of John M. Phillips.

MR. O'DONNELL: I will withdraw the question.

10 CROSS EXAMINED BY MR. HACKETT, K. C. OF
COUNSEL FOR DEFENDANT:

Q.—Where were you born? A.—In Germany.

Q.—Where in Germany? A.—Wurtzburg, in the southern part of Germany.

Q.—What is the name of the place? A.—Wurtzburg.

Q.—How old were you when you came to this country?
A.—About eight or nine.

20 Q.—When did you learn how to talk English? A.—Just as soon as I got here.

MR. HACKETT: It is understood that my cross-examination is being made under reserve of my objections.

BY MR. HACKETT CONTINUING:

Q.—You have told us that you went to Atlantic City immediately after John M. Phillips died? A.—Yes.

Q.—When was that? A.—That was on the 3rd day of July, 1928.

30 Q.—What time did he die? A.—I got notice at the race track.

Q.—That is not what I asked you. What time did he die? A.—I do not know, I was not there.

Q.—That is strange, because you said you arrived five hours after his death? A.—That is what they told me. That he was dead five hours when I got there.

Q.—You have been testifying as to what was told you; not what you know? A.—I could not have been at the race track and at his bedside.

40 Q.—What time did you arrive in Atlantic City? A.—About five o'clock.

Q.—Did you go immediately to the cottage? A.—Immediately.

Q.—Whom did you see there? A.—I saw Frankie Phillips, and Tommy Grimes.

Andrew Zorn for plaintiff (cross-examination).

Q.—Did you see any one else? A.—Not at that time, when I got there. Yes, Mr. Franz was along with me. He came along with me down there.

Q.—You did not see any one else? A.—Not at that time.

Q.—You did not see Mrs. Francis Phillips? A.—Later on. Which Mrs. Phillips?

10 COUNSEL: Mrs. Francis Phillips?

A.—No.

Q.—You did not see her? A.—No.

Q.—You know Mrs. John M. Phillips was not in Atlantic City when her husband died? A.—That is right.

Q.—She was not there? A.—No.

Q.—And you know that Mr. Phillips had not seen his wife for some time before his death? A.—I do not know.

20 Q.—But you told us a few moments ago that you rather prided yourself on the great confidence Mr. Phillips reposed in you? A.—Not in his private affairs.

Q.—All he confided in you, of course, was the ownership of the money in Montreal. That is all he told you about? A.—No.

Q.—Do you mean that is all he told you, or that he told you something else? A.—He told me a lot more.

Q.—Were you or were you not on intimate and confident terms with John M. Phillips? A.—I was.

30 Q.—Were you or were you not an intimate and confidant of John M. Phillips? A.—I was.

Q.—Did you or did you not know that there was trouble between John M. Phillips and his wife, and that they had not seen each other for a period of time before his death? A.—No, I did not.

Q.—In any event, he was living in Atlantic City and his wife was living somewhere else? A.—I believe his wife was down there many a time.

40 BY THE COURT:

Q.—There was a Mrs. Phillips there when you arrived? Which one was it?

MR. O'DONNELL: The present Mrs. Paulsen, Mrs. Francis Phillips at the time.

HIS LORDSHIP: The wife of the boy?

Andrew Zorn for plaintiff (cross-examination).

MR. O'DONNELL: Yes, your Lordship.

HIS LORDSHIP: Mrs. John M. Phillips was not there?

MR. HACKETT: No, your Lordship.

BY MR. HACKETT CONTINUING:

10 Q.—To whom did you speak on your arrival, apart from Mr. Francis Phillips? A.—There were only two people there.

Q.—Grimes and Francis Phillips? A.—Yes.

Q.—Was Grimes a friend of Mr. Phillips? A.—Well, I do not know.

Q.—You never saw him with Mr. Phillips in your life? A.—Yes, I did.

Q.—Was he or was he not a friend of Mr. Phillips? A.—I do not know if he was a friend or not.

20 Q.—Was he with him a great deal? A.—For the last two years, yes.

Q.—And, before that? A.—Not so much.

Q.—But he was with him constantly towards the end of his life, was he not? A.—Not constantly.

Q.—Do you know how long Grimes had been in Atlantic City? A.—The last time he was there he was there quite a little while. I could not tell you how long.

Q.—How many weeks? A.—May be four weeks.

30 Q.—Was he in Florida with Mr. Phillips? A.—I think he was down there for a little while.

Q.—When was the last time you came to Montreal with Mr. Phillips?

MR. PHILLIPS: The last time I was here with Mr. Phillips?

COUNSEL: Yes.

A.—About two years ago.

40 Q.—Where did you stay? At what Hotel? A.—At the Mount Royal Hotel.

Q.—How many days were you here? A.—A couple of days.

Q.—Did you register in your own name? A.—No.

Q.—Why not? A.—Mr. Phillips registered me.

Q.—How did he register you? A.—I do not know.

Q.—In what month was that? A.—It was in the Fall.

Andrew Zorn for plaintiff (cross-examination).

Q.—Of what year? A.—About four years ago. Two years before he died.

Q.—That would be six years ago? A.—That is all right.

Q.—You say you were the intimate friend and confidant of Mr. Phillips, and know about his personal affairs? A.—We never discussed personal affairs.

10 Q.—But, he unbosomed all his business affairs to you?
A.—Absolutely.

Q.—Mr. Phillips appears to have made some reference in your presence to moneys in Montreal? A.—He did.

Q.—Where else did he have that money? Of course he did not tell you? A.—I always knew how much money he had in the bank balance. He told me that. I believe he had some money somewhere.

Q.—Where? A.—In Jersey, I believe.

Q.—Where? A.—I do not know.

20 Q.—And, that is all you know? Apparently all you know is what Mr. Campbell knows, and all Mr. Campbell knows is what you know — and it is all centered on the fact that there was money in Montreal. Is that what you wish us to understand?
A.—Oh no.

Q.—Would you mind telling me about the conversation you had with Francis Phillips in Atlantic City? What did you say to him about money? A.—You know what you say when you come in after somebody dies.

30 Q.—But I am not talking about somebody dying. I am talking to you about money. A.—I said “Frankie, how are you fixed? Have you got money?” He said “I have not got any money just now, but you know I can get it.”

Q.—Was that all he said? A.—I said “Can I help you out? Do you need any?” And he said “No Andy”.

Q.—And that was all he said to you on that money question? A.—You do not talk so much after an accident like that.

40 Q.—But, conceding you do not talk so much, when trouble and grief come along, I want to know if what you have stated is all that you said and all that Francis Phillips said with regard to money matters? A.—That is right.

Q.—And you pledge your oath to that? A.—I do.

Q.—You did not say a word more, or a word less? A.—

No.

Q.—You are sure of that? A.—Pretty near.

Andrew Zorn for plaintiff (cross-examination).

Q.—And, anything you may have said to the contrary on any other occasion disappears, and what you have said just now stands final and ultimate. Is that correct? A.—That is correct.

Q.—And you cannot be budged from that? A.—No.

Q.—And, you are absolutely positive of it? A.—Absolutely.

10 Q.—You have told me that Mr. Phillips telephoned you one day — which happened to be a Sunday (and all the important transactions in this case were performed on a Sunday) and invited you to go to Atlantic City. Is that correct? A.—That was not on a Sunday.

Q.—How long was it before Mr. Phillips died? A.—About ten days.

Q.—We are in agreement on the fact that Mr. Phillips died on July 3rd, 1928? A.—Yes.

20 Q.—Ten days before that would be, I believe, June 24th? A.—It might have been a couple of days earlier, or later, I am not so sure about that.

Q.—This morning with Mr. Campbell, we had Mr. Lincoln's birthday and George Washington's birthday, and as it happened you went on St. Jean Baptiste's birthday (he is the patron saint of the Province of Quebec) to visit Mr. Phillips in Atlantic City. You said you took "the wife". Was it your wife, or somebody else's wife? Can you answer? A.—Of course I can. I am surprised at the question.

30 Q.—Was it your wife or somebody else's wife? A.—Absolutely my wife.

Q.—And you and your wife went to Mr. Phillips' home in Atlantic City? A.—Yes.

Q.—How long did you stay? A.—Over night.

Q.—And you went on the 23rd, 24th, or the 25th of June? A.—That is right.

Q.—Who was there when you were there? A.—I believe Frankie was there.

Q.—Who else was there? A.—I do not know of anybody else being there.

40 Q.—Was Mr. Phillips ill at that time? A.—No, he was not

Q.—Do you want us to believe Mr. Phillips was living alone at that time? A.—He had nurses and different people.

Q.—One of the difficulties with your testimony and why it is so unassailable, is that Frankie Phillips is dead, and he cannot contradict you: and John M. Phillips is dead, and he can-

Andrew Zorn for plaintiff (cross-examination).

not contradict you. Now, can you not find some living person who was there on the day you went there and spent some time with Mr. Phillips? A.—No, I do not think I can.

Q.—But you are positive you went? A.—Yes.

Q.—With your wife? A.—Yes.

10 Q.—And you are just as sure of that as you are of the other testimony you have given? A.—Yes.

Q.—Were did you spent the night when you were at Mr. Phillips' home? A.—At the cottage.

Q.—How many persons spent the night in the cottage? The night you and Mrs. Zorn were there? A.—I do not know if anybody was there ... not that night.

Q.—Do you mean you and your wife retired at six o'clock, and did not get up until late the next morning? A.—No.

20 Q.—Do you seriously want this Court to understand that you were invited to the home of your bosom friend and you cannot say whether there was anybody else who spent the night in the house or not? A.—There were nurses there I do not count them for any visitors.

Q.—How many nurses were there? A.—There was a man nurse there.

Q.—What was his name? A.—I do not know his name.

Q.—Were there any other nurses there? A.—Yes, there was a woman nurse there.

Q.—Was there a doctor who came in? Be careful now, A.—I am not certain about doctors.

30 Q.—Was there a doctor? A.—I do not know, He may have been there when I was out.

Q.—What time did you say you reached there? A.—On the first train. Around two or three o'clock.

Q.—And what time did you leave? A.—In the morning. The first train out.

Q.—And, you cannot say if there was anybody in the house other than a male nurse during the night? A.—Mr. Phillips and I were there.

40 Q.—And, nobody else? A.—I do not know if anybody else was there.

Q.—How many bedrooms were there in that house? A.—I think there were two.

Q.—Will you swear there were only two? A.—That is all I saw.

Q.—You and your wife occupied one, and Mr. Phillips occupied another? A.—Or Mr. Phillips and I occupied one.

Andrew Zorn for plaintiff (cross-examination).

Q.—You and Mr. Phillips slept in the same bed? A.—I think so.

Q.—Let us not think about those things. Did you or did you not sleep with Mr. Phillips that night? A.—I slept with Mr. Phillips many a time. I do not know if I did it that night or not, but I think I did.

10 Q.—I am not concerned with the vagaries of your sleeping partners. What I want to know is did you sleep with Mr. Phillips on this particular night in Atlantic City? A.—I did.

Q.—You swear to that? A.—I swear to that, yes.

Q.—And Mrs. Zorn occupied the only other bedroom in the house? A.—Yes.

Q.—Did you sleep with Mr. Phillips because he was ill and required your attention? A.—No. Because we went to bed very late and the women went to sleep early. Helen was there, I think, I know there were two women.

20 Q.—Of course there are two Helens, You are referring to the Helen who is not here — the daughter — not the daughter-in-law? A.—I did not know the daughter-in-law.

Q.—But, you have talked about her here?

WITNESS: About who?

COUNSEL: Mrs. Francis Phillips.

A.—I only saw her once in my life.

30 Q.—But, you told us a little while ago you saw her in Atlantic City? A.—That was the only time I saw her. I would not know her now.

Q.—So, you cannot say whether the Helen who was in the house was Helen Paulsen of today, the widow of Frankie Phillips, or Helen Phillips the child of John M. Phillips by his second wife? You cannot say which one of these it was? A.—No. I know it could not be Francis' wife, because I would not know her.

40 Q.—But, you told us a little while ago you did meet her in Atlantic City on that occasion?

WITNESS: Did I say that?

COUNSEL: Yes. Do you wish to take it back?

A.—No.

Q.—Then what do you want to take back? Did you or did you not see Mrs. Francis Phillips? A.—I only saw her once.

Andrew Zorn for plaintiff (cross-examination).

Q.—But, you have sworn you saw her in Atlantic City?

A.—I think it was there.

Q.—And, it was on the occasion of your first visit, on St. Jean Baptiste Day?

MR. O'DONNELL: The witness does not know St. Jean Baptiste Day.

10

BY MR. HACKETT CONTINUING:

Q.—Then on June 24th, 1928, or a day before, or a day after, you went to Atlantic City? A.—Yes.

Q.—And, you have testified that there were women in the house the night you slept there with Mr. Phillips? A.—I think Helen Phillips was there.

BY MR. O'DONNELL:

20

Q.—Which Helen Phillips? A.—Mr. Phillips' daughter.

BY MR. HACKETT CONTINUING:

Q.—You have told us you saw John M. Phillips' daughter-in-law, Francis' wife, there? A.—I do not think I said that.

Q.—Is it your memory that is not good? A.—My memory is all right.

MR. COOK: He said he met Francis Phillips' wife later after John M. Phillips' death.

30

BY THE COURT:

Q.—On what occasion do you think Francis Phillips' wife was there? Was it on the visit you made ten days before the death of John M. Phillips, or was it on the visit you made when you were told it was five hours after the death of John M. Phillips? A.—That was the time.

Q.—So, it was on July 3rd, 1928? A.—That is right.

40

BY MR. HACKETT CONTINUING:

Q.—On July 3rd, did you see Helen Phillips, the sister of Frankie? A.—I believe she landed later on in the day — later in the evening.

Q.—Landed where? A.—At Atlantic City.

Q.—From where? A.—From Long Island, I believe.

Q.—Are you sure of that? A.—It may have been the next day I am not sure.

Andrew Zorn for plaintiff (cross-examination).

Q.—Are you sure you did not see Mrs. Francis Phillips, the wife of Francis Phillips, on your visit of the 23rd, 24th or 25th of June? A.—No.

Q.—You are not sure? A.—I did not see her.

BY THE COURT:

10 not. Q.—You are sure you did not see her? A.—No, I did

BY MR. HACKETT CONTINUING:

Q.—Who were the women to whom you referred? The women who slept in the house the night you slept with John M. Phillips? A.—I guess it was Helen Phillips.

Q.—Who was the other one? A.—That is all I know.

20 Absolutely not. Q.—Of course you are not forgetting your wife? A.—

Q.—Is it your testimony that Helen Phillips, the sister of Francis Phillips, slept with Mrs. Zorn that night? A.—I believe so.

Q.—Who else was in the house? A.—We had people coming in and out, from the Hotel — friends of Mr. Phillips.

Q.—Try to remember some live ones. A.—I could not bring my friends from Long Island City to Atlantic City and bring them in there.

30 Q.—But you say there were people who came in to the Phillips' cottage from the Hotel that evening. I am now asking you to name them? A.—I did not know them.

Q.—So you want me to understand that you were with your bosom friend in his home, and people came into the home and you did not meet them? A.—I cannot tell you who was there. If I knew them I would tell you who they were.

40 Q.—Then, you want the Court to understand that on a friendly visit to Mr. Phillips, people came in from the hotel to see him, in his home, and you were not introduced to them and did not meet them? A.—Mine was not a friendly visit. Mine was a business visit.

Q.—You told us you went to Mr. Phillips' home on the 23rd, 24th or 25th of June, and you went again on the 3rd of July? A.—Yes.

Q.—Where is this home situated in Atlantic City? A.—About a block from the Ambassador Hotel, it belongs to the Ambassador.

Andrew Zorn for plaintiff (cross-examination).

Q.—Is it part of the Ambassador? A.—I believe the same people who own the hotel own the cottages.

Q.—I wanted you to describe the bed in which you and Mr. Phillips slept together. A.—Just an ordinary double bed.

Q.—Was it wood, or iron, or steel, or what? A.—That I do not know.

10 Q.—How was the house, or cottage, described or known?
A.—Santa Barbara, I believe.

Q.—And, you say there were but two bedrooms in that cottage? A.—Well, I did not look around. I was mostly in the reception room.

Q.—How many rooms were there? A.—You asked me before how many bedrooms there were, and I said two.

Q.—What other rooms were there? A.—There was one reception room.

20 Q.—You have told us that you were with Mr. Phillips for a number of years, and that when his business assumed a certain volume you were replaced by a number of individuals. Is that correct? A.—Yes.

Q.—With the growth of the business one man could no longer perform all the duties, and they were subdivided and assumed by several others. Is that correct? A.—Yes.

Q.—Do you wish the Court to understand that Mr. Phillips' business had increased in volume, and the revenues from it had likewise increased? A.—Yes, sir.

30 Q.—You considered Mr. Phillips a wealthy man?

WITNESS: When he died, or when he was alive?

COUNSEL: When he was alive.

WITNESS: What year?

COUNSEL: I was speaking of those years to which you and I referred; after the business had grown to such dimensions that a number of individuals replaced you.

40 MR. O'DONNELL: What years would that be?

WITNESS: Which year?

BY MR. HACKETT, CONTINUING:

Q.—You told His Lordship that when the business reached a certain volume, about 1924, that other persons took over your duties. I am now asking you if at that time, and after-

Andrew Zorn for plaintiff (cross-examination).

wards, you considered John M. Phillips as a wealthy man?
A.—Of course I did not count it, but he was better off than he was before.

Q.—I want to know — and you must remember you have told us how intimate you were, not in personal matters, but in business matters — what was his wealth, in your opinion, at that time?

10

MR. O'DONNELL: Is this relevant?

MR. HACKETT: Yes, it is very relevant.

MR. O'DONNELL: It does not arise out of the examination in chief of the witness. Mr. Zorn expressed no opinion whatever as to the value of Mr. Phillips' estate, or his wealth, and I submit the question is entirely illegal, and anything this witness would say would, in any event, be only hearsay.

20

MR. HACKETT: I am endeavoring to cross examine a gentleman who has a very glib tongue, and who is telling us what dead man have said, and I think I am entitled to some latitude.

MR. O'DONNELL: I do not think my learned friend is treating the witness as he should be treated. Those reflections my friend is making from time to time are entirely uncalled for. There is no warrant for the statement that the witness has a very glib tongue.

30

HIS LORDSHIP: What bearing has John M. Phillips' wealth on the case?

MR. HACKETT: If your Lordship forces me to disclose the point of my cross examination, its effectiveness disappears entirely.

40

MR. O'DONNELL: I submit my friend must remain within the limits of what was dealt with in the examination in chief. There was no question about the wealth of Mr. Phillips, neither before nor after his death.

MR. HACKETT: But the witness has taken us into a bedroom filled with bonds, and now my friend wants to cut out my cross examination. It is preposterous.

Andrew Zorn for plaintiff (cross-examination).

HIS LORDSHIP: You may cross examine him on the bonds, but you cannot make an investigation into the wealth of Mr. Phillips.

MR. HACKETT: But, in dealing with a witness of this kind...

10 MR. O'DONNELL: Again we have my friend making reflections. We have him saying "A witness of this kind". He has already said "A witness with a glib tongue", and so on. I do not think the witness has done or said anything to deserve those remarks. All this is appearing in the Record.

MR. HACKETT: It strikes me that I would be in a very peculiar position if I have to follow the line indicated by opposing Counsel in my cross examination, particularly in a deposition which so far as its worth goes rests exclusively upon the
20 assertion of the witness of what two dead men have said.

HIS LORDSHIP: Your cross examination, of course, cannot go beyond the examination in chief, except if you want to repudiate the testimony of the witness, in which event you may attack his credibility.

As to the question put, there was nothing in the examination in chief of the witness in regard to the wealth of John M. Phillips, and that subject is not in question in this case. The only question before me is the question of the ownership of the
30 money deposited with the Montreal Safe Deposit Company.

I think your question is illegal, Mr. Hackett, and I maintain the objection.

BY MR. HACKETT, CONTINUING:

Q.—You have been telling us of the great intimacy which existed between you and Mr. Phillips. You can probably tell us how many bonds were in Mr. Phillips' bedroom on this Sabbath morning you and Mr. Campbell called upon him at Freeport?
40 A.—I could not tell you. I did not count them.

MR. O'DONNELL: He has already said that.

HIS LORDSHIP: You should not interfere with the cross examination, Mr. O'Donnell.

Andrew Zorn for plaintiff (cross-examination).

BY MR. HACKETT, CONTINUING:

Q.—I would draw your attention, Mr. Zorn, to the fact that you were very careful to explain to the Court that only a portion of the bonds were taken away by Dr. Cassidy. You were also able to tell the denomination of the bonds. Surely your acute mind and alert eye must have enabled you to form some opinion
10 as to the value of the remainder of the bonds in the room after Dr. Cassidy left.

HIS LORDSHIP: The witness has said they were New York City bonds, and were of the denomination of \$1000. He did not say how many bonds were there.

BY THE COURT:

Q.—Can you say the number of bonds that were handed to Dr. Cassidy? A.—I cannot, your Honor.
20

Q.—Not even approximately? Was it a large bundle? A. I handled City bonds many a time.

BY MR. HACKETT:

Q.—For whom? A.—For contractors.

Q.—So, you are familiar with the City bonds? A.—I am.

Q.—And, from this familiarity (which I hope did not breed contempt) you were able to tell, were you not, by glancing at the pile of bonds how many were in it? A.—Yes, you could
30 — \$200,000 or \$300,000.

Q.—Left? A.—I do not know what was left. I did not look into the suitcase to see what was left.

BY THE COURT:

Q.—Was it a very thick bundle? A.—It was about 10 or 12 inches high.

Q.—What was the size of it? A.—You know, the regular size.

Q.—Rectangular? A.—Yes.
40

BY MR. O'DONNELL:

Q.—Longer one way than the other? A.—Yes.

BY THE COURT:

Q.—What was the length, and what was the width? A. That would depend on how they were laid.

Andrew Zorn for plaintiff (cross-examination).

Q.—They were flat? A.—Yes.

Q.—About what was their length? A.—About 12 to 15 inches.

Q.—And, the width? A.—About 10 or 12 inches high. The width was about 8 inches.

Q.—Is that the size of the New York City bonds? A.—The same.

10 Q.—That was the size? A.—Yes.

BY MR. HACKETT, CONTINUING:

Q.—You are referring to the number of bonds that were left after Mr. Cassidy had gone? A.—No, I was not.

Q.—Then, what were you referring to? A.—I was referring to what was packed up to be taken away.

Q.—I would like you to forget for the moment what was taken away, and please tell us the number of bonds, and the face value of the bonds, that were left? A.—That I do not know.

20 Q.—You have not the remotest idea?

MR. COOK: I submit that is not a proper way of cross examining a witness. Mr. Zorn has already answered this question at least half a dozen times.

BY THE COURT:

Q.—Are those bonds in many denomination? A.—There are \$100 bonds, and \$1000 bonds.

30 BY MR. HACKETT, CONTINUING:

Q.—And, those were all \$1000 bonds? A.—Yes.

Q.—Although you told the Court that when Dr. Cassidy left he only took a portion of the bonds, you wish the Court to understand now that you can form no appreciation of the number that were left behind? A.—No.

Q.—Or, their face value? A.—No.

Q.—Again, from this intimacy which existed between you and Mr. John M. Phillips do you know of any other moneys or bonds that he had elsewhere than in the bedroom that day? A. No.

40 Q.—You know nothing at all of it? A.—No.

MR. COOK: I do not want to suggest anything to the witness. We are discussing the bonds that were in Mr. Phillips' room, and now my friend puts the question: "Do you know any-

Andrew Zorn for plaintiff (cross-examination).

thing about other money or bonds". The witness has bonds in his mind, and he says: "No"; but he must know, and does know, about other moneys that Phillips had, because he was Phillips' confidential man.

10 MR. HACKETT: That is just what I am trying to impress upon him, and the only thing he can remember is the money in Montreal.

MR. COOK: That is absolutely improper.

BY MR. HACKETT, CONTINUING:

20 Q.—It has just been repeated to us on very high authority that you were the confidential man of Mr. Phillips, and I ask you to say, out of the wealth of that confidence, whether in December 1927, and January, 1928, you know of other bonds or other moneys which belonged to Phillips, apart from the bonds that were in his room at that time? A.—I do not know.

Q.—So, although you were the confidential man of Mr. Phillips he did not confide in you about his moneys? A.—Yes, he did.

Q.—But, you did not know where he kept his money? A. Bonds were a second consideration as far as I was concerned.

Q.—What was the first? A.—How much money we had in the Bank so that we could do business. I knew that.

30 Q.—How much money did you have in the Bank? A.— Sometimes we had \$25. and sometimes we had \$250,000.

Q.—Can you now come back to my original question, and tell me the approximate wealth of Mr. Phillips at that time?

MR. O'DONNELL: Same objection.

WITNESS: I cannot.

HIS LORDSHIP: Was this witness heard before the Commissioner in New York?

40 MR. O'DONNELL: Yes, your Lordship, he was called by the Plaintiff in the other case, but not on this point.

BY MR. HACKETT, CONTINUING:

Q.—On the day John M. Phillips died, July 3rd, 1928, is it to your knowledge that Francis Phillips had on deposit in the Bankers Trust Company at Atlantic City between \$25,000 and \$30,000?

Andrew Zorn for plaintiff (cross-examination).

MR. O'DONNELL: I object to this as irrelevant, Francis Phillips might have had ten other bank accounts, or he might have had no bank accounts. Whether he had or not is absolutely irrelevant to this case.

HIS LORDSHIP: I do not think that is a relevant question, Mr. Hackett, and I am disposed to maintain the objection.

10 MR. HACKETT: I would ask your Lordship to bear in mind that the witness told us he went to Francis Phillips and said to him: "How are you fixed for money?" and the answer given by Francis Phillips goes into the Record. I cannot imagine a question more relevant than the one I have asked.

HIS LORDSHIP: And Francis Phillips answered he had no money, but that he would have some.

20 The witness simply reports the answer of Francis Phillips, that he had no money.

MR. HACKETT: And surely I am entitled to establish the improbability of that answer, by asking him if he knows the boy at that time had between \$25,000 and \$30,000. I want to prove he is not telling the truth.

MR. O'DONNELL: Or, that Francis Phillips may not have been telling the truth.

30 HIS LORDSHIP: You are trying to prove that Francis Phillips lied to him?

MR. HACKETT: Or, that he is lying to the Court. It is my duty to cross examine the witness, and I submit I have the right to do it.

40 HIS LORDSHIP: That is just the reason why I asked you to state why your question should be allowed. If I allow the question, the answer will be taken, but, prima facie, it will not disprove the statement of the witness. It will not disprove the truth of the statement that Francis Phillips said he had no money. It would prove only that Francis Phillips may not have told the truth.

Seeing the reason given by Counsel for the Defence, I allow the question under reserve of the objection.

WITNESS: I answered yes before.

Andrew Zorn for plaintiff (cross-examination).

BY THE COURT:

Q.—What is your answer? A.—Yes.

Q.—Where had he the money? A.—That I do not know.

Q.—What was the amount? A.—Around \$25,000, or \$30,000. His father told me that himself.

10 Q.—You have stated that you met Francis Phillips, and that he told you he had no money. At the time he made that statement to you did you know he had no money but that he would have some later on after the settlement of the Estate? Did you know then that he had money, and, if so, why did you not remind him that his answer was not right when he said he had no money, because you knew then that he had some money in some other place? A.—His father told me that he had put that money in trust for him.

20 Q.—But, you are not answering my question. Why did you not tell Francis Phillips that he was not saying the truth when he said he had no money, when you were aware (if you were aware) that he had money somewhere else. Did you take it for granted that he had no money at all at the time, according to what he said; or did you prefer not to draw his attention to the fact that he had some money some place else, to your knowledge? Do you understand my question? A.—I am entitled to an explanation on that.

30 Q.—Give the explanation. A.—His father told me he put that money in trust for him. I felt that this money could not be got without his father's signature, if the money was in trust for him. That is what the father told me — that he had opened a trust account for Frankie, around Atlantic City some place — I do not know exactly where. I felt he could not get the money while his father was dead, and I thought he might need money. I felt he could not get the money until it was arranged by the Surrogate, and so on.

BY MR. O'DONNELL:

40 Q.—The Surrogate is the Court? A.—Yes.

BY MR. HACKETT, CONTINUING:

Q.—You told us that you arrived in the United States when you were eight or ten years of age? A.—Yes.

Q.—And, you are now fifty five years of age? A.—Fifty six.

Q.—And, you have lived in the United States from the time of your arrival until now? A.—Yes.

Andrew Zorn for plaintiff (cross-examination).

Q.—You are aware of the requirements of the Income Tax Act? A.—I am.

Q.—Do you know that returns are made under oath? A. I do.

Q.—Were you convicted of an offence under the Income Tax Act? A.—I would not say convicted.

10 Q.—Did you plead guilty to a charge, and were you sentenced on November 21st, 1928, to pay a fine of \$2000, and stand committed to be imprisoned for one year? A.—That was done under an agreement.

Q.—In any event, you admit that you pleaded guilty to an offence, and paid a fine of \$2000? A.—Yes.

Q.—And, you were sentenced to one year in jail? A.—Two years, I believe.

Q.—You were sentenced on different counts, to one year each? A.—Two counts.

20 Q.—Making a total of two years in jail, and you paid a fine of \$2000? A.—Yes.

Q.—On a plea of guilty? A.—Yes.

HIS LORDSHIP: Was the sentence of two years suspended?

BY MR. O'DONNELL:

Q.—You have never been in jail? A.—No, sir.

BY MR. HACKETT:

30 Q.—You have never been in jail? A.—No.

BY THE COURT:

Q.—Were you put in jail, or was the sentence suspended?

BY MR. HACKETT:

Q.—You have been in jail other times? A.—No.

40 Q.—The case in which you were committed appears to be the United States of America vs Andrew Zorn, in the District Court of the United States, Eastern District of New York, No. 22737 of the Records of that Court: under Section 1017 of the Revenue Act of 1924. Willam A. De Groot, United States Attorney; and the Judge was Judge Moscovitz. Do you know him? A.—Yes.

HIS LORDSHIP: What is the nature of the charge, Mr. Hackett?

Andrew Zorn for plaintiff (cross-examination).

MR. HACKETT: Breach of the Income Tax Law.

HIS LORDSHIP: The same as Mr. Campbell?

MR. HACKETT: I do not know whether it was the same thing, your Lordship. The sentence was the same.

10 HIS LORDSHIP: It is important for me to know the nature of the offence.

MR. O'DONNELL: The document from which my learned friend read states the offence was that Mr. Zorn, within the jurisdiction of the Court, unlawfully and willfully attempted to evade and defeat the Income Tax in the sum of \$108 imposed by an Act of Congress approved June 2nd, 1924.

MR. HACKETT: But, that is not all it says. That is only one count.

20 I would suggest we either put in the documents, or keep them out.

There is a question of perjury, your Lordship. There is a return that has to be made under oath.

MR. O'DONNELL: I wish to object to all this evidence, on the same grounds as Mr. Campbell's evidence was objected to this morning.

30 HIS LORDSHIP: I think it would be well to have the offence mentioned. If it is a contravention of the Income Tax Act, we will know the nature of the offence. If it is manslaughter, we will know it. If it is theft, we will know it.

MR. O'DONNELL: It is an infraction of the Income Tax Act of the United States.

HIS LORDSHIP: Is that correct, Mr. Hackett?

MR. HACKETT: I think so, your Lordship.

HIS LORDSHIP: Have you any objection to putting that in?

40 MR. HACKETT: It is all in already.

AND FURTHER DEPONENT SAITH NOT.

J. H. KENEHAN.
Official Court Reporter.

AND THE FURTHER HEARING OF THE CASE IS CONTINUED TO MONDAY, OCTOBER 17th, 1932, AT 10.15 O'CLOCK IN THE FORENOON.

Peter P. Campbell for plaintiff (examination in chief).

DEPOSITION OF PETER P. CAMPBELL, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF.

10 This evidence was taken in the case No. 110169 of the Superior Court records of the district of Montreal, the Bank of Rockville Centre Trust Co. es-equal. vs. Chase National Bank of the City of New York, and was allowed to be filed in the case herein to form part hereof, in virtue of a judgment of Mr. Justice Mercier of the 9th of February, 1933.

20 On this fourteenth day of October, in the year of Our Lord one thousand nine hundred and thirty two personally came and appeared PETER P. CAMPBELL, of Long Island City, New York, aged 50 years, no occupation, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. O'DONNELL, OF COUNSEL FOR PLAINTIFF,

Q.—Did you know the late John M. Phillips? A.—I did.

Q.—Will you please tell His Lordship how long you knew him? A.—For possibly twenty five years before his death.

Q.—Did you ever work for Mr. Phillips? A.—I did.

30 Q.—Will you please tell the Court what was the nature of your work for him? A.—I was the General clerk, I should say, and in charge when himself was not there.

Q.—How long did you work for him? A.—About four years in all.

Q.—Over what period? A.—I believe it was from 1923, or 1924, until about the first of May, 1928.

Q.—That is an approximate period? A.—Yes.

Q.—Did you have any communication with Mr. John M. Phillips in the later part of December, 1927?

40 MR. HACKETT: I renew my objection, to any conversations the witness may have had with Phillips unless it is first established to be against interest.

HIS LORDSHIP: For the same reason already given, I note the objection and permit the evidence to be made under reserve.

WITNESS: I had many.

Peter P. Campbell for plaintiff (examination in chief).

BY MR. O'DONNELL, CONTINUING,

Q.—Do you know what this lawsuit is about? A.—I do.

Q.—Can you tell His Lordship of any communication which you may have had with Mr. Phillips with respect to the matters now before this Court; which may have taken place in the end of December, 1927? A.—I remember several of them:
10 but the one I believe you are trying to bring out is the one along the lines of those bonds in dispute.

During the latter part of December, 1927. I received a telephone call from Mr. Phillips.

BY THE COURT:

Q.—Mr. John M. Phillips? A.—Mr. John M. Phillips. That on the next morning he wanted to see me at Freeport, and that Mr. Zorn would pick me up with his car and take me down
20 there.

BY MR. O'DONNELL, CONTINUING,

Q.—Who was Mr. Zorn? A.—He was a very close confident and adviser of Mr. Phillips.

Q.—Mr. John M. Phillips? A.—Yes, sir.

Q.—Where did he live? A.—In Long Island City.

Q.—Where did you live at that time? A.—Marlboro, Long Island.

Q.—How far is that from Freeport? A.—Probably 20
30 miles.

Q.—What did you do when you received the telephone call? A.—The next morning Mr. Zorn came to my house, and I went with him in his car down to Mr. Phillips' house at Freeport.

We entered Mr. Phillips' home, and were told he was upstairs in the bedroom. We went up to the bedroom, and he was sitting there with Dr. Cassidy.

Q.—Is that Dr. T. M. Cassidy? A.—Yes.

Q.—What happened then? A.—We discussed business — finances — and Mr. Phillips said: "Now, dont be worrying
40 about that at all. That is what I have had Dr. Cassidy here for. I am going to give him some bonds, and have him sell them, and there will be plenty of cash. Dont be worrying about that at all".

Q.—Was there any reason why Mr. Phillips should have spoken to you with regard to his finances? A.—I handled his cheque books, and his bank deposits, and things of that kind.

Peter P. Campbell for plaintiff (examination in chief).

MR. HACKETT: Of course, my objection applies to all this evidence.

HIS LORDSHIP: Yes, Mr. Hackett. That is understood.

10 WITNESS (continuing answer): And I took care of his payrolls, and general finances.

BY MR. O'DONNELL, CONTINUING,

Q.—What happened after that, on that occasion? A.—He had a couple of old suitcases under the bed, and he took one of them out, and took out a package of bonds and gave them to Dr. Cassidy to sell.

BY THE COURT:

20 Q.—Did you see the bonds yourself? A.—Yes. It was a package, probably about 8 inches by 12 or 14 inches, roughly.

Q.—Are you sure they were bonds? A.—Oh, yes. There was a bond on top. I know they were bonds, because I had handled those bonds a long time before.

BY MR. O'DONNELL, CONTINUING,

Q.—What did he do with the bonds he took from under the bed? A.—He took some out and gave them to Dr. Cassidy, to sell — one of the packages.

30 Q.—Have you any idea how many were in the package? A.—I have not.

Q.—How big package was it he handed to Dr. Cassidy?

BY THE COURT:

Q.—Did he mention what sum they represented? A.—No. There were rubber bands around them.

Q.—Was there any mention of the total sum? A.—No. Of course, I do not know what conversation he had had before.

40 BY MR. O'DONNELL, CONTINUING,

Q.—Were the bonds folded? A.—They were lying flat.

Q.—Did you see the top bond? A.—Yes, sure.

Q.—Can you remember the denomination of the bond? A.—The top was \$1,000; and I believe all the others to have been the same.

Peter P. Campbell for plaintiff (examination in chief).

Q.—Can you remember the nature of the bond? A.—New York City bond.

Q.—How did that interview you have spoken of terminate? A.—Shortly afterwards Dr. Cassidy left, and Mr. Zorn and I stayed there and had luncheon.

Q.—Who is Mr. Zorn? A.—The gentleman who had taken me to Mr. Phillips' home. We stayed and had luncheon with Mr. Phillips after Dr. Cassidy had left.

Q.—The Mr. Zorn to whom you refer is Mr. Andrew Zorn? A.—Yes.

Q.—Was Mr. Zorn in the bedroom with Dr. Cassidy, Mr. Phillips and yourself? A.—Yes, he was.

Q.—When Dr. Cassidy left did he take the bonds with him? A.—He did. He took them out of the bedroom. Of course, I did not follow him out of the bedroom.

Q.—You stayed in the bedroom with Mr. Phillips and Mr. Zorn? A.—Right.

BY THE COURT:

Q.—Cassidy left alone? A.—Yes, he left alone.

BY MR. O'DONNELL, CONTINUING,

Q.—After the interview you have spoken of did you have any other interviews with Mr. Phillips during December, 1927, or January, 1928? A.—In January, 1928, I met him, I think on three occasions, as I recall it, in the Robert Treat Hotel, in Newark, New Jersey.

Q.—Will you please tell His Lordship what transpired, in so far as it may relate to the matters in issue here? A.—I met him there. We were still talking about finances, and his business, and certain bills to be paid.

Q.—You were still the paymaster at that time? A.—There was not much going on at that time.

Q.—You mean in the way of contracts? A.—Yes.

Q.—What was Mr. Phillips' business? A.—Building precast pipe.

Q.—That is, sewer pipe? A.—Yes.

Q.—And, there was not much of that kind of work going on in January, 1928? A.—No: just small. Nothing to what had been running during good weather, and before that investigation had started.

Q.—What took place on the occasion you are speaking of now? A.—I was talking to him about payrolls, and money to

Peter P. Campbell for plaintiff (examination in chief).

pay this, and money to pay that, and he said: "At the present time, and later on, you will have to get what moneys you need from Mr. Zorn, because it wont amount to such a great amount, and he will take care of that; or, at different times Mr. Curran might go and borrow some payroll, and I will tell him where to get it; and when I come back we will be able to take care of everything. I am going back to Atlantic City now".

10 Q.—Where was Mr. Phillips going at that time? A.—To Atlantic City.

Q.—In January, 1928? A.—Yes.

Q.—Was that before, or after, Mr. Phillips underwent the operation? A.—That was before.

Q.—Was it before, or after, he had been to Florida? A. It was before he had been to Florida.

Q.—And, his intention was to go back to Atlantic City? A.—He had a cottage at Atlantic City — Santa Barbara Cottage, I think it was, — the Ambassador Hotel.

20 Q.—And, he intended to return to Atlantic City after he had his operation in Florida? A.—He did. I do not know whether he intended to, but I know later on that he came back from Florida, but that was much later — that was in May, I believe.

Q.—And this interview you have last spoken of was before Mr. Phillips went to Florida? A.—Yes.

30 At that time he said "Now, dont you worry about money. Dont be bothering me about it. Dont be bothering me about that small stuff, for the reason you know I had Cassidy dispose of those bonds, and I have deposited plenty of money in a box in Francis' name in Montreal."

MR. HACKETT: This is all under reserve of my objection.

HIS LORDSHIP: Yes.

BY MR. O'DONNELL, CONTINUING,

40 Q.—Was there any discussion as to how the money would be obtained in Montreal? You said the box was in the name of Francis. A.—There was not any discussion, any more than he said — I think that was about the second or third time I met him — he told me he had deposited money in Montreal, and that he had plenty of money to take care of everything.

Peter P. Campbell for plaintiff (examination in chief).

BY THE COURT:

Q.—And, this was in January, 1928? A.—Probably the latter part of January, 1928.

Q.—You said you met him on three occasions in January, 1928? A.—Yes.

10 Q. And, it was on one of those occasions? A.—I think it was on the latter occasion.

BY MR. O'DONNELL, CONTINUING,

Q.—Did you see Mr. John M. Phillips after his return from Florida? A.—I did.

Q.—Will you please tell His Lordship where you saw him? A.—I saw him upon his arrival. He came over in an ambulance from West Philadelphia to Atlantic City, and I saw him upon his arrival.

20 Q.—How did you come to be in Atlantic City at that time? A.—I had received a request some way to be there upon his arrival. Although I was no longer at that time in his active employ — because there was not any work going on in his way — still I was very close to him.

Q.—Did you have any discussion with Mr. John M. Phillips at that time as to Francis Phillips? A.—He asked me about different business things, and approximately how much had been borrowed, and he told me about having sent his son Francis to Montreal to try to get some money, and how he had been turned back.

30 Q.—Where had he been turned back? A.—I do not know. Some place on the border, — Duluth, or Detroit, or some place. I was wondering what he was doing away up there to get into Canada.

Q.—And, he told you Francis had been turned back? A. Yes. He also said that as soon as he was able, and well enough, he would take care of things himself, and come up with Francis.

40 Q.—At that time was Mr. Phillips doing any contracting business? A.—At that time no. He had moneys that were owed to him by contractors, but there had not been any new work.

Q.—Was he making pipe, or operating generally as he had been? A.—No: only in a small way.

Q.—Were there many people in his employ at that time? A.—There were quite a few.

Q.—But, the pipe making end of his business was not being carried on actively? A.—The big end of it, no.

Peter P. Campbell for plaintiff (cross-examination).

MR. O'DONNELL: I have no further questions.

MR. HACKETT: I wil cross examine the witness, under reserve of my objections.

CROSS EXAMINED BY MR. HACKETT, K. C., OF COUNSEL FOR DEFENDANT.

10

Q.—You have told us that you had known Mr. John M. Phillips for about twenty five years? A.—Yes, sir.

Q.—What kind of a man was he? A.—Always active, in civic work, and politics, principally. He was a reserved man. He was always in business or some kind of thing.

Q.—Was he timid? A.—Oh, no.

Q.—Was he vacillating, or could he make up his mind? A.—Mr. Phillips could make up his mind to do things. He did what he was going to do.

20

Q.—Was he a man who carried out his decisions promptly, or did he do it in a slow and deliberate and weak way? A.—I would not say in any deliberate or weak way. He was a good business man. He used what I would call fair and good sound judgment in his business.

Q.—What was your work in the office? A.—I did everything. The first thing, when I got there in the morning, I opened up his mail, and made distribution of it to the different plants where material had been delivered.

Q.—Where was the office at this time?

30

WITNESS: You mean during the whole time, or just during January, 1928?

COUNSEL: During the time you were there. A.—He had two places: 49 Jackson Avenue, and No. 9 Jackson Avenue, and No. 42 Jackson Avenue.

Q.—That would be three places? A.—Yes. 49 was an upper, and we moved across the street to 42.

40 Q.—When did you first know Mr. Zorn? A.—I knew him before Phillips.

Q.—Mr. Zorn is here in Court. What is his particular calling in life?

WITNESS: At the present time?

COUNSEL: Yes. A.—I believe he is a salesman for the Atlas Portland Cement Company, as far as I know.

Peter P. Campbell for plaintiff (cross-examination).

Q.—And, you have retired from active participation in the world's work? A.—Well, I have, during this depression. I have been forced to retire.

Q.—You can afford to subsist without effort? A.—Well, I am not starving. I am not in want.

Q.—You have told us that you had a communication from Mr. Phillips inviting you to go to his home in Freeport? A.—
10 That Mr. Zorn would pick me up and take me there — that Mr. Zorn would stop at the house, and take me there, the next day.

Q.—And, Mr. Zorn stopped at the house the next day, and drove you about 25 miles? A.—However far it is — 20 or 25 miles — from Marlboro to Freeport.

Q.—And, when you arrived there you found Mr. Phillips and Mr. Cassidy together? A.—They were in the bedroom when we went upstairs.

Q.—And, they were apparently awaiting your arrival, to transact the business? A.—That I do not know. I do not know
20 what they did before we got there.

Q.—Had you been summoned there to take part in this transaction? A.—I did not know what I was summoned there for, any more than I had been talking to him over the telephone at different times, and then I received this phone call that he would have Mr. Zorn pick me up the next morning, and for me to go to Freeport.

Q.—Did he fix a time? A.—He did not fix any definite time, but I would say it was about half past nine, or half past ten that Mr. Zorn picked me up.

Q.—Did Mr. Phillips speak to you himself over the tele-
30 phone? A.—He did.

Q.—Why do you say that with so much emphasis? A.—Because I never took any orders from anyone except Mr. Phillips himself to go to Freeport.

Q.—Where was Mr. Phillips speaking from? A.—I think he was talking from Atlantic City, or from Jersey, some place.

Q.—You do not know? A.—No. I do not know positively.

Q.—Did he tell you? A.—No, he did not tell me.

40 It was on a Saturday night, and it was very late at night. He might have been in New York, or he might have been in Long Island City, at the Elks Club, where he usually went late on Saturday nights.

I do not know where he was when he telephoned.

Q.—Where is the Elks Club? A.—Elmhurst, Long Island.

Peter P. Campbell for plaintiff (cross-examination).

Q.—Was that a “hang out”, so to speak, of Mr. Phillips?
A.—Mr. Phillips was a charter member of the Club, and also there was a room reserved there for him at all times, which he rented and paid for by the month.

Q.—Are you a member of the Elks Club? A.—I am: a life member.

10 Q.—Can you fix the date of this Sunday trip to the home of Mr. Phillips at Freeport? A.—I cannot fix any date, but I would say it was around the holidays.

Q.—But, you said it was in December? A.—The latter part of December. I would not attempt to fix any date, any more than I know it was around the holidays, because he said he was going to go to back to Atlantic City, or wherever it was, and be away for the holidays. That is the only way I can fix it.

Q.—So, it must have been before Christmas? A.—Well, I do not know.

20 Q.—Are you a Christian or a Jew? A.—I am a Christian.

Q.—Then you should not have so much difficulty in determining the holidays? A.—But, what would I fix last week as?

Q.—What do you call the holiday season? A.—I would call the holidays between Christmas and New Years.

Q.—And, you did nothing but what you have told us? A. That is all.

30 Q.—You and Mr. Zorn went in an automobile. You did not say whether it was before or after you attended Divine Worship on this Sunday? A.—I have not said that yet.

Q.—You did not say whether it was after, or before? A. No. I would say it was around nine o'clock, to half past ten, because Mr. Zorn is an early riser and likes to get things done.

Q.—You got to Freeport? A.—Yes.

Q.—And, Dr. Cassidy was there? A.—Yes, he was.

Q.—And, Dr. Cassidy went away with the bonds? A.—He left the room with the bonds, yes.

40 Q.—And, Mr. Phillips was in bed? A.—He was sitting on the edge of the bed, as you would find him most of the time you would go there, when he was in his bedroom.

Q.—He was undressed? A.—Yes.

Q.—And Mr. Zorn, being an early riser, was hungry later on, and you had something to eat? A.—No. I think by the time Dr. Cassidy got out of there luncheon was ready, and we were asked to stay.

Q.—And, you had luncheon? A.—We had.

Peter P. Campbell for plaintiff (cross-examination).

Q.—Who were present? A.—Mr. Zorn, Mr. Phillips, and myself.

Q.—Where was Mrs. Phillips? A.—I do not know. I did not see her.

Q.—And, immediately after lunch you and Zorn went back to your point of departure? A.—Within an hour or so. We sat around a short time — just long enough to be courteous,
10 I suppose — not to eat and run away.

Q.—And, that was all there was to it? A.—That is all.

Q.—What was the date of this meeting at the Robert Treat Hotel in Newark? A.—I was there several times.

Q.—But, I am speaking now of the incident about which you told the Court. What date was that? A.—I was there two or three times. I am pretty sure I was there three times in January.

Q.—And, it was there that Mr. Phillips told you not to have any worry because he had money on deposit in Canada in
20 Francis Phillips' name? A.—Yes.

Q.—That was all he said to you about the money on deposit?

WITNESS: That was all?

COUNSEL: Yes. A.—No. There were other things besides that discussed. We discussed his business, and what he owed. As matter of fact, I wanted some money myself, and wanted cash; and he did not have it, but he spoke about what he had in
30 different deposit boxes, and in different Banks, and that there would be plenty of money to take care of everybody.

Q.—He told you there was money in Montreal in Francis Phillips name? A.—Yes.

Q.—You are quite sure of that? A.—Positively.

Q.—Where else did he tell you there was money on deposit? A.—I think he said something about some moneys in Jersey.

Q.—Where in Jersey? A.—I do not know. He did not
40 tell me any more about where it was in Montreal than he told me about where it was in New Jersey.

Q.—Now, let us get this quite clearly. You have told us that Mr. John M. Phillips told you there were moneys in Montreal in Francis Phillips' name? A.—Yes, sir.

Q.—But did he or did he not tell you that there were moneys — and I am speaking of cash — elsewhere? A.—He did.

Q.—Where? A.—New Jersey.

Peter P. Campbell for plaintiff (cross-examination).

Q.—And, where else? A.—That is all. He said Jersey, and Montreal.

Q.—He just mentioned Jersey, and Montreal? A.—If you knew Phillips he would tell you everything he knew, so you need not add that.

10 Q.—What amazes me is that all he appears to have told you, or that you remember, is something that is of vital importance to the success of the Plaintiff in this case. If he told you anything else, I would like to know what it was. A.—I went there originally to discuss some bills that he owed, and some moneys that I wanted myself, and which I could not get — he did not have the cash. He told me that the money was some place in Jersey in Francis' name, and some place in Montreal in Francis' name, and that I would have to wait.

Q.—You do not know where it was? A.—No. I did not know every place where it was.

20 Q.—And, did you get the money? A.—I got a little bit later on.

Q.—How much did you get later on? A.—I think possibly I got, may be \$5,000. Mr. Frenz brought me some, and I think Mr. Curran brought me some.

Q.—Mr. Cassidy never brought you any? A.—No. Mr. Cassidy always sent a cheque to me when Mr. Phillips wanted to pay me anything.

Q.—So, you got what you call a little bit of money — \$5,000 — in cash? A.—Yes.

30 Q.—From Phillips? A.—It was delivered to me as coming from Phillips, yes.

Q.—By whom? A.—Once by Mr. Frenz.

Q.—And, another by Mr. Zorn? A.—No: by Mr. Curran. Mr. Phillips was away when Mr. Curran brought me the money.

BY THE COURT:

Q.—When you mention the name of Mr. Phillips, you mean Mr. John M. Phillips? A.—Mr. John M. Phillips.

40 BY MR HACKET, CONTINUING,

Q.—You knew he had a son? A.—I did.

Q.—The boy was crippled from infantile paralysis? A. Yes.

Q.—A clever chap? A.—I would not say so.

Q.—You did not think he was clever? A.—No, I did not. The boy was too sick to be clever.

Peter P. Campbell for plaintiff (cross-examination).

Q.—When was the boy sick? A.—He had been sick for years.

Q.—He was rather undersized, was he not? A.—No. Some of the bones may have been.

Q.—You say the boy had been an invalid for years. What was wrong with him? A.—He had had infantile paralysis, I believe. That is what I was told.

10 Q.—Do you know when that was? A.—I do not, but I saw him on several occasions in the hospital.

Q.—That was about in 1925? A.—I guess before that.

Q.—Do or do you not remember he was ill in 1925? A. Oh, yes, I remember seeing him ill then; and long before that too.

Q.—I would like to know if you can fix the month in which you had the conversation with John M. Phillips at the Robert Treat Hotel in Newark, New Jersey?

WITNESS: Which conversation? I said I was there
20 three times, I thought in January.

Q.—Then, let us have the first one. A.—I cannot fix the date of any of them.

Q.—I did not ask you for the date. I asked you for the month? A.—In January.

Q.—And, the second one? A.—In January.

Q.—And the third one? A.—In January.

The reason for that is...

Q.—(interrupting) If I want the reason, I will ask you.

30 What period of time separated the first visit from the second? A.—It may have been a week or ten days.

Q.—What period of time separated the second visit from the third? A.—It may have been two weeks.

Q.—On what occasion did you ask him for money? A.— I asked him for money, I believe the third time, because I believed by that time he would have disposed of the bonds and received the money from Cassidy. It was at that time — the third time — in the latter part of January — and that was the reason of him telling me of having taken the moneys to Canada and deposited them in the name of Francis Phillips.

40 Q.—That is a very prolific but not a very satisfactory explanation. Do you wish the Court to understand that on the first occasion you saw Mr. John M. Phillips at the Robert Treat Hotel you did not ask him for money? A.—We spoke about it, but I did not get it.

Q.—Let us be candid. Did you ask Mr. John M. Phillips for money when you met him first at the Robert Treat Hotel in Newark? A.—Positively.

Peter P. Campbell for plaintiff (cross-examination).

Q.—You did? A.—Yes.

Q.—Can you pledge your oath that when you first met Mr. John M. Phillips at the Robert Treat Hotel, in January, 1928, you asked him for money? A.—I am already under oath.

Q.—And, you pledge your oath that you asked him for money on that occasion? A.—I did.

10 Q.—And, you did not get it? A.—No.

Q.—And, on the second occasion you asked him for money? A.—I did.

Q.—Did you get it? A.—I did not.

Q.—And, on the third occasion you asked him for money? A.—At that time I did not get it.

Q.—When did you get it? A.—I got money later on.

The last money I got from John M. Phillips was in the very early part...

20 Q.—(interrupting) You will save time, Mr. Campbell, if you will just answer my questions as I put them to you. I did not ask you the last time you got money from Mr. John M. Phillips: I asked you if you got money from John M. Phillips in response to your request — the third application you made for it — in January, 1928? I did not ask you for the last time. I asked you when he gave you money in response to your third request, made at the Robert Treat Hotel? A.—He gave me money in Atlantic City, later on.

Q.—I asked you when? A.—I would say...

30 Q.—(interrupting) I know you would say, but can you say? A.—I am going to tell you the exact time. On Washington's Birthday, I think it was.

Q.—That was on February 22nd? A.—Around that time, yes. It was a holiday in February.

Q.—There is no doubt about it being Washington's Birthday? A.—It was a holiday. It might have been the other fellow's birthday — Lincoln's. It was on a holiday in February, and I was down there.

Q.—You say it was in February? A.—Yes.

40 Q.—And, if it was not on Washington's Birthday, it was on some other day? A.—It may have been Lincoln's Birthday.

Q.—That is on February 12th, is it not? A.—Yes.

Q.—On the first occasion you asked Mr. John M. Phillips for money in January, 1928 — and you have told us very vigorously that you did not get any — what did he say to you? A. I had to wait until he made arrangements to get some cash in.

Q.—And, what did you say to him? A.—I had known that he had given those bonds to Dr. Cassidy to sell, and I

Peter P. Campbell for plaintiff (cross-examination).

thought he had the cash in, and that was why I kept after him and tried to get some of my cash.

Q.—And, what did you say to him on the second occasion?

A.—The same reason.

Q.—And, on the third? A.—The same reason.

Q.—How much money did you owe at that time? A.—I did not owe anything.

10 Q.—How much money did he owe you? A.—Plenty.

Q.—Were you then as affluent as you are now, and were you in a position that you did not require remuneration for your services? A.—I had plenty to get along without it. I knew the man was honest and would take care of his just obligations.

Q.—How much did he owe you at that time? Because I assume you were interested in what he owed you rather than in what he owed anybody else? A.—I was interested in that more than anything else.

20 He probably owed at that time something like \$27,000.

Q.—To you? A.—He did.

Q.—What year was that? A.—1928.

Q.—He owed you that for services? A.—No.

Q.—Money loaned? A.—Money loaned, cash, and different things — paying out bills.

Q.—It was a very easy matter for you to pay out \$27,000? A.—It was the same money used over and over again. It would come back, and be paid out again, and come back.

30 Q.—Do you wish the Court to understand that Mr. John M. Phillips owed you approximately \$27,000 all through the month of January, 1928? A.—And long before that.

Q.—Had you been after him for some time to get this money? A.—No. I was not much concerned about it, only I needed a little at that time.

Q.—You have said that there were moneys owing by Phillips, that you knew of, as well as what he owed you? A.—Phillips owed considerable bills, yes.

40 Q.—Did people go to you to recover amounts that were owing by Phillips? A.—There was nothing pressing. There were little bills for material, and so on, to be paid — operations and so on going on, and contractors not paying; and I wanted to see that those things were closed up.

BY MR. O'DONNELL:

Q.—The bills were the usual business bills? A.—Yes.

Peter P. Campbell for plaintiff (cross-examination).

BY MR. HACKETT, CONTINUING,

Q.—Were you Mr. Phillips' confidential man? A.—Some termed it such.

Q.—Unfortunately you are testifying for yourself. I asked you whether you were? A.—I collected his moneys from contractors. I drew most of the cheques, and paid most of the bills that were paid. I held his power of attorney on his safe deposit box, and when he was not around I was supposed to look after things.

Q.—Where was this safe deposit box? A.—Corn Exchange Bank. I kept payrolls in there. We drew them on the Friday night, so that we would have it to put in the envelopes.

Q.—Did you hold a power of attorney on this box at that time? A.—I did: up until the time of his death.

Q.—Why did you not take moneys from that source? A. There was not any money in there.

Q.—How did you get the payrolls, if there was not any money there? A.—We are talking about when he owed me the money. I am talking about where the payrolls were kept when he was active and doing plenty of work.

Q.—And, when he was active and doing plenty of work you were his confidential man? A.—I handled moneys in and out.

Q.—How long have you known Dr. Cassidy? A.—Up to the present time, twenty five or twenty six years.

Q.—He was a friend of yours?

WITNESS: Who?

COUNSEL: Dr. Casisdy? A.—I knew him. I never associated with him very much, or anything, but I have known the Doc for many years.

Q.—You called him "Doc"? A.—Always. I first knew him as "Doc" Cassidy", and I have continued to call him that ever since.

Q.—You are aware that he is married to the widow of the late John M. Phillips? A.—I am.

Q.—And, you are aware that if this Action succeeds the widow and child of Francis Phillips will receive nothing from the Estate of John M. Phillips?

MR. O'DONNELL: I object to the question. It is not for the witness to interpret the Will or the legal rights of others.

Peter P. Campbell for plaintiff (cross-examination).

HIS LORDSHIP: So much so that the Will is not in question.

MR. COOK: The question is absolutely illegal.

MR. HACKETT: I am entitled to know if the witness is aware of a fact. I have not asked him to interpret the Will: I merely ask him about a fact.

10

HIS LORDSHIP: On what do you base you right to put the question, Mr. Hackett?

MR. HACKETT: To see what the witness knows, and to find out to what extent he is interested or biased. I submit it is a perfectly proper question in cross examination.

HIS LORDSHIP: But, that is not the purport of the question. As I see it, the purport of the question is to have the opinion of the witness on the meaning of the Will if the Action is maintained, or dismissed.

20

The objection is maintained, inasmuch as the question is not relevant to the issue, and the witness cannot be called upon to give his opinion on the Will. The Will must receive its application in accordance with the circumstances, and it is not for the witness to interpret it.

BY MR. HACKETT, CONTINUING,

Q.—You have lived all your live in the United States? A. I have.

30

Q.—You are familiar with the requirements of the Income Tax Law of the United States? A.—I thought I was.

Q.—You know that returns under the Income Tax Law have to be made under oath? A.—I do.

Q.—Is it true that you were convicted, and are at present under sentence of two years, for a breach of the Income Tax Law of the United States? A.—For failing to put in things you have asked: like where I paid moneys out for Phillips, and was reimbursed by him later on, and then used that same money over again to pay Dr. Cassidy for something, or Dr. Cassidy would give me some money to disburse for Mr. Phillips, or were Phillips himself had Curran pay moneys in my account, and then had me disburse them for my account.

40

I considered what the Income Tax Law meant was that I was only to account for my own income, which I did. We were indicted for failure to put in those other amounts, which we

Peter P. Campbell for plaintiff (cross-examination).

could not explain, and the thing was later settled upon a basis of about 5% of what they wanted, and we received a suspended sentence, under misdemeanor.

Q.—Why did you not give that explanation to the Court, instead of pleading guilty to the indictment? A.—We did not plead guilty to the indictment.

10 Q.—Do you swear you did not plead guilty to the indictment? A.—They reduced it from...

Q.—(interrupting) Did you plead guilty to the indictment? A.—Not the original indictment, no — absolutely and positively no.

Q.—Did you plead guilty to an indictment before Moscowitz, J., on November 21st, 1928, and were you sentenced to pay a fine of \$2,000? A.—To a different thing. I paid a fine of \$2,000, yes.

20 Q.—And, you pleaded guilty to a charge, upon which a fine of \$2,000 could be imposed? A.—To a misdemeanor, yes.

Q.—You also were sentenced to two years in prison? A. It was suspended sentence.

Q.—But, you were sentenced to two years in prison? A. On the income indictment, yes.

Why don't you explain what you originally started out with, and not leave a supposition?

BY MR. O'DONNELL:

Q.—Did you go to jail? A.—I did not.

30 Q.—And, the indictment, or the sentence, my friend has spoken of was for a misdemeanor? A.—Yes.

Q.—The original indictment had been for a felony? A. Yes.

Q.—What was the amount the Income Tax Law people were claiming from you? A.—I do not know. Hundreds of thousands of dollars.

Q.—How much did you eventually settle it for?

MR. HACKETT: I object to any testimony by the witness tending to contradict a written document.

40 MR. O'DONNELL: There is no written document.

HIS LORDSHIP: Is the document in the Record?

We have the admission of the witness that he was indicted, and fined, and even that he was condemned to jail, but, he says, the sentence was suspended. I do not know how they could suspend a sentence that was rendered. They might say: "Sentence Suspended", but that is not a sentence. A sentence might

Peter P. Campbell for plaintiff (cross-examination).

be commuted, but it cannot be suspended. If he was condemned to jail, and to a fine, he cannot say sentence was suspended. It may have been commuted.

BY MR. O'DONNELL:

10 Q.—Can you explain the question His Lordship is troubled with? A.—There was a compromise. They wanted to collect something like \$247,000 on all those moneys which did not belong to me. They went through my Bank account for Mr. Phillips. I paid them in, and out.

MR. HACKETT: The witness is now giving testimony he should have given before the Court which tried him. He was not only found guilty, but he pleaded guilty.

20 HIS LORDSHIP: I will not reopen the New York case. In the first place, I have no jurisdiction. At the same time, I must say I find it queer that a sentence was pronounced and then suspended. I should think if it was pronounced it would have to be served, or commuted. I do not understand a matter of compromise with the State.

BY MR. HACKETT, CONTINUING,

Q.—Is there anyone here in Court, or whom you have seen since you have been in Montreal, with whom you made the compromise and settlement in this case to which you have referred? A.—It was one of the Attorneys — a District Attorney.

30 Q.—What is his name? A.—We did not make it with him. We made it with people from the Attorney General's Office in Washington. It has been sent up to the District Attorney's Office in Brooklyn, and Mr. Wilkinson was in Court.

Q.—Mr. Wilkinson, the gentleman who was here? A.—I saw him here yesterday. I did not see him today.

Q.—Mr. Wilkinson, the gentleman who was here, was one of the officers who represented the Federal authorities? A.—He was a Federal Assistant District Attorney.

40 Q.—And, do I understand you to say that it was with him you made this arrangement? A.—No. Some people from the Attorney General's Office.

Q.—Does he know anything about it? A.—It was in his office.

Q.—Will you produce this Indictment and Judgment?...

MR. O'DONNELL: I object to the production of the document.

Peter P. Campbell for plaintiff (cross-examination).

HIS LORDSHIP: I do not know if you need the document when you have an admission from the witness.

BY MR. HACKETT, CONTINUING,

10 Q.—I ask you if the entry which appears on the back of the Indictment, in the following terms: “The United States of America vs Peter P. Campbell, Defendant; Section 1017 Revenue Act of 1924; Section 114 Revenue Act of 1926. No 22,736. In the District Court of the United States, Eastern District of New York. On the 21st November, 1928, before Moscowitz, J., Defendant present and sentenced to pay a fine of \$2,000, without costs; and stand committed to and to be imprisoned for one year on count 1 — execution of sentence suspended — and to be imprisoned for one year on count 4 — execution of sentence suspended” is correct; and if that Judgment was rendered on the Plea made on November 14th, 1928, before Moscowitz, J.,
20 “Defendant Peter P. Campbell present, changes Plea to Guilty on counts 2 and 4. Continued on bail to November 21st, 1928. Counts 1, 3 and 5 dismissed on motion Assistant United States Attorney”. A.—I do not know what the numbers mean, but there was a suspended sentence. I do not know what the numbers refer to.

30 MR. O'DONNELL: Inasmuch as the witness has already admitted the matter referred to, I would ask that what has been read by my friend into the Record be stricken out, for the reason that under the Canada Evidence Act when a witness is asked whether or not he was convicted, and admits he was, that is sufficient and the Judgment or any document relating to the matter should not be produced or read into the Record.

HIS LORDSHIP: Application dismissed.

AN FURTHER DEPONENT SAITH NOT.

J. H. KENEHAN,
Official Court Reporter.

40 AND IT BEING 12.15 O'CLOCK THE FURTHER HEARING IS CONTINUED TO 2 O'CLOCK IN THE AFTER-NOON.

George Frenz for plaintiff (examination in chief).

DEPOSITION OF GEORGE FRENZ, A WITNESS EXAMINED ON BEHALF OF THE PLAINTIFF.

10 This evidence was taken in the case No. 110169 of the Superior Court records of the district of Montreal, the Bank of Rockville Centre Trust Co. es-qual. vs. Chase National Bank of the City of New York, and was allowed to be filed in the case herein to form part hereof, in virtue of a judgment of Mr. Justice Mercier of the 9th of February, 1933.

20 On this fourteenth day of October, in the year of Our Lord one thousand nine hundred and thirty two personally came and appeared GEORGE FRENZ residing at No. 3180 45th Street, Long Island City, New York, Real Estate, aged 52 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. O'DONNELL, OF COUNSEL FOR PLAINTIFF.

Q.—Did you know the late John M. Phillips? A.—I did.

Q.—How long did you know him? A.—All my life. I grew up with him.

Q.—Where did he live? A.—In Long Island City.

30 Q.—Where you lived? A.—Yes.

Q.—And, you knew him as a young man, and you subsequently were connected with him in business? A.—Yes.

Q.—Were you ever in his employ? A.—I was.

Q.—Will you please tell His Lordship when, and over what period of time? A.—I went into actual employment for Mr. Phillips from September 1927, to July 3rd, 1928.

Q.—July 3rd, 1928, was the date Mr. Phillips died? A.—Yes.

40 Q.—What was the nature of your employment? What were your duties with Mr. Phillips? A.—I met him at his home with my car...

Q.—(interrupting) What was the nature of your work? A.—That was part of my work. to meet him in the morning — to call for him at his home, and take him down to business—to go to the different plants where the pipe was being manufactured, or being used. Then I did general clerical work in the office,

George Frenz for plaintiff (examination in chief).

which was assigned to me by Mr. Campbell, who was in charge there.

Q.—Your contact with Mr. Phillips was daily? A.—While in his employ, yes.

Q.—In the early part of January, 1928, do you remember having had any communication with Mr. Phillips? A.—I do.

10 Q.—Will you please tell His Lordship what happened, with respect to the occasion to which I refer?

WITNESS: In January?

COUNSEL: January, 1928.

MR. HACKETT: The question reads: "Did you have any communication?" Then, on an affirmative answer from the witness, the next question is: "What happened?"

20 If this is an attempt to prove a declaration of the deceased, I submit it is admissible only if it be against interest, and I ask your Lordship to consider that. It may be said my objection is premature, but if it is not made now it may be too late.

MR. O'DONNELL: I do not know what the witness will say.

HIS LORDSHIP: What do you want to prove? What are you aiming at?

30 MR. O'DONNELL: I want to prove this witness went to Mr. Phillips' house on a certain morning or afternoon in January, 1928. That is simply leading up to something else I expect to prove, which will probably be objected to and upon which your Lordship will rule.

HIS LORDSHIP: What allegation of your Declaration do you want to prove?

40 MR. O'DONNELL: I am beginning to prove the circumstances under which the money which was found in Montreal came to be in Montreal. I have to begin somewhere; and, as far as this witness is concerned this is the beginning of the circumstances relating to the money which is now in Montreal. Dr. Cassidy stated he brought the money here, and the evidence I am about to make is in the way of corroboration of Dr. Cassidy's evidence. This witness knows certain facts concerning Dr. Cassidy and what Dr. Cassidy did with respect to the particular money that is in Montreal.

George Frenz for plaintiff (examination in chief).

I am not endeavoring to prove any contracts, or anything of the kind. I am simply corroborating Dr. Cassidy.

HIS LORDSHIP: After the explanation given by Counsel for Plaintiff, for the time being the Court admits the evidence under reserve of the objection.

10 BY MR. O'DONNELL, CONTINUING.

Q.—Where were you living in January, 1928? A.—No. 608 Fifth Avenue, Long Island City.

Q.—Where was John M. Phillips living? A.—Freeport, Long Island City.

BY MR. HACKETT:

Q.—What is the distance between 608 Fifth Avenue and Freeport? A.—About 25 miles.

20 BY MR. O'DONNELL, CONTINUING.

Q.—Will you please tell His Lordship what happened with respect to the occasion to which I refer, in January, 1928? A.—There were lots of things I did in January for Mr. Phillips; but the one thing that is referred to here is I got a telephone call after leaving him at home on Saturday. I was called at my home Saturday night. He said: "You be down at my house tomorrow morning" — that would be the Sunday.

When I got there, said...

30 Q.—(interrupting) How did you go there? A.—In my car. I drove it myself.

When I got there Mr. Phillips said: "Come on upstairs with me: and I want you to come over to Dr. Cassidy's house..."

When I got upstairs, he opened a black bag...

Q.—(interrupting) Where did Dr. Cassidy live? A.—On Stewart Avenue, in Garden City, Long Island.

Q.—How far is that from Freeport? A.—About ten or twelve miles.

40 When I got upstairs to the room he had a black bag, and in this black bag there was a number of bonds, probably about 10 or 11 inches high — in different colors.

Q.—How long were they? A.—About 14 to 18 inches.

He told me to take them out. I took them out of the bag, and that left the bag empty.

I took them downstairs.

George Frenz for plaintiff (examination in chief).

BY THE COURT:

Q.—You did not examine the bonds particularly? A.—
No. I just picked them out. He told me what they were. He
said: “They are bonds, and we are going over to Dr. Cassidy’s
house with them”.

10 I took them from the bedroom, downstairs, got a piece of
wrapping paper in the kitchen, wrapped them up, and took them
along. I had them in my possession all the time.

I took them out in my car, and went over to Dr. Cassidy’s
house with them. Mr Phillips was with me.

20 On the way over from his home to Dr. Cassidy’s, in con-
versation he told me what he was going to do with those bonds.
He said he was going to have Dr. Cassidy convert them into
cash, and then he was going to take it up to Montreal — that
he was going to have Dr. Cassidy come up here with them, and
put the cash in some safe deposit box up here in Montreal, and
for the time being said he would open this box in his boy’s name
until he got straightened up on certain business himself that
he had pending at that time. The reason, he said, he had to
convert those bonds into cash was to use the cash to conduct his
business.

Q.—I understand at that time he was having difficulty
with the Income Tax Department of the United States? A.—
There was a general investigation.

BY THE COURT:

30 Q.—Did you accompany Phillips and Cassidy to Montreal?
A.—I did not.

Q.—You are only reporting what he told you as to his
intentions? A.—What his intention was to do with those bonds.

BY MR. O’DONNELL, CONTINUING:

Q.—And, you took the bonds and went to Dr. Cassidy’s
house? A.—Yes.

40 Q.—What happened there? A.—We went upstairs into
Dr. Cassidy’s apartment, and in front of me Mr. Phillips told
the Doctor — he said: “I want you to attend to this and I want
you to convert these into cash”. Then they talked about coming
up to Montreal and opening a safe deposit box, and how he
would do it under Francis’ name for the time being.

BY THE COURT:

Q.—He repeated to Dr. Cassidy what he had told you
previously? A.—Yes, sir, absolutely.

George Frenz for plaintiff (examination in chief).

BY MR. O'DONNELL, CONTINUING:

Q.—Are you the same Mr. Frenz whose name appears as a subscribing witness to the Will of the late John M. Phillips, produced in this Record as Plaintiffs' Exhibit P-1?

10 Please look at Plaintiff's Exhibit P-1, and say if you are the Mr. George D. Frenz who signed with Thomas M. Cassidy as witness to the Last Will and Testament of John M. Phillips, dated March 16th, 1928?

MR. HACKETT: Of course, my objection stands as regards all this testimony.

HIS LORDSHIP: Your objection is noted, and the evidence is taken under reserve of it.

WITNESS: My signature is not on this.

20 BY THE COURT:

Q.—Were you a witness to the Will? A.—I was.

BY MR. O'DONNELL, CONTINUING:

Q.—Where was that Will executed? A.—In the Allison Hospital, at Miami, Florida.

Q.—Where Mr. Phillips was at the time? A.—Yes.

30 Q.—How did you happen to be there at that time? A.—Mr. Phillips called me up from Miami, Florida, and told me to go to Mr. Caplis' house.

Q.—Who was Mr. Caplis? A.—He was acting as Mr. Phillips' attorney at the time.

Q.—He is a lawyer in Long Island City? A.—Yes; not practising, though.

40 Q.—Did you go to Mr. Caplis' house? A.—I did. Mr. Phillips called me up from Miami, telling me to go to Mr. Caplis' house, and he would have a paper, or some papers, for me to bring down to Miami. Mr. Phillips was confined to the Allison Hospital at the time, to be operated on in a few days, so the necessity was for me to go down there immediately.

I went up to Mr. Caplis' house, and he gave me this paper, which he told me was a Will. He said: "Now, you will be a witness to this. Make certain Mr. Phillips reads it, and after Mr. Phillips reads it, you read it, and read it loud".

MR. HACKETT: What has this to do with the case?

HIS LORDSHIP: The Will is not in controversy?

George Frenz for plaintiff (cross-examination).

MR. O'DONNELL: No, your Lordship. The object of this evidence is simply to show the relationship between the witness and John M. Phillips.

WITNESS: I followed out those instructions.

BY MR. O'DONNELL, CONTINUING:

10 Q.—Did you read the Will aloud, and have Mr. Phillips read it aloud?

MR. HACKETT: I object to this as irrelevant.

HIS LORDSHIP: The validity of the Will is taken as granted. The Will is not contested. You have not any interest in putting the question Mr. O'Donnell. The Will is to be considered as valid. If there are some other circumstances, outside of the Will, you may question the witness on them.

20 MR. O'DONNELL: I have no further questions, my Lord.

CROSS EXAMINED BY MR. HACKETT, K. C., OF COUNSEL FOR DEFENDANT.

Q.—You have given your occupation as that of a real estate agent? A.—Yes.

30 Q.—Have you an office? A.—I take care of an individual's...

Q.—(interrupting) I am asking you if you have an office? A.—I have not.

Q.—You are an investigator, are you not? A.—I have done that work at times.

Q.—Is that not your work at the present time? A.—It is not.

Q.—What are you doing at the present time? A.—Taking care of some real estate.

40 Q.—Whose real estate? A.—Mr. Edward Fitzpatrick's real estate.

Q.—Where does he live? A.—His present address is 2090, Seven Avenue, Long Island City.

Q.—You devote your whole time to Mr. Edward Fitzpatrick's real estate? A.—I do.

Q.—Nothing else? A.—I did some other work this summer outside of that.

George Frenz for plaintiff (cross-examination).

Q.—What kind of work? A.—I was ticket office man for the Queensboro Athletic club in Long Island City.

Q.—When did you last do some investigating work, so called? A.—About three or four years ago.

Q.—Have you ever been associated with a firm of lawyers? A.—I was.

10 do. Q.—Do you know what an ambulance chaser is? A.—I

Q.—Have you ever considered yourself as carrying on that vocation? A.—I did not.

Q.—Is it not a fact that the lawyers with whom you were associated were disbarred? A.—They were not.

Q.—Were they suspended? A.—They were.

Q.—Because of your activities on their behalf? A.—Absolutely no.

Q.—You will testify to that? A.—I will.

20 not. Q.—Did you share fees with those lawyers? A.—I did

Q.—It was not so established? A.—It was never established.

Q.—Will you tell the Court the date you attended at the home of Mr. Phillips, and when the bond episode to which you have testified so minutely took place? A.—That was in the early part of January, 1928.

Q.—You say the early part: what day? A.—It must have been right after New Year's. A few days after.

30 A.—Three or four days, possibly. I recall it distinctly, because it was on a Sunday.

Q.—Would you say it was the first Sunday in the New Year? A.—I would.

To show you that I am Mr. Fitzpatrick's real estate agent, I have some receipts here, if you want to see them.

AND FURTHER DEPONENT SAITH NOT.

J. H. KENEHAN,
Official Court Reporter.

James E. Wilkinson for plaintiff (examination in chief).

DEPOSITION OF JAMES E. WILKINSON, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF.

10 This evidence was taken in the case No. 110169 of the Superior Court records of the district of Montreal, the Bank of Rockville Centre Trust Co. es-qual. vs. Chase National Bank of the City of New York, and was allowed to be filed in the case herein to form part hereof, in virtue of a judgment of Mr. Justice Mercier of the 9th of February, 1933.

20 On this seventeenth day of October, in the year of Our Lord one thousand nine hundred and thirty two personally came and appeared JAMES E. WILKINSON of No. 16 Court Street, Brooklyn, in the State of New York, lawyer, aged 53 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. COOK, K. C., OF COUNSEL FOR PLAINTIFF.

Q.—You are a member of the Bar of the State of New York? A.—I am.

Q.—Are you a member of the Supreme Court Bar?

30 WITNESS: Do you mean of the United States?

COUNSEL: Yes.

A.—No, I have not been admitted to the Supreme Court, but I am a member of the Bar of the Circuit Court of Appeals, and of the United States District Court for the Eastern District of New York, the Southern District of New York, and also for the District of Connecticut.

Q.—For how many years have you been practicing your profession? A.—Thirty years last July.

40 Q.—I understand you were in charge of the criminal prosecutions for the District of New York, from the early part of 1928 to the 1st of May, 1931? A.—For the Eastern District of New York, in the United States District Attorney's Office.

Q.—That was in connection with Income Tax matters? A.—No; it was in connection with all prosecutions of any character or description arising out of violations of the laws of the United States. For the last two years my duties became such

James E. Wilkinson for plaintiff (examination in chief).

that I refused to handle prohibition matters any further, and they had to form a separate unit on account of the volume of business I was transacting in relation to Income Tax prosecutions.

10 MR. HACKETT: I would ask my friend at this point if he would mind not putting leading questions. Of course, the questions put so far are only preliminary, and they are not at all prejudicial.

HIS LORDSHIP: I do not think leading questions would have much influence upon a member of the Bar.

MR. HACKETT: That may be your Lordship's opinion, and as such it is entitled to every respect, but, at the same time, we should proceed legally.

20 MR. COOK: I shall endeavor, to the best of my ability, not to lead Mr. Wilkinson into any path where he should not stray.

BY MR. COOK, CONTINUING:

Q.—In the cause of your duties, during the period you have mentioned, did you have occasion to come across the late Mr. John M. Phillips, or to be interested in his affairs? A.—I did.

30 Q.—Will you please state to the Court what happened in connection with that?

MR. COOK: I prefer not to lead the witness, but to let him tell the story in his own way.

40 WITNESS: My attention was first directed to the Income Tax situation of John M. Phillips by the Intelligence Unit of the United States Government, which had charge of Income Tax prosecutions. For some considerable months prior to the month of March, 1928, an investigation had been under way with respect to ...

MR. HACKETT (interrupting) If it be the intention of the Plaintiff to prove any investigation, or any prosecution, I submit the best evidence must be adduced.

HIS LORDSHIP: And, it must first be alleged.

James E. Wilkinson for plaintiff (examination in chief).

MR. HACKETT: It must be alleged, in the first place. In the second place, only the best evidence is admissible here, and the memory of Mr. Wilkinson may not be admitted when there are documents, memoranda, prosecutions, and possibly convictions in the Court.

10 MR. COOK: This is purely preliminary, and merely incidental to the evidence the witness will give as to how he came into it. My friend need not fear anything that is illegal or detrimental will be placed in the Record, if I can possibly prevent it.

I would ask that the witness be allowed to proceed, because it is only by explaining matters I can make the evidence to which I will come in a moment.

20 HIS LORDSHIP: The objection is noted, and the evidence taken under reserve of it.

WITNESS (continuing answer) The result of those investigations was turned over to me. I presented the evidence to a Federal Grand Jury, an Indictment was returned against John M. Phillips, and...

MR. HACKETT: (interrupting) I object to any evidence of any Indictment against John M. Phillips being made by this witness. It is not the best evidence, and it is not alleged.

30 HIS LORDSHIP: Have you alleged those facts in your Pleadings, Mr. Cook?

MR. COOK: No, your Lordship. This is preliminary to evidence I intend to make in regard to Francis Phillips, and in regard to the conduct of Francis Phillips in connection with the matter.

BY MR. COOK, CONTINUING:

40 Q.—During the course of the investigation you speak of had you occasion to examine, or to question, the late Francis Phillips in connection with his relations with his father in regard to the bonds and so on that we have been discussing in this case? A.—I did.

Q.—What happened?

MR. HACKETT: This witness has testified that he is an Assistant District United States Attorney in charge of cri-

James E. Wilkinson for plaintiff (examination in chief).

minal prosecutions. My friend Mr. Cook is attempting to prove by Mr. Wilkinson what was said and done in a criminal court in New York.

In the first place, this is not alleged.

10 In the second place, if it were alleged, the memory of Mr. Wilkinson is not the best evidence. Evidence that is made before a Court is taken down, and there are Minutes of it, and I object to Mr. Wilkinson's evidence because it is not the best evidence.

MR. COOK: The evidence of the witness is clearly the best evidence that is available to your Lordship in this case. It is exactly the same class of evidence as the evidence given by Mr. Campbell, Mr. Zorn, and Mr. Frenz a few days ago; and that is all I am producing Mr. Wilkinson for.

20 I am not interested in the prosecution of Mr. John M. Phillips, but I am interested in what Francis Phillips declared to this witness, against his interest, in regard to the matters we have been discussing.

My friend is entirely premature in the objection he is raising, because it is impossible for your Lordship to know what the witness is going to say until we reach the point of his evidence, which is as to what Francis Phillips said to him.

30 HIS LORDSHIP: In regard to the witnesses who were heard the other day, there was no question of any written evidence, so we had to take the evidence as it was, because it was the best possible evidence in the circumstances. It was taken under reserve.

40 In this instance, it is quite different. I understand an investigation took place and that the witness acted as Attorney for the United States, and examined some of those men — chiefly Mr. Francis Phillips — and that there was a deposition taken in writing, or testimony taken in writing. If that be so, and if there was written evidence, taken according to law, by a stenographer, on the examination made by Counsel for the United States, then that evidence must be in existence, and it is the best evidence that can be adduced, and it should be filed.

According to our law the evidence of any party in a case must be filed as the best evidence possible. That being so, for the time being the door is closed to producing verbal testimony on this point. The best evidence would be the production of the deposition of Francis Phillips.

James E. Wilkinson for plaintiff (examination in chief).

MR. COOK: With all respect to your Lordship, may I urge this: supposing Francis Phillips was examined before the Grand Jury in New York, and supposing he afterwards made statements to the witness; surely it would be competent to me to make evidence as to the statements Francis Phillips made to Mr. Wilkinson.

10 It is not a question of written evidence: it is a question of what Francis Phillips told the witness in conversation. And, the evidence is just as good as was the evidence of Mr. Zorn, Mr. Campbell, and Mr. Frenz, who testified on Friday.

I must respectfully ask your Lordship to hear what Mr. Wilkinson has to say, and if you come to the conclusion, after having heard his evidence, that it is improper evidence — which I submit very respectfully it is not — your Lordship will make an Order accordingly. It is my respectful submission that your Lordship cannot properly come to that conclusion until I have put the evidence in. The witness is just competent to testify as to what Francis Phillips said as were any of the other witnesses who testified — in fact, he is more competent than they were, because he is a trained professional man.

MR. HACKETT: I think part of the difficulty might be removed if your Lordship asked the witness if the statements of Francis Phillips before the Grand Jury were taken down in shorthand.

30 HIS LORDSHIP: I was thinking of that.

BY THE COURT:

Q.—I do not know how you proceed before a Grand Jury, Mr. Wilkinson. Is the testimony given before a Grand Jury taken by a stenographer? A.—In our District it was.

Q.—So, in that case it was taken? A.—Yes, your Lordship.

Q.—Is there any means of having those depositions? A. Yes, sir.

40 Q.—Duly certified by a competent officer? A.—No, sir: for this reason — part of the Minutes were certified by him; the other portion of the testimony was not.

Here is the way we do it: we have a stenographer, who is a special assistant United States Attorney, transcribe the Minutes. None of those Minutes are ever written up except at the request of the Assistant presenting the case to the Grand Jury.

James E. Wilkinson for plaintiff (examination in chief).

I did request those Minutes. The first batch of them were certified, then I ordered the remainder of Francis Phillips' testimony. There were other witnesses examined, but I did not order the transcript of the testimony of all the witnesses. I ordered the transcript of some of it, but not all. Subsequently, Mr. Berry, the stenographer, died, so there is a portion certified over his signature, and there is a portion which is not. But, I was the questioning officer there.

10 Q.—Is the portion Counsel wants to put before the Court transcribed? A.—Yes, it is transcribed.

Q.—And, certified? A.—No: it could be only certified by my identification as the original Minutes.

Q.—But, could it be done? A.—It could be done.

The original Minutes would not be available to the Court. What could be done today would be to have photostatic copies of the originals.

20 Q.—And, certify them? A.—There is no way of certifying them. We have not the rule of certifying the Minutes in the United States Court.

So that your Lordship may understand: Grand Jury Minutes in the United States Court would not be available in any other Court, or be revealed, except in the interests of justice.

Originally when this situation arose, somebody communicated with the Collector of Internal Revenue, who communicated with my chief, Mr. Amely. The communications were had with the office of the Attorney General, in Washington, and they wrote Mr. Amely asking him that he exercise his discretion in the interests of justice in revealing the Minutes of the Grand Jury. That was done, and that is the reason I am privileged to be here to testify.

30 MR. HACKETT: The witness has just stated that the only way he could come here to testify is with the order of competent authority. The evidence of that order surely does not rest in his own verbal assertion. Great as may be our esteem for the witness, it behooves him to come into Court with his credentials, and if there must be an order of competent authority for him to come here, let him begin by showing whence he comes, and under what authority, by producing a certified order of the competent officer of the United States permitting him, as it were, to violate his oath of office and make known what took place ...

40 MR. O'DONNELL: That is rather strong.

James E. Wilkinson for plaintiff (examination in chief).

MR. HACKETT: And giving information of what took place in the secrecy of the Grand Jury room. That is a second ground of objection.

We know there are written documents, and we know how from the witness that he can only disclose what happened in the secrecy of the Grand Jury room in virtue of an order of the Court. Now, let him begin by producing the order which relieves
10 him from the secrecy incident to his oath of office.

MR. COOK: I again submit that the evidence I am offering to your Lordship now is perfectly proper evidence. I cannot say more than that. I think my friend's objection is not correct. Until the witness gives the evidence, how can your Lordship say whether it is or is not competent?

Francis Phillips may have been examined by Mr. Wilkinson before the Grand Jury, and, as a matter of fact he was; but, he may also have made statements to Mr. Wilkinson outside the
20 Grand Jury Room. Whether he did or not, I do not know. In any event, I submit respectfully I can ask him, and the fact that Mr. Wilkinson was the gentleman who examined Francis Phillips before the Grand Jury does not prevent Mr. Wilkinson from testifying as to what Francis Phillips may have said outside of the Grand Jury room.

HIS LORDSHIP: You might, perhaps, ask the witness if what he is about to say was disclosed to him at a sitting of the Grand Jury, or whether it was told to him outside the sitting
30 of the Grand Jury.

MR. COOK: I have no objection to asking that.

BY MR. COOK, CONTINUING:

Q.—You have heard the question suggested by His Lordship. Are you prepared to answer it? A.—I am. I am prepared to testify, first, as to the testimony of young Francis Phillips before the Grand Jury; and also as to two conversations I had
40 outside of the Grand Jury room with him, in my capacity of investigating the circumstances of the case. If it is the sense of the ruling of the Court that I confine my testimony to such conversations as I had outside of the Grand Jury room, I will so testify.

HIS LORDSHIP: In any event, the evidence will be made under reserve of Mr. Hackett's objection.

James E. Wilkinson for plaintiff (examination in chief).

MR. HACKETT: Will your Lordship ask the witness whether those alleged conversations with Francis Phillips took place before or after he is said to have rendered testimony before the Grand Jury?

WITNESS: Both took place afterwards.

10 MR. HACKETT: Then, I ask your Lordship to ask the witness whether or not those statements were in the same sense as the testimony Francis Phillips gave before the Grand Jury.

MR. O'DONNELL: That is cross examination.

HIS LORDSHIP: That may come afterwards.

20 MR. HACKETT: I think it is essential we have the information before your lordship passes upon the objection. Not so very long ago I came into rather violent conflict with your Lordship in regard to this rule of verbal evidence, and I feel we should know just what we are dealing with.

I suggest to your Lordship that the witness should be required to say before being permitted to testify further, whether or not the subsequent conversations were confirmatory of the testimony given in the Grand Jury room.

MR. COOK: I suggest the witness be allowed to give his own evidence.

30 HIS LORDSHIP: I will take the evidence under reserve of the objection.

MR. HACKETT: But, your Lordship, it is not alleged. I also make the further objection that the idea of a lawyer coming into Court and testifying as to the communications between himself and a young man who has testified before the Grand Jury is illegal.

HIS LORDSHIP: The young man was not his client?

40 MR. HACKETT: No, your Lordship.

MR. O'DONNELL: It was a matter of one private citizen speaking to another.

HIS LORDSHIP: Of course, if the young man was Mr. Wilkinson's client, it might be different. There might be something to say if the witness was revealing some of the secrets

James E. Wilkinson for plaintiff (examination in chief).

which transpired between himself and Francis Phillips if Francis Phillips had been his client. That, I understand, however, was not the case.

10 MR. HACKETT: We have the admission of the witness that Francis Phillips gave testimony before the Grand Jury, and that testimony was taken in shorthand and has been transcribed. That is the best evidence of the attitude and testimony of Francis Phillips, and any other testimony concerning the preceding or subsequent statements would be, I submit with great respect, absolutely inadmissible, on the ruling of what constitutes the best evidence.

HIS LORDSHIP: Your objection is noted, and reserved.

20 WITNESS: The first conversation I have reference to occurred after the final testifying of Francis Phillips before the Grand Jury. He had testified, if my recollection is right, on the 17th July, 1928. The following morning we met in the Chambers of Federal Judge Robert A. Inch, who had charge of the criminal term for the month of July. Mr. Henry Vollmer, the Attorney for young Francis Phillips, was there.

BY MR. COOK:

Q.—You were not the Attorney for Francis Phillips?

A.—No. I was the Attorney for the Government.

30 A three cornered conversation took place between Mr. Vollmer, Francis Phillips, and myself.

BY MR. HACKETT:

Q.—Was that taken down in shorthand?

A.—No.

40 I told Mr. Vollmer that I believed young Phillips had been a very recalcitrant and insulting witness before the Grand Jury, and that I intended to present those facts before Judge Inch and ask that he be punished. Francis then said: "I told you, Mr. Wilkinson, everything I know. I have taken those different safe deposit boxes out at the behest of my father. I put property in from time to time..."

MR. HACKETT: I object again, because, in the very words of the witness: "I told the Grand Jury"; therefore the notes of the evidence taken before the Grand Jury are the best evidence, and the witness is merely availing himself of this ca-

James E. Wilkinson for plaintiff (examination in chief).

sual conversation to circumvent the rule which precludes secondary evidence.

10 WITNESS: (continuing answer) He said: "I told you, Mr. Wilkinson, that I took those boxes out at the behest of my father, and from time to time I put money and bonds in them. I considered those moneys and bonds mine; but not mine in the exact sense, because I had not earned them. I always felt I would not own them until my father died; that my father could have them back at any time he asked or requested me for them." I said: "Francis, you did take boxes in assumed names". He said: "I did that at the behest of my father". I said: "You were very insulting to the Grand Jury, and to me... nobody desires to hurt this boy. I understand he is an invalid and a cripple, and I have tried to be kind to him, but nevertheless the Government is interested, since the death of the father in the assets of the Estate of John M. Phillips, and I intend to do everything within the scope of my authority and power to recover for the Government." 20 Francis said: "You are not going to bring my wife into this are you?" I said: "I intend to call her as a witness".

We went before Judge Inch. I did not have it in my mind further to call the boy at that time.

We then issued a subpoena for his wife, and finally they subpoenaed her at Montauk Point, Long Island (within the District of my Department) about 130 miles from the Court.

30 They came along within the following two weeks after the 18th July, and young Francis and his wife returned to the Court Room. Young Francis was very excited, and he ran at me with his clenched fists. He said: "You are not going to bother my wife before the Grand Jury? Just look at her. She is hysterical. She knows nothing about my father's affairs, and she knows nothing about mine. I told you everything I know. The Government was after my father, and I told you everything my father wanted me to do. I put money and I put bonds wherever he wanted it". I said "Francis, your father was in this Court, and you knew it. You went down to Miami, Florida, to the Bank of the Bay of Biscayne, and you took a man named Grimes with you. You thought everyone would be telling your father. All along I am sure you had in your mind that your father was going to trial in my Court, and you removed two packages of bonds from the Bank of Biscayne, and took them along to Atlantic City with you, and you gave those bonds to your father. Your father died on July 3rd, and those bonds could not be found. You said 40

James E. Wilkinson for plaintiff (examination in chief).

10 that you looked for them, but could not find them. You did not make any complaints that they had been stolen. Now, what do you think I am? You are a boy eighteen years of age. Do you want to save trouble for me, and for the Government, and for yourself, and your wife, and everybody?" He said: "I don't know what became of those bonds, and my wife does not know, and I don't want you to take her before the Grand Jury. My father did not treat me like he was my father: he treated me like an old man, and he talked to me as he would talk to one of his associates — he would swear; he would use slang. He treated me as if I was a social intimate of his own years". I said: "However, I will have to take your wife before the Grand Jury".

That was the last conversation.

BY MR. COOK, CONTINUING:

20 Q.—Did you have any conversation at that time with Francis Phillips about any money in Montreal? A.—Not specifically. I referred to the moneys and bonds he had in the various safe deposit boxes, and I had included the Montreal box together with four other boxes in my question to him, because I had mentioned "In the five safe deposit boxes".

Q.—And his reply to you, as you have given it, covered everything? A.—Yes.

30 Q.—Did you question Francis Phillips at that time concerning a visit he had made to Montreal on or about July 16th, 1928?

MR. HACKETT: I object to this evidence as tending to prove facts which are not alleged. I cannot, for the life of me, see at the moment just what legal justification there is for the question: quite apart from the propriety of putting it or of the witness answering it.

I object to the question as illegal and irrelevant.

HIS LORDSHIP: We must not forget this is a case of conspiracy and fraud.

40 MR. HACKETT: No, your Lordship, it is not a case of conspiracy. That is where I fear the Court may have erred.

HIS LORDSHIP: I do not mean the pretension of ownership, but it is bound up with the first case: so much so that there is a consent that the proof adduced in the main issue shall be common to the present instance.

James E. Wilkinson for plaintiff (examination in chief).

MR. HACKETT: That is not quite what the consent says. Your Lordship.

HIS LORDSHIP: This Action is the consequence of the first Action. If the first Action had not been taken, then this Action would never have come before the Court.

10 MR. HACKETT: I would not say that.

What I am trying to draw to your Lordship's attention is that the proof (as the Court has been good enough to remind me on many occasions) must be restricted to the allegations, and the allegations of the declaration do not refer to any conspiracy.

HIS LORDSHIP: In any event, the witness may give a negative answer.

20 MR. HACKETT: That is a way out, but it does not have any bearing upon the legality of the question.

HIS LORDSHIP: In any event, I will note your objection.

MR. HACKETT: Then, I will suggest that before the witness answer he be asked to say...

30 HIS LORDSHIP (interrupting) I allow the question under reserve of your objection. You will have the opportunity of cross examining the witness.

MR. HACKETT: But, was this said in the Grand Jury Room, or not?

HIS LORDSHIP: That is not the question I am deciding now.

40 MR. HACKETT: As the question is put, the witness can truthfully answer it as having been testimony in the Grand Jury Room, and if it was in the Grand Jury room the witness has told us there are notes which were taken there.

MR. COOK: We are now out of the Grand Jury room.

HIS LORDSHIP: The witness may answer "Yes" or "No; then he may be asked "Where?" or "When?"

WITNESS: Not on the last interview, but on the one we had after he had testified after the Grand Jury room, in

James E. Wilkinson for plaintiff (examination in chief).

Judge Inch's outer chambers, when his Attorney, Mr. Vollmer, was there.

BY MR. COOK, CONTINUING:

Q.—Will you please say what happened? A.—I further said: “Mr. Vollmer, John M. Phillips died on July 3rd...”

10

BY THE COURT:

Q.—(interrupting) Was Francis Phillips there? A.—Yes, your Lordship.

MR. HACKETT: I object to any conversations between Mr. Wilkinson and Mr. Vollmer. Mr. Vollmer is alive and well, and if one is at all anxious to know what was said, let Mr. Vollmer be summoned and let him come here. This is not the best evidence.

20

HIS LORDSHIP: That was why I asked the witness if Francis Phillips was there. If the conversation took place between the three of them, we will see what it was. That was why I put the preliminary question. Of course, if Francis Phillips was not there, and the witness were permitted to relate a conversation between Mr. Vollmer and himself, it would be quite different. I know Mr. Wilkinson will be careful not to mix them.

WITNESS: I will try to keep within the rule.

30

On July 16th I said: “Francis hired an aviator to take him to Montreal, Canada”. I said “There is a safety deposit box there with the sum of \$300,000 and upwards either in bonds or in currency.” I said: “I believe, Mr. Vollmer; and I will tell you, Francis, you took that money back with you to New York”.

BY THE COURT:

Q.—Francis was there? A.—Yes. He said: “That is a lie. I did not take anything out of that safety deposit box on that occasion. I visited the offices of Cook & Magee, my father's attorneys, when I was in Montreal on the 16th, and I came back.” I said: “The boy tried first to indicate this money was his, and after pressure by me, and after he was taken before Judge Inch, he said he did not consider any of this was his money till his father died”. I said: “I want the truth from the boy, Henry (I am very well acquainted with Mr. Vollmer, and called him Henry)”. The boy said: “I told you the truth, Mr. Wilkinson. My father

40

James E. Wilkinson for plaintiff (examination in chief).

knew the Government was after him and investigating his Income Tax, and he needed money to carry on his business which he was operating in a large way as a contractor, and I told you everything I know, and I can add nothing further”.

That was the substance of that conversation.

BY MR. COOK, CONTINUING:

10 Q.—Do you know a man named Peter Campbell? A.—I do.

Q.—Do you know a man named Andrew Zorn? A.—I do.

Q.—Were you in Court on Friday when they gave evidence as to having been convicted in regard to their Income Tax?

20 MR. HACKETT: I object to any testimony the witness might give concerning those convictions. In the first place, they are not alleged; in the second place we are not trying either Zorn or Campbell, and it is incompetent to bring a witness at this stage, in any event, to bolster up...

HIS LORDSHIP: You might perhaps add that the interested parties themselves had an opportunity of speaking of the cases, and clearing the atmosphere, and that they were the best persons to clarify it.

30 MR. COOK: The evidence in regard to the conviction of those gentlemen was brought out by my friend in cross examination. Those men, who were convicted in the manner they explained, were not professional men — they were laymen. Now Mr. Wilkinson comes forward and says “I can explain the entire matter to the Court”, and I think he should, because I think in fairness to those witnesses Mr. Wilkinson should be allowed to say just what happened in regard to the matter. He was there, and he knows all about it.

I submit it is perfectly proper evidence, and I ask that the witness be allowed to answer.

40 HIS LORDSHIP: Both Mr. Campbell and Mr. Zorn gave their explanations. What more do you want?

MR. COOK: I am asking that the witness be allowed to explain, from a legal point of view, how the matter was arranged, and what was done in connection with those cases. Mr. Wilkinson is the one man who can speak of it, and he is in a position to speak of it from first hand knowledge. He is in a far

James E. Wilkinson for plaintiff (examination in chief).

better position to speak of it than the witnesses who were cross examined in regard to it.

HIS LORDSHIP: You do not want to repeat the fact that they were charged with certain offences, that a trial took place, that sentence was rendered, that sentence was suspended, and that there was some sort of a compromise. I do not
10 suppose you want to contradict all that?

MR. COOK: All I want to ask this witness is, as a professional expert, how those men could be sentenced and have a suspended sentence at the same time.

MR. HACKETT: And, I object to that. I am not prepared to go into an investigation of the methods of criminal justice in the State of New York. I did not bring those men here. I cross examined them to some extent, and that was all. If we are
20 going to hold a lengthy investigation into the answers given by each witness who happens to stub his toe in cross examination, this case will be very much more protracted than it has been.

I object to this as illegal, not alleged, irrelevant, and not pertinent to the issues before the Court.

MR. COOK: The question I asked the witness is a question your Lordship saw fit to put to the other witnesses. This witness is a professional gentleman, and is far better able to explain the question your Lordship put, from a technical stand
30 point, than were those contractors, who merely told you what they knew.

HIS LORDSHIP: I suppose you do not want to enquire into the methods followed by the State of New York in dealing with an accused person.

I do not see it has any bearing on the case, and I will maintain the objection.

MR. COOK: I have no further questions.

40 MR. HACKETT: Under reserve of the objections I have made to the testimony, I will ask the witness a few pertinent questions.

James E. Wilkinson for plaintiff (cross-examination).

CROSS EXAMINED BY MR. HACKETT, K. C., OF
COUNSEL FOR DEFENDANTS.

Q.—You have told us that you are a practicing attorney?
A.—Yes.

Q.—And that you have practiced law for some thirty odd
years? A.—Thirty years.

10 Q.—In so far as Francis Phillips is concerned, you have
told us of two separate interviews? A.—Yes.

Q.—For reasons of your own I think you told us of the
last interview first, and of the first interview last? A.—No. I
think I told you them in chronological order. I intended to, any-
way.

20 Q.—I understood, and in fact, the stenographic notes show
that the first interview of which you spoke was that of July
17th? A.—That was the 18th. Either the 18th or 19th — the
day after he had been before the Grand Jury. The other inter-
view was around about ten days or two weeks later, to the best
of my recollection.

Q.—That shows just how dangerous it is to rely upon
one's recollection, because you gave July 17th as the date of the
first interview, and July 16th as the date of the second. A.—
No. I distinctly remember I did not.

Q.—In any event the record will speak for itself on that
score? A.—Yes.

30 BY THE COURT:

Q.—And, if the record shows that, it is wrong? A.—Yes;
it is an error.

BY MR. HACKETT, CONTINUING:

Q.—As the balance of your testimony may be wrong? A.
Oh, no.

40 HIS LORDSHIP: That does not follow. It will simply
be a matter of inverting, the first for the last?

BY MR. HACKETT, CONTINUING:

Q.—You told us that this first interview took place in
Judge Inch's room, I understand? A.—The ante-room to his
chambers.

Q.—And, who were present? A.—Mr. Henry Vollmer,
Mr. Francis Phillips, and myself.

James E. Wilkinson for plaintiff (cross-examination).

Q.—Anybody else? A.—I do not know if she paid any attention to the conversation, but Judge Inch's private secretary, Miss Shoemaker, was there; but she was typewriting, I think.

Q.—You do not recall anybody else? A.—No.

10 Q.—Are you prepared to pledge your oath there was nobody else there? A.—To the best of my recollection, yes.

Q.—That is, you will say that you were directing your attention to Mr. Vollmer and to Francis Phillips, and other people may have been there but you do not recall them? A.—I would not say that. I would say I am positive in my recollection of only three people. The only three people engaged in that interview were Mr. Vollmer, Francis Phillips, and myself.

BY THE COURT:

20 Q.—Judge Inch was not there? A.—No. We went in to Judge Inch later.

BY MR. HACKETT, CONTINUING:

Q.—And, those were the three people who did the talking? A.—Yes.

Q.—But, you are not prepared to say there was no one else present in the room? A.—Miss Shoemaker, I think.

30 Q.—Are you prepared to say there was no one else there, or do you say that you do not recall? A.—There would be no one else within earshot: I am confident of that.

Q.—That is to the best of your recollection? A.—Yes.

Q.—You told the Court you did not make any specific reference to any box, as I understood you? A.—I mentioned five boxes to the boy in the conversation, he had testified to.

Q.—Is it your testimony that you did, or did not, make a specific reference at that interview to the box in Montreal? A.—I did. When I told Mr. Vollmer, and told Francis, that his father had died on July 3rd ...

40 MR. HACKETT: (interrupting) That is not an answer to the question.

BY MR. HACKETT, CONTINUING:

Q.—Is it your testimony that you did, or did not, make a specific reference at that interview to the box in Montreal? A.—I did.

James E. Wilkinson for plaintiff (cross-examination).

Q.—I want to know whether your testimony now contradicts the testimony that you gave a few minutes ago, in which you said you did not specifically refer to the box in Montreal?
A.—I did not so testify.

Q.—Again, if the record shows that you did, it is merely proof of the unreliability of one's recollection? A.—The record will not show that.

10 Q.—But, if it does show that, it will again establish that your memory is not as reliable as you might wish it were? A. It cannot show that, because I specifically referred to it, and gave you the details of the conversation.

Q.—We are always referring to the first interview to which you testified? A.—Yes, sir.

Q.—Did I understand you to say that John M. Phillips was before your Court on the 21st June? A.—Either the 20th or the 21st.

20 Q.—It is of importance to the Court, and to me, to know whether it was the 20th or the 21st? A.—My best recollection is it was the 21st.

Q.—And, how about the 22nd? A.—I would say no. It was either the 20th or the 21st. To the best of my recollection, it was the 21st.

BY MR. O'DONNELL:

Q.—That is a matter of record, is it not? A.—Yes, sir.

30 MR. HACKETT: The records, apparently have ceased to be of any importance.

BY MR. HACKETT, CONTINUING:

Q.—Is it not a fact that young Francis Phillips was nearly distracted when the question came up of the interrogation of his wife? A.—Yes.

Q.—And, is it not a fact he told you she was pregnant?
A.—Yes.

40 Q.—And, did he not shake his diminutive fist in your face? A.—He did.

Q.—And told you what a preposterous and ungodly thing it was to drag a girl sixteen or seventeen years of age into Court to testify, when she was about to become a mother? A.—Yes.

Q.—And, it was after this that he made the statement to you, concerning property, which you have given here? A.—No.

James E. Wilkinson for plaintiff (cross-examination).

Q.—The record of your testimony, in the order in which you gave it here, shows that it was after you had hailed his wife into Court that he made statements to you? A.—I was just about to tell you the one statement he made at that time.

Q.—At what time? A.—At the time he came in previously to my calling his wife before the Grand Jury. Would you like that statement?

10 Q.—In your examination in chief you said it was after that he made statements to you concerning the ownership of bonds in Montreal? A.—No. I did not mention Montreal in that conversation. I only mentioned the general proposition as to how his father treated him, and that he had told me everything that he knew, and his wife knew nothing, and that he had given me the complete information, and that his father did not treat him like a boy, but treated him like an old man, and that everything
20 he had done he had done under the dictation of his father, and that he could not add anything further to what he had told me, and that his wife could not help the situation.

Q.—Did you make any notes of those conversations? A. No.

Q.—You are relying entirely and exclusively upon your memory? A.—I am.

Q.—Where did the second interview take place? A.—The second interview took place at the entrance to the Grand Jury room, in the office of Mr. Herbert H. Kellogg, who at that time was in charge of the Appellate work of the office.

30 Q.—And, who were present? A.—I was present. Francis Phillips was present. His wife was present. There was also a bunch of newspaper men, whom I had expelled from the scene because they were attempting to take flashlight photographs. I got them out of the room at young Phillips request.

Q.—Can you recall if anybody else was present? A.—Not that I recall.

Q.—You would not go so far as to state nobody else was there? A.—No, I would not.

40 Q.—What measure of pressure and coercion was brought to bear upon young Phillips? A.—No pressure, or coercion, except this...

Q.—(interrupting) Was he threatened? A.—Let me ask you a question. I do not want to offend, and bring in something you do not like.

Q.—But, you have brought in quite a lot that I do not like. A.—I have no interest in the outcome of this.

James E. Wilkinson for plaintiff (cross-examination).

Do you want me to refer to the times Phillips was before the Grand Jury, or to the pressure I was bringing to bear at the time of those two interviews?

Q.—You threatened him with prosecution? A.—I threatened to bring him to Court and punish him for his contempt in Court — for his recalcitrant attitude in the Grand Jury room.

10 Q.—And, after they had taken his wife — who was a girl sixteen or seventeen years of age, from her bed between five or six o'clock in the morning, and brought her to Court? A.—No, sir, I did not. I did not have his wife brought to Court. What happened was this: he secreted his wife 130 miles from the Court, and she was served with a subpoena by a Deputy Marshall, and came to Court in response to the subpoena.

Q.—At five o'clock in the morning? A.—I do not know what time the subpoena was served. I was not there.

20 Q.—You have said you have been a practicing attorney in New York for thirty odd years? A.—Thirty years.

Q.—Is there anything in the Statutes of New York, or is there anything in the ethics of the profession which guide practitioners, which precludes attorneys from carrying on other business?

WITNESS: What do you mean? You mean in the United States Attorney's Office?

COUNSEL: In the State of New York.

30 A.—No.

Q.—It is competent to an attorney to engage in trade, or any other calling he wishes? A.—Yes, sir.

Q.—It is competent to him to conduct a detective bureau if he wishes? A.—If he wishes, yes.

40 Q.—During part of those thirty years have you conducted a detective bureau? A.—I did. My father was in that business, and I followed it after his death, because he had a lot of work for the Dupont Powder Company. I concluded that work in my time, and then turned it over. I have not had a license since 1918 or 1919.

Q.—Is it not a fact that you were a licensed detective up to 1920? A.—It might have been 1920. but nevertheless I never worked in divorce work, or anything like that.

Q.—What I am trying to establish is that your work was largely investigating work, as distinct from legal work? A.— Yes.

James E. Wilkinson for plaintiff (cross-examination).

Q.—And, you were carrying on the work of a detective and a runner down of offenders against the law? A.—Yes.

Q.—And your work in the District Attorney's Office has always assumed that character, has it not? A.—No. Except this; I was a prosecutor there, and I might add that out of 139 contested felony prosecutions I had 121 convictions.

10 Q.—And, that was largely due to your work as a detective? A.—No: my legal training. I tried a case with Max Steur, and collected \$238,000 in Income Tax, and sent his client away for a year and a day in Atlanta.

BY THE COURT:

Q.—Those cases were before the Courts? A.—Yes.

BY MR. HACKETT, CONTINUING:

20 Q.—In the particular instance to which you refer, in which you opposed Mr. Max Steur he was defending a government official who has an annual salary of \$3000? A.—Yes. He took a bribe of \$15,000 to conceal an Income Tax return. I had also indicted the tax-payers in the same Indictment, and I collected \$238,000 from the taxpayers for the Government.

Q.—Due to your good work as a detective? A.—No, sir: as a District Attorney.

BY MR. O'DONNELL:

30 Q.—You obtained Judgment in the Courts, after you prosecuted in the Courts? A.—Yes; prosecuted in the Courts.

BY MR. HACKETT, CONTINUING:

Q.—Without assistance of any kind? A.—None whatever.

Q.—Nobody with you at all? A.—Except the agents of the Intelligence Unit.

40 Q.—Whose activities had been directed by you? A.—
Yes.

MR. HACKETT: I have no further questions.

MR. COOK: I declare my case closed.

MR. HACKETT: My friend began the examination of a witness, whom I attempted to cross examine, and I was met with an objection.

James E. Wilkinson for plaintiff (cross-examination).

HIS LORDSHIP: Who is that?

MR. HACKETT: Mrs. Paulsen.

With your Lordship's permission, I will complete my cross examination of the young lady.

10 MR. COOK: My examination of Mrs. Paulsen was a mere examination on Discovery.

HIS LORDSHIP: She was not heard before me.

MR. COOK: I examined her on Discovery, and I asked all the questions I wanted to ask. If my friend wishes to examine Mrs. Paulsen, he may examine her as his own witness.

MR. HACKETT: My friend Mr. Cook examined Mrs. Paulsen, and I objected to certain phases of the examination.

20 MR. COOK: She is the widow of Francis Phillips, and she is one of the Defendants in this case.

HIS LORDSHIP: And, she has been examined on Discovery?

MR. O'DONNELL: Yes, your Lordship, and my friend wants to cross examine her now.

30 HIS LORDSHIP: Was Mr. Hackett present when the lady was examined on Discovery?

MR. HACKETT: Yes, your Lordship. I would like my friends to say everything they have to say before I speak.

MR. COOK: I have nothing further to say.

40 MR. HACKETT: My friend called Mrs. Paulsen, one of the Defendants. The examination was an amicable one. We went to Mr. Cook's office. Mrs. Paulsen was asked several questions to which I objected. Then I started to cross examine her, whereupon Mr. Cook made an objection and asked that I do not proceed with my cross examination and that it be reserved for your Lordship to decide the objection. Now I only wish to proceed with my cross examination of Mrs. Paulsen in your Lordship's presence.

HIS LORDSHIP: According to our law of procedure either party has the right to examine the other party on Disco-

James E. Wilkinson for plaintiff (cross-examination).

very. If the Plaintiff wishes to examine the Defendant on Discovery, it is his right, and the other party has the right to cross examine. If the Defendant wishes to examine the Plaintiff on Discovery, he may do so, and the Plaintiff's lawyer has the right to cross examine.

10 We also know those examinations on Discovery must be filed of record, and make proof of their contents. Formerly there was no obligation to file a deposition on Discovery in the Record, and it sometimes happened that a party examined the opposite party on discovery and found the examination was against him, and kept the deposition out of the Record. The Legislature decided this was not proper, and whether the deposition was good or bad for the party who examined, it had to be filed in the Record.

20 As I understand it, Mr. Cook examined Mrs. Paulsen on Discovery. That being so, of course it was the right of Mr. Hackett to cross examine the witness. I have the examination on Discovery before me, and I see Mr. Hackett commenced to cross examine Mrs. Paulsen. I notice his question was:

“I will ask you to complete the answer to the question that was put to you as the conversation between you and the late Mr. John M. Phillips”.

Mr. Cook objected to this, and said:

30 “Because obviously it was not my intention to ask any such question of Mrs. Paulsen, and I ask that the matter be reserved for the decision of the Court”.

This shows the cross examination was suspended under this consent, because, as far as I can see, Mr. Cook reserved the matter for the decision of the Court.

Naturally I would think the lady would be called again before me to complete her cross examination.

40

J. H. KENEHAN.
Official Court Reporter.

PART III.—EXHIBITS.

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

EXHIBIT C-1.

*(Photostatic copy of Tabulation of Sewer Contracts from
Sept. 23, 1907 to Nov. 28, 1927.)*

Word	Title of Contract	Contractors Contract No.	Owner Contract No.	Bids Opened	Contract Signed	Order of Days After	Work Started	Work Completed	Contractor's Line No.	Contractor	Field Engineer	Engineer's Estimates		Contractor's Lowest Bid	Total Final Cost	Type of Service	Date of Final Approval	No. of Bids	Bids		Range %	% to Final Est	Highest Bid
												Preliminary	Final						Low Type "A"	Low Type "B"			
3	Trig Sewer at 3rd Ave from 8th St. to 10th St etc	74	1 179	July 4, '07	Sept 23, '07		Oct 7, '07	Feb 12, '08	150	John T. Clancy	James H. Johnson	14,500.00	17,000.00	14,535.24	15,633.65	C & V.P.	May 17, 1907	5	19,535.24	158	86	22,947.41	
2	Sewer at Metropolitan Ave. from Thompson Ave. to 3rd St. etc	87	1 181	Sept 26, '07	Apr 13, '08		June 1, '08	May 23, '08	170	Joseph A. Joyce	James H. Johnson	12,175.00	21,000.00	18,348.20	32,084.83	C & V.P.	June 5, 1907	5	23,049.24	149	141	44,012.40	
1	Sewer in Florence Ave. from East River to 1st Ave etc		2 18	Oct 23, '08	Mar 20, '09		Apr 5, '09	Oct 23, '09	170	P. F. Swanson	Harold Tork	32,000.00		20,102.50	20,730.29	A & C.V.P.	Oct 23, 1908	7	20,132.51	146	65	29,532.50	
1	Sewer in Lawrence St. from Truancy Ave. to the corner south of Hancock Ave etc		2 37	Sept 17, '09	Dec 4, '09		Feb 8, '10	July 7, '10	150	Flores Bros	?	31,500.00	34,057.00	23,387.00	21,705.80	B & C.V.P.	Oct 22, 1909	7	23,382.48	222	65	52,008.80	
1	Sewer in Ely Ave. from Washington Ave. to Webster Ave etc	15,377	2 39	Sept 17, '09	Dec 4, '09		Dec 13, '09	June 25, '10	150	Green Gut Co	Albert Decker Jr	24,000.00	27,024.25	16,639.00	17,102.17	B & C.V.P.	Oct 22, 1909	6	16,639.00	163	76	27,119.93	
2	Carlisle Ave. from Myrtle Ave. to Broadway Ave	26,716	2 36	May 5, '10	July 1, '10	July 15, '10	?	?	150	Charles A. Meyers	Thome	30,000.00	27,817.50	16,387.00	15,838.33	B & C.V.P.	Apr 1, 1910	6	16,387.00	220	59	36,044.50	
1	1st Ave. from Morris Ave. to Taylor Ave. etc	26,723	2 51	May 5, '10	June 3, '10	July 2, '10	July 13, '10	?	200	Henry J. Muller	Albert Decker	53,530.00	45,747.50	33,879.75	34,503.03	C & V.P.	Dec 30, 1909	4	33,879.75	113	78	40,589.80	
2	Cypress Ave. from Myrtle Ave. to Green St. 14th St. from Van Dyke Street Ave. to Flushing Ave. etc	21,258	2 59	July 6, '10	Aug 3, '10	Sept 10, '10	Sept 10, '10	Nov 11, 1911	250	Hicks Johnson Const Co	Jacob Thome	92,500.00	63,351.80	62,742.76	63,847.57	C & V.P.	May 20, '10	8	62,842.76	153	75	84,222.40	
1	1st Ave. from Morris Ave. to Taylor Ave. etc	21,277	2 60	July 6, '10	Aug 17, '10	Sept 15, '10	Sept 16, '10	?	170	Henry J. Muller	Albert Decker	16,100.00	17,504.50	12,574.00	12,243.07	B & C.V.P.	June 3, 1910	1	12,243.07	118	72	14,959.40	
4	1st Ave. from Liberty Ave. to Webster Ave. 1st Ave. from Webster Ave. to Gateway Rd. etc	28,210	2 65	Oct 31, '10	Dec 20, '10	May 4, '11	July 31, '11	Nov 4, '11	200	Thome & Clarke	Mackey	40,000.00	88,700.00	59,130.28	59,657.19	C	July 29, 1910	11	59,130.28	172	67	109,745.50	
4	1st Ave. from Webster Ave. to Gateway Rd. etc	28,211	2 66	Oct 31, '10	Dec 20, '10	Aug 14, '11	Oct 8, '11	Apr 20, '12	200	Thome & Clarke	Mackey	48,500.00	103,320.00	72,258.70	70,706.88	C	July 29, 1910	10	72,258.70	156	74	121,255.50	
4	Bronx St. from 14th Ave. to Gateway Rd. etc	28,213	2 67	Oct 31, '10	Nov 28, '10	June 13, '11	Nov 16, '11	?	200	Wm Kelly	Mackey	70,000.00	81,400.00	60,057.49	59,776.38	C	July 29, 1910	11	60,057.49	157	73	94,818.20	
4	Bronx St. from 14th Ave. to Gateway Rd. etc	28,214	2 68	Oct 31, '10	Nov 28, '10	?	?	?	200	Wm Kelly	Mackey	70,000.00	78,700.00	58,156.75	54,911.20	C	July 29, 1910	10	58,156.75	149	73	82,389.50	
4	Bronx St. from 14th Ave. to Gateway Rd. etc	28,217	2 69	Oct 31, '10	Nov 28, '10	?	?	?	200	Wm Kelly	Mackey	99,500.00	101,600.00	80,235.08	87,719.45	C	July 29, 1910	7	80,235.08	158	89	103,040.00	
2	Bronx Ave. - De Witt Ave. to 1st Ave. etc	28,223	2 71	Oct 31, '10	Jan 27, '11	Mar 31, '11	Nov 11, '11	?	250	Hicks Johnson Const Co	Jacob Thome	74,000.00	70,740.75	58,906.83	57,590.80	C & V.P.	Sept 14, 1910	5	58,906.83	137	83	81,076.25	
1	Ely Ave. from Taylor Ave. to the corner south of 1st Ave. etc	29,307	2 77	Feb 27, '11	Mar 30, '11	?	?	?	120	Clancy & Van Alst	Albert Decker	9,200.00	7,022.75	5,000.40	4,871.95	V.P. & B.C.	Apr 1, 1911	6	5,000.40	154	71	7,696.50	
4	Liberty Ave. from Webster Ave. to Street Hill etc	29,308	2 87	Feb 27, '11	Mar 28, '11	Apr 12, '11	?	?	200	Likelihood Contract Co	Mackey	73,412.00	76,750.00	51,333.58	53,218.99	C	Jun 12, '11	11	51,333.58	165	67	84,775.50	
1	9th Ave. from Broadway Ave. to the corner south of 1st Ave. etc	29,871	2 98	Apr 24, '11	May 12, '11	June 6, '11	?	?	90	Emergency Const Co.	Albert Decker	9,444.26	8,178.50	5,509.78	5,451.97	V.P.	Mar 9, 1911	9	5,509.78	133	67	7,351.40	
1	Manhattan Ave. from Taylor Ave. to the corner south of 1st Ave. etc	30,931	3 1	July 20, '11	Aug 16, '11	Sept 10, '11	?	?	200	James Dwyer & Thomas Improvement Co.	Albert Decker	105,000.00	101,418.05	96,370.10	88,001.47	C & V.P.	May 4, 1911	2	96,370.10	106	95	102,264.65	
1	Street Hill from Broadway Ave. to 1st Ave. etc	30,867	3 2	July 20, '11	Aug 25, '11	Sept 13, '11	Oct 31, '11	?	200	William Kelly	J.P.C. Mackey	93,000.00	68,970.25	64,006.00	64,667.67	C & V.P.	June 15, '11	2	64,006.00	107	93	69,614.84	
1	Manhattan Ave. from Broadway Ave. to 1st Ave. etc	31,771	3 5	Sept 11, '11	Oct 2, '11	Nov 20, '11	Nov 2, '11	?	150	William Kelly	J.P.C. Mackey	70,000.00	68,287.80	66,740.05	68,750.97	C	July 27, 1911	4	66,740.05	163	102	108,834.55	
2	Manhattan Ave. from Broadway Ave. to 1st Ave. etc	31,865	3 16	Sept 20, '11	Oct 7, '11	Nov 11, '11	?	June 14, '12	170	Kelly Const Co., Assn. - Manhattan Const Co.	G.S. Clarke	18,700.00	18,778.75	25,064.26	25,446.84	C	Nov 16, '11	5	25,064.26	142	132	35,639.25	
2	Manhattan Ave. from Broadway Ave. to 1st Ave. etc	32,116	3 24	Mar 23, '12	Apr 27, '12	May 27, '12	?	?	170	Gubert Hill	Director of Works	18,703.75	18,400.00	16,146.00	14,218.33	V.P.	Feb 8, 1912	7	16,146.00	161	77	22,773.60	
2	Manhattan Ave. from Broadway Ave. to 1st Ave. etc	32,268	3 28	Mar 27, '12	Apr 29, '12	May 29, '12	Oct 9, '12	?	120	McManis & Clark Co.	G.S. Clarke	14,500.00	12,743.25	11,304.50	11,299.91	C	Nov 10, '11	2	11,299.91	175	116	26,004.40	
1	Manhattan Ave. from Broadway Ave. to 1st Ave. etc	32,316	3 27	Mar 27, '12	May 27, '12	June 17, '12	Nov 12, '12	?	90	Jan J. Sypreth & Co.	J.P.C. Mackey	14,670.00	15,656.25	18,277.97	14,111.11	C	Nov 7, 1912	9	14,277.97	129	97	17,145.30	
4	Manhattan Ave. from Broadway Ave. to 1st Ave. etc	32,867	3 29	Mar 27, '12	Apr 27, '12	July 7, '12	?	June 27, '12	120	Jan J. Sypreth & Co.	J.P.C. Mackey	28,400.00	28,804.55	30,633.50	30,766.29	C	Mar 27, 1912	9	30,633.50	141	105	42,648.85	
4	Manhattan Ave. from Broadway Ave. to 1st Ave. etc	34,534	3 62	Apr 27, '12	Oct 7, '12	Oct 31, '12	?	?	200	Jan J. Sypreth & Co.	J.P.C. Mackey & Assn.	27,300.00	33,203.21	42,192.03	41,374.33	C	Mar 7, 1912	3	42,192.03	132	127	55,648.65	
2	Central Ave. from Broadway St. to Myrtle Ave	33,532	3 32	May 27, '12	July 18, '12	Sept 28, '12	Jan 10, '13	Mar 18, '13	200	Henry J. Muller in connection with Eng. Co. contractor of Hicks Johnson Const Co.	G.S. Clarke	134,130.00	118,623.00	99,845.85	102,003.02	C	May 2, 1912	7	99,845.85	147	84	147,259.50	
2	Frank Ave. Rd. from Myrtle Ave. to Broadway Ave. etc	33,831	3 33	May 27, '12	July 18, '12	Aug 12, '12	?	?	170	Hicks Johnson Const Co.	G.S. Clarke	12,925.00	16,235.00	18,688.40	18,964.96	C	May 2, 1912	7	18,599.00	126	115	23,563.50	
4	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	33,834	3 34	May 14, '12	June 26, '12	Sept 10, '12	?	?	250	Jan J. Sypreth Co. Inc.	J.P.C. Mackey & Assn.	211,200.00	233,051.00	186,929.10	205,111.67	C	Mar 21, 1912	3	186,929.10	110	80	205,768.00	
2	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	34,107	3 51	July 28, '12	Aug 31, '12	Oct 5, '12	?	Dec 9, '12	90	Clancy & Van Alst	G.S. Clarke	7,770.00	6,934.75	7,912.82	7,894.20	C & V.P.	June 13, 1912	2	7,912.82	101	114	8,029.05	
2	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	34,573	3 53	July 23, '12	Oct 4, '12	Apr 23, '13	?	?	90	G.S. Clarke	G.S. Clarke	6,200.00	7,335.00	7,298.70	7,172.58	V.P.	June 18, 1912	4	7,298.70	116	100	8,256.60	
1	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	34,586	3 58	Sept 5, '12	Nov 20, '12	Nov 20, '12	?	?	300	Jan J. Sypreth Co. Inc.	Decker	121,250.00	150,835.00	182,902.80	164,153.33	C & V.P.	July 11, 1912	5	182,902.80	138	104	211,663.30	
1	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	36,810	3 64	Sept 5, '12	Oct 28, '12	Nov 1, '12	Mar 13, '13	Feb 16, '14	200	Decker Kelly Inc	Thome	178,450.00	172,665.35	150,919.25	157,890.17	C	May 2, 1912	3	150,919.25	123	87	155,278.00	
2	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	36,763	3 65	Oct 7, '12	Oct 29, '12	Nov 18, '12	Nov 18, '12	?	90	Eng. Exp. & Const Co.	G.S. Clarke	6,000.00	5,929.03	6,169.70	5,626.50	V.P.	Sept. 19, 1912	2	6,169.70	111	104	9,465.62	
1	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	36,146	3 72	Nov 8, '12	Jan 28, '13	Mar 20, '13	?	?	120	Emergency Const Co.	J.T. Decker	6,422.50	7,688.25	7,450.20	7,307.52	V.P.	Oct 3, 1912	5	7,307.52	178	97	13,330.00	
1	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	36,815	3 73	Nov 8, '12	Jan 28, '13	July 2, '13	July 8, '13	Nov 11, '13	120	Clancy & Van Alst	Decker	9,440.00	8,714.25	9,098.85	9,491.36	C & V.P.	Oct 17, '12	5	9,098.85	154	116	13,654.25	
1	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	36,148	3 74	Nov 8, '12	Jan 28, '13	Mar 31, '13	?	?	100	Emergency Const Co.	Decker	4,911.50	5,939.00	5,587.75	5,461.75	V.P.	Feb 3, 1913	6	5,587.75	126	93	10,906.00	
1	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	36,653	3 79	Feb 8, '13	Mar 28, '13	Mar 20, '13	Mar 26, '13	?	250	Likelihood Const Co.	McLay	14,510.00	183,393.50	223,758.74	237,454.03	C & V.P.	Oct 17, 1912	7	223,758.74	121	122	250,417.25	
1	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	36,651	3 83	Feb 10, '13	Mar 18, '13	Apr 11, '13	?	?	120	Flores Bros	Decker	17,410.00	20,075.75	28,151.50	29,001.50	C & V.P.	Nov 9, 1912	2	28,151.50	165	140	29,799.50	
2	Frank Ave. Rd. from Broadway Ave. to Broadway Ave. etc	36,583	3 86	Feb 10, '13	Mar 10, '13	Apr 2, '13	?	?	60	Dr. H. J. Swanson	G.S. Clarke	5,500.00	5,670.50	5,023.60	4,821.20	V.P.	Jun 9, 1913	7	5,023.60	160	90	6,199.35	
												2,221,206.87	6,973,244.13	2,023,114.14			273,360.19			91.98	371,715.12		

No Type Specified

EXHIBIT C-1 (continued):

Sheet # 2

WARD	Title of Contract	Contractors Bureau Number	Sewer Bids	Bids Opened	Contract Signed	Ordered to work	Work Started	Work Completed	Alienated Contract Time Days	Contractor	Field Engineer	Engineers Estimates		Contractors Lowest Bid	Total Final Cost	Type of Sewer	Date of Final Authorization	Bids		Range % High & Low	% Bid to Final Estimate	Highest Bid
												Preliminary	Final					'A'	'B'			
2	Cypress Ave from Cooper St. to Vermont Ave	52	36,188	3/9	Mar 28 '13	May 6 '13	June 2 '13	Aug 1 '14	120	Tenth Ave Const Co	G.S. Curie	14,476.70	22,163.87	20,103.26	Ca.V.P.	Feb 6, 1913	5	28,008.89	2/13	93	42,037.35	
1	Jerome Ave from Ocean Ave. Eastward to Greenwood Ave etc	43	35,999	3/23	Mar 27 '13	Apr 25 '13	June '13	?	170	J.L. Sigretto & Co	Thoms	22,700.00	24,569.90	23,467.90	Ca.V.P.	Mar 6, 1913	5	23,467.90	1/23	96	29,874.44	
4	Liberty Ave from Stuchoff St to Chestnut St, etc	44	36,002	3/25	Mar 27 '13	Apr 21 '13	June 13	May 26 '14	90	H.J. Mearns	Thoms	4,700.00	5,167.50	4,629.03	Ca.V.P.	Mar 6, 1913	7	4,629.03	1/32	90	6,167.40	
2	Madison St from Myrtle Ave to Wreckoff Ave etc	45	36,009	3/26	Mar 28 '13	Apr 21 '13	June 9 '13	?	150	J.D. Bonafede - William H. Mearns	Corke	34,755.00	34,755.50	33,974.75	C	Mar 6, 1913	5	33,924.75	2/27	98	77,073.40	
1	North Ave from 1/2 Dem St. to Mul St. etc	46	35,999	3/27	Mar 28 '13	Apr 25 '13	May 23 '13	?	?	J.L. Sigretto & Co	A. Jucker	19,175.00	21,907.50	22,161.70	Ca.V.P.	Apr 3, 1913	6	22,161.80	1/43	101	31,676.10	
4	Liberty Ave from Lefferts Ave to Nebraska Ave, etc	47	36,271	3/28	Mar 28 '13	May 26 '13	July 30 '13	Aug 4 '13	?	200	J.L. Sigretto & Co	Thoms	111,650.00	124,906.75	116,305.23	C	Apr 3, 1913	6	116,395.23	1/29	93	49,939.30
4	Jerome Ave from Lefferts Ave to Moore Ave, etc	48	36,273	3/28	Mar 28 '13	May 26 '13	July 2 '13	?	?	100	J.L. Sigretto & Co	Thoms	11,357.50	10,721.75	10,371.01	Ca.V.P.	Apr 3, 1913	4	10,321.01	1/13	96	11,639.10
4	Jerome Ave from Greenwood Ave to Lefferts Ave, etc	50	36,339	3/28	Mar 28 '13	July 26 '13	Aug 21 '13	Jan 24 '14	120	H. Britton	Thoms	19,492.50	22,731.25	20,319.63	Ca.V.P.	Apr 3, 1913	6	20,378.85	1/14	90	29,967.75	
3	Madison Ave from Queens Ave to Cole Ave	51	36,332	3/17	Mar 16 '13	July 16 '13	Sept 10 '13	Dec 22 '13	120	J.D. Bonafede - William H. Mearns	Reider	9,175.00	12,898.00	11,113.75	C	May 13, 1913	6	11,113.75	1/60	86	17,838.50	
3	1/2 St. from Francisco Ave to Cypress Ave	52	36,481	3/21	Mar 21 '13	Aug 21 '13	Oct 31 '13	Mar 3 '14	50	J.D. Bonafede - William H. Mearns	A. Jucker	4,730.00	4,734.30	3,907.82	V.P.	May 29, 1913	6	3,908.82	1/18	92	4,010.40	
3	Francis Ave from Queens Ave to Beach St	53	37,184	3/22	Mar 22 '13	Aug 4 '13	Sept 10 '13	Dec 17 '13	120	J.D. Bonafede - William H. Mearns	A. Jucker	13,650.00	18,707.70	18,097.70	Ca.V.P.	June 26, 1913	7	18,992.70	1/56	104	29,747.20	
3	Francis Ave from 17th St to the Crown 2 to N East of Canal Ave, etc	54	37,208	3/26	Mar 26 '13	Aug 17 '13	Sept 10 '13	Nov 20 '13	60	H.J. Mearns	Reider	3,600.00	5,751.00	2,574.00	V.P.	May 29, 1913	4	6,574.00	1/27	114	8,356.50	
4	Beaufort Ave from Freedom Ave to Hatch Ave, etc	55	37,208	3/28	Mar 28 '13	Aug 4 '13	Sept 30 '13	Dec 22 '13	120	J.D. Bonafede - William H. Mearns	Thoms	19,237.50	22,723.40	21,315.05	Ca.V.P.	June 19, 1913	5	21,315.05	1/15	96	24,629.00	
4	Chester Ave from Greenwood Ave. to Lefferts Ave etc	56	37,811	3/28	Mar 28 '13	Aug 9 '13	Aug 9 '13	Oct 22 '13	100	J.L. Sigretto & Co	Thoms	13,038.00	14,728.05	14,411.33	Ca.V.P.	May 29, 1913	6	14,411.33	1/15	97	16,557.80	
3	Henry St from Parsons Ave to Beach St	57	37,197	3/23	Mar 23 '13	Aug 21 '13	Sept 16 '13	Nov 6 '13	60	Cloney & Van Alst	Reider	9,900.00	10,146.75	9,722.61	V.P.	June 26, 1913	6	9,722.61	1/53	96	14,833.85	
3	Debra St from California Ave. to Spring Ave, etc	58	37,204	3/23	Mar 23 '13	Aug 12 '13	Sept 2 '13	Sept 2 '13	90	H.J. Mearns	J.B. Mackey	10,580.00	12,874.35	13,676.75	Ca.V.P.	June 26, 1913	7	13,676.75	1/54	106	21,160.08	
2	5th St from the Backward Line to Luring St	59	37,796	3/25	Mar 25 '13	Apr 1 '13	Mar 24 '13	Apr 2 '13	450	Luke A Burke & Sons	J.B. Mackey	56,500.00	64,579.00	61,477.30	Ca.V.P.	July 10, 1913	9	61,477.30	1/55	102	190,605.00	
4	Atlantic Ave from Greenwood Ave. to Lefferts Ave etc	60	37,907	3/27	Mar 27 '13	Nov 20 '13	Dec 11 '13	Dec 3 '14	75	Angelo Panno	Thoms	6,740.00	7,441.55	7,462.50	V.P.	Aug 28, 1913	6	7,162.50	1/30	96	9,334.77	
4	Tredford Ave. from Beaufort Ave. to Chester Ave, etc	61	37,909	3/28	Mar 28 '13	Dec 22 '13	Mar 15 '14	Mar 18 '14	160	J.L. Sigretto & Co.	Thoms	37,450.00	38,067.50	29,393.10	C.	Oct 9, 1913	5	29,393.10	1/59	77	46,901.00	
4	Madison Ave from Justice Ave to Lefferts Ave etc	62	38,670	3/28	Mar 28 '13	Apr 26 '14	Mar 25 '14	Mar 23 '14	350	Loe & Kelly Inc	Panno	36,000.00	41,745.30	37,154.00	Ca.V.P.	Dec 19, 1913	9	37,154.00	1/30	89	48,476.15	
4	Chester Ave from Lefferts Ave to Moore Ave etc	63	38,679	3/28	Mar 28 '13	Feb 14 '14	May 27 '14	June 2 '14	200	Cloney & Van Alst	J. Thoms	10,920.00	21,797.75	21,872.61	Ca.V.P.	Dec 18, 1913	11	21,862.60	1/16	100	25,398.40	
3	Kumhill Ave from Freedom Ave to Flinch Ave etc	64	38,679	3/28	Mar 28 '13	Feb 28 '14	Apr 22 '14	Apr 22 '14	100	J.L. Sigretto & Co	Thoms	15,670.00	17,956.40	15,107.74	Ca.V.P.	Dec 18, 1913	8	15,107.74	1/35	94	18,815.25	
3	Cypress Ave from 112th St. to 125th St etc	65	38,678	3/28	Mar 28 '13	Feb 14 '14	May 18 '14	May 21 '14	100	Cloney & Van Alst	Walter A. Van Alst	15,650.00	23,209.90	20,311.28	Ca.V.P.	Dec 18, 1913	5	20,311.28	1/17	87	25,001.56	
4	Burr St from Liberty Ave to Jerome Ave	66	38,673	3/28	Mar 28 '13	Feb 28 '14	Mar 27 '14	Mar 27 '14	155	J.L. Sigretto & Co	Thoms	13,805.00	18,823.75	16,706.57	Ca.V.P.	Dec 18, 1913	9	18,706.57	1/28	89	19,669.10	
4	Springwood Ave from Hamilton Ave to Lefferts Ave etc	67	38,672	3/28	Mar 28 '13	Feb 28 '14	Mar 25 '14	Mar 24 '14	200	J.L. Sigretto & Co	Thoms	22,100.00	31,008.00	26,771.94	Ca.V.P.	Dec 18, 1913	9	26,971.99	1/47	87	39,116.74	
1	Harriet St from East River to Hamilton St, etc	68	40,313	3/28	Mar 28 '13	Aug 5 '14	Oct 10 '14	Oct 14 '14	150	Cloney & Van Alst	T.J. Corke	34,000.00	31,035.80	24,414.20	C	Jan 9, 1914	8	25,543.79	1/54	81	49,576.40	
4	Flinch St from Vanderwever Ave. to Ocean View Ave, etc	69	39,779	3/28	Mar 28 '13	June 1 '14	June 9 '14	June 3 '14	150	J.L. Sigretto & Co	Thoms	24,930.00	26,554.05	20,646.21	C	May 1, 1914	7	20,546.20	1/34	77	27,571.20	
3	From end of East sewer at 5th Ave to Penned Cove	70	40,762	3/27	Mar 27 '13	Aug 3 '14	Sept 15 '14	Sept 15 '14	60	Cloney & Van Alst	T.J. Corke	22,000.00	28,750.00	28,477.30	Ca.V.P.	Dec 18, 1913	9	28,167.50	1/41	98	39,745.50	
4	Atlantic Ave N.S. from Stuchoff Ave to end of East of Lefferts Ave, etc	71	41,146	3/27	Mar 27 '13	Feb 5 '14	Mar 17 '14	Mar 15 '14	200	Eric Eric	G.S. Curie	14,750.00	22,813.35	16,193.64	Ca.V.P.	July 2, 1914	9	16,833.64	1/54	74	25,914.00	
1	Flinch Ave from Hamilton St to Sherman St, etc	72	41,140	3/27	Mar 27 '13	Jan 3 '14	Mar 9 '14	Mar 25 '14	150	Peace Bros	T.J. Corke	8,200.00	7,875.75	5,722.24	Ca.V.P.	July 2, 1914	7	5,982.50	1/29	76	7,733.20	
1	Large St. from the Backward to Van Nostrand Ave, etc	73	40,639	3/27	Mar 27 '13	Feb 30 '14	Mar 37 '14	Apr 3 '14	150	Peace Bros	T.J. Corke	11,250.00	12,710.70	12,096.30	Ca.V.P.	July 2, 1914	8	12,096.30	1/55	95	18,800.21	
2	Kleido St from Queens Blvd to Jerome Ave etc	74	40,821	3/27	Mar 27 '13	Dec 11 '14	Mar 24 '15	May 29 '15	150	Cloney & Van Alst	T.J. Corke	18,500.00	27,745.15	20,212.50	Ca.V.P.	July 2, 1914	7	20,212.50	1/54	91	31,207.54	
												1,684,748.60	1,842,422.18	1,824,887.86				1,842,422.18		92.42	57,804.53	

Word	Title of Contract	Comptroller's Contract Number	Sewer Bureau	Bids Opened	Contract Signed	Ordered to Work Today's date	Work started	Work complete	Contract time analysis	Contractor	Local Engineer	Engineers Estimates		Contractors Low Bid	Total Final Cost	Type of Sewer	Date of Fuel Attachment	No. of Bidders		Bids		Range % High to Low	To Bid to Fuel Est.	Highest Bid
												Preliminary Estimate	Final Estimate					Low Type A	Low Type B					
												A	B					A	B					
✓	Albion Ave. N. 55th Street to 56th St. etc.	75 41 523	4 14	Mar 22, 1915	Mar 29, 1915	Mar 27, 1915	Mar 27, 1915	Apr 15, 1915	45	Joe L. Signetta & Co.	J. Thoms	5770 -	6726.40	4072.58	3294.14	Y.P.	Jun 8, 1915	12	4489.51	265	60	6700.77		
✓	Church St. from N. 14th Ave. to 15th Ave. etc.	76 41 528	4 15	Mar 22, 1915	Mar 29, 1915	Mar 27, 1915	Mar 27, 1915	Apr 15, 1915	40	" "	" "	6750 -	5779.90	4358.84	4248.62	Y.P.	Jun 8, 1915	15	4352.34	168	76	7316.10		
✓	Liberty Ave. - Holmes Ave. to St. Ann's Ave. etc.	77 41 531	4 19	Feb 26, 1915	Mar 22, 1915	Mar 22, 1915	Mar 22, 1915	Apr 29, 1915	570	Paige Bros.	J. Thoms	5008.22	5546.15	46305.00	46,512.81	C&V.P.	Jun 22, 1915	13	46,297.06	155	84	72010.70		
✓	Fulling St. - Ashland St. to St. Ann's Ave. etc.	77 41 533	4 20	Mar 22, 1915	Mar 29, 1915	Mar 27, 1915	Mar 27, 1915	Apr 29, 1915	570	Joe L. Signetta & Co.	" "	4525 -	5261 -	4855.62	4796.15	"	"	9	4855.62	136	82	5140 -		
✓	Fulling St. - Ashland St. to St. Ann's Ave. etc.	77 41 533	4 25	Mar 22, 1915	Mar 29, 1915	Mar 27, 1915	Mar 27, 1915	Apr 29, 1915	570	Henry Briting	J. Thoms & G. Clarke	16,000 -	18,811.10	18,881.80	15,832.34	"	"	15	15,811.20	159	74	20,028.25		
✓	Fulling St. - Ashland St. to St. Ann's Ave. etc.	77 41 533	4 26	Mar 22, 1915	Mar 29, 1915	Mar 27, 1915	Mar 27, 1915	Apr 29, 1915	570	H. J. Muller Const. Co.	" "	21,000 -	22,400 -	18,162.50	18,162.50	"	Mar 5, 1915	9	18,162.50	159	51	25,178 -		
✓	Irving Ave. - 14th St. to 15th St. etc.	77 41 535	4 28	Mar 22, 1915	Mar 29, 1915	Mar 27, 1915	Mar 27, 1915	Apr 29, 1915	570	Shelburne Const. Co.	G. S. Clarke	16,450 -	13,672.25	12,086.10	11,774.73	"	Mar 5, 1915	9	12,026.10	213	88	25,709.16		
✓	Broadway St. - Humphrey Ave. to Cass St. etc.	78 42 254	4 29	Apr 22, 1915	May 12, 1915	May 12, 1915	May 12, 1915	Oct 4, 1915	100	Joe L. Signetta & Co.	Thoms	19,000 -	37,638.50	26,345.03	20,154.52	"	"	8	26,245.63	152	97	35,477.60		
✓	Brilliant Ave. - East to Mason St. etc.	78 42 254	4 31	Apr 14, 1915	May 12, 1915	May 12, 1915	May 12, 1915	Oct 4, 1915	100	Tas H. Johnson	T. Clarke	5500 -	5771.75	4320.69	3925.69	Y.P.	Mar 19, 1915	11	4326.04	387	73	16,922.22		
✓	Green St. - Spruce Ave. to Walnut Ave. etc.	78 42 254	4 28	May 22, 1915	May 29, 1915	May 27, 1915	May 27, 1915	Jul 1, 1915	60	" "	G. Clarke	7200 -	9276.05	8180 -	8041.01	"	"	13	8110 -	138	88	11,820 -		
✓	Cass St. - Edgewood Ave. to Spruce Ave. etc.	78 42 254	4 28	May 22, 1915	May 29, 1915	May 27, 1915	May 27, 1915	Jul 1, 1915	60	H. J. Muller Const. Co.	" "	57500 -	56,026.25	48,819 -	40,873.40	C&V.P.	Apr 1, 1915	9	43,019 -	136	78	57,206.5		
✓	Green St. - Spruce Ave. to Walnut Ave. etc.	78 42 254	4 28	May 22, 1915	May 29, 1915	May 27, 1915	May 27, 1915	Jul 1, 1915	60	Green Const. Co.	" "	7740 -	9727.25	6493.43	6204.79	"	"	11	6,493.43	145	72	7420 -		
✓	Paik Ave. - 51st St. to 52nd St. etc.	77 42 297	4 26	June 22, 1915	July 24, 1915	Oct 1, 1915	Sept 22, 1915	Apr 20, 1916	125	Clary & Van Alst	T. Clarke	27,125 -	40,811 -	27,009.90	27,474.70	"	Apr 30, 1915	7	27,474.70	134	68	56,383.5		
✓	May Abt. Ave. - East to Ridge St. etc.	77 42 297	4 27	May 22, 1915	July 21, 1915	Aug 16, 1915	Aug 9, 1915	Oct 8, 1915	90	Green Const. Co.	" "	3200 -	3445.80	3326.49	3326.49	"	"	6	3326.49	150	87	5177.20		
✓	Albion Ave. - Spruce Ave. to Walnut Ave. etc.	77 42 297	4 28	Aug 19, 1915	Sept 29, 1915	Oct 26, 1915	Oct 16, 1915	July 8, 1916	300	Angelo Pains	Thoms	28,800 -	47,817.60	31,400.00	31,802.00	"	June 25, 1915	11	31,400.00	138	60	48,579.74		
✓	D.W. Murphy Ave. - Hudson Ave. to East of 24th St. etc.	77 42 297	4 44	Sept 11, 1915	Oct 6, 1915	Nov 22, 1915	Nov 22, 1915	Nov 22, 1915	300	Angelo Pains	J.P. Payne	12,825 -	12,873.01	81,142 -	71,882.00	C&V.P.	June 4, 1915	9	81,142 -	174	64	141,515 -		
✓	Rial St. - Clark Ave. to Grand St. etc.	77 42 297	4 45	Oct 14, 1915	Nov 22, 1915	Apr 17, 1916	Oct 26, 1915	Oct 26, 1915	225	Clary & Van Alst	" "	11,634 -	15,442.90	73,053.99	65,888.97	"	"	15	73,053.99	131	87	76,600 -		
✓	Mary Ave. - Clark Ave. to Hudson Ave. etc.	77 42 297	4 46	Oct 14, 1915	Nov 22, 1915	Apr 17, 1916	Oct 26, 1915	Oct 26, 1915	225	W.H. Shering	" "	13,322 -	17,041 -	78,887 -	75,840.67	"	"	15	78,887 -	144	83	113,400 -		
✓	Hudson Ave. - Clark Ave. to Hudson Ave. etc.	77 42 297	4 47	Sept 24, 1915	Oct 27, 1915	Jan 24, 1916	Jan 24, 1916	Apr 14, 1916	225	J. Signetta & Co.	T. Clarke	65,200 -	74,212.25	57,107.90	57,107.90	C&V.P.	Sept 21, 1915	10	57,107.90	183	78	65,673.50		
✓	Green St. - Spruce Ave. to Walnut Ave. etc.	77 42 297	4 48	Nov 15, 1915	Dec 13, 1915	Dec 13, 1915	Dec 13, 1915	Sept 22, 1916	150	Green Const. Co.	J. Thoms	27,027.75	27,271.60	22,297 -	22,297.15	"	Aug 26, 1915	11	22,297.15	352	61	41,997.16		
✓	Harold Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 49	Oct 14, 1915	Oct 29, 1915	Oct 14, 1915	Oct 14, 1915	June 15, 1916	150	J.H. Johnson Const. Co.	Thoms & Clarke	24,407.50	22,400 -	15,750.87	15,750.87	Y.P.	Aug 2, 1915	11	15,750.87	170	70	22,115.72		
✓	Smart Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 50	Oct 14, 1915	Oct 29, 1915	Oct 14, 1915	Oct 14, 1915	June 15, 1916	100	Green Const. Co.	T. Clarke	6700 -	7297.40	5810.97	5810.97	C&V.P.	July 29, 1915	9	5810.97	150	80	8,647.50		
✓	Willard Ave. - Poling St. to Polignone Ave. etc.	77 42 297	4 51	Oct 14, 1915	Nov 8, 1915	Nov 8, 1915	Nov 8, 1915	Feb 23, 1916	100	Joe Signetta & Co.	G. Clarke	12,240 -	7971.97	8007.67	8007.67	"	"	8	8007.67	204	89	12,250.97		
✓	Willard Ave. - Poling St. to Polignone Ave. etc.	77 42 297	4 52	Feb 22, 1916	Mar 14, 1916	Mar 29, 1916	Mar 29, 1916	Apr 20, 1916	400	Green Const. Co.	" "	4,213.40	5,444.70	2864.18	2899.00	Y.P.	Mar 21, 1916	19	2,844.18	168	83	4,218.20		
✓	Willard Ave. - Poling St. to Polignone Ave. etc.	77 42 297	4 53	Mar 22, 1916	Apr 7, 1916	May 16, 1916	May 16, 1916	July 26, 1916	300	Clary & Van Alst	T. Clarke	6200 -	5653.25	4629.50	4629.50	"	"	5	4,629.50	172	83	9,001 -		
✓	Anthony Ave. - Calver Ave. to Silver St. etc.	77 42 297	4 64	Mar 22, 1916	May 16, 1916	May 16, 1916	May 16, 1916	July 26, 1916	300	Joe H. Johnson	G. Clarke	5375 -	3677.40	3014.42	2827.27	"	Mar 24, 1916	6	3,014.42	144	82	4321.10		
✓	Kingsland Ave. - 51st St. to 52nd St. etc.	77 42 297	4 65	Apr 16, 1916	May 9, 1916	June 15, 1916	June 15, 1916	Sept 22, 1916	150	Clary & Van Alst	Henry J. Clark	32,000 -	37,106.45	38,800.20	40,822.20	C&V.P.	Mar 6, 1916	6	38,800.20	128	103	53,539.27		
✓	Green St. - Spruce Ave. to Walnut Ave. etc.	77 42 297	4 69	July 29, 1916	Aug 16, 1916	Aug 16, 1916	Aug 16, 1916	Nov 9, 1916	150	Joe H. Johnson	E. Thoms	20,750 -	28,282.20	31,129.60	30,129.60	"	Aug 2, 1916	7	30,129.60	129	123	37,462.97		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 71	June 24, 1916	Aug 2, 1916	Aug 22, 1916	Aug 2, 1916	Nov 9, 1916	200	H. J. Muller Const. Co.	G. Clarke	40,000 -	51,945.25	66,774.50	65,679.27	Y.P.	Aug 24, 1916	6	66,774.50	111	130	73,818.20		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 72	May 16, 1916	June 2, 1916	June 2, 1916	June 2, 1916	Nov 9, 1916	110	F. Spinale	J. Thoms	17,000 -	16,600.40	12,482.21	12,482.21	"	Apr 14, 1916	10	12,482.21	176	75	21,740.20		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 73	June 24, 1916	July 15, 1916	June 15, 1916	June 15, 1916	Oct 26, 1916	125	Joe H. Johnson	G. Clarke	15,225 -	18,061.90	15,184.20	15,184.20	"	Apr 16, 1916	6	15,184.20	136	85	20,814 -		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 74	Dec 1, 1916	Feb 2, 1917	Mar 29, 1917	Mar 29, 1917	Apr 26, 1917	200	Paige Bros.	J. Thoms	57,345 -	43,644.15	64,760.80	60,106.50	"	Sept 13, 1916	2	64,760.80	126	104	67,871.70		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 76	July 24, 1916	Aug 12, 1916	Sept 12, 1916	Sept 12, 1916	Dec 9, 1916	400	H. Briting	" "	5500 -	5526.45	5436.93	5436.93	Y.P.	May 12, 1916	2	5,436.93	107	99	6,970.40		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 78	Aug 9, 1916	Aug 9, 1916	Oct 9, 1916	Oct 9, 1916	Oct 31, 1917	400	P.L. Peas	" "	10,819 -	11,115.45	10,466 -	10,667.00	"	"	7	10,466 -	218	94	22,231 -		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 79	"	"	Aug 31, 1916	Aug 31, 1916	May 8, 1917	165	" "	" "	27,125 -	27,216.15	26,382.95	26,486.92	C&V.P.	"	7	26,382.95	145	97	32,231.20		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 82	Oct 26, 1916	Nov 23, 1916	Nov 23, 1916	Nov 23, 1916	May 22, 1917	150	Joe Ruth	G. Clarke	47,000 -	58,407.50	59,232 -	57,207.75	"	"	3	57,207.75	94	74	74,222 -		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 83	July 24, 1916	Nov 8, 1916	Dec 6, 1916	Dec 6, 1916	Jan 6, 1917	600	John C. Shedd	" "	6,442 -	6,578.20	8,712.77	8,712.77	"	May 26, 1916	4	8,712.77	149	138	13,026.25		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 84	Aug 9, 1916	Sept 22, 1916	Sept 22, 1916	Sept 22, 1916	July 16, 1917	100	F.L. Peas	J. Thoms	15,132.60	23,477.45	23,123.43	23,123.43	C&V.P.	"	5	23,123.43	98	83	31,285.70		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 85	Aug 16, 1916	Oct 11, 1916	Nov 18, 1916	Nov 18, 1916	Oct 12, 1917	300	Clary & Van Alst	J. Thoms	115,740 -	114,520.00	170,239.60	157,041.21	"	July 27, 1916	6	157,041.21	121	87	200,042.70		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 86	Sept 16, 1916	Sept 22, 1916	Sept 22, 1916	Sept 22, 1916	Nov 2, 1916	400	Green Const. Co.	G. Clarke	44,642.25	4,833.60	5102 -	5102 -	Y.P.	July 7, 1916	4	5,152 -	134	85	6,732.20		
✓	Woodbury Ave. - Hudson Ave. to Broadway Ave. etc.	77 42 297	4 87	Nov 8, 1916	Jan 8, 1917	Mar 29, 1917	Mar 29, 1917	Apr 22, 1917	125	Green Const. Co.	T. Clarke	27,100 -	28,426.20											

SHEET No 5

Ward	Title of Contract	Comptroller's Contract Number	Number of Pages	Date opened	Contract started	Contract to work by	Work started	Work complete	Amount in \$1000	Contractor	Field Engineer	Engineer's Estimate		Contractor's Bid	Total Final Cost	Type of Service	Rated Final Authorization	No of Bidders		Bids		Range % high to low bid	% Bid to Final Estimate	Highest Bid
												Ultimate Estimate	Final Estimate					A	B	Low type A	Low type B			
2	Broad St. from Magenta Ave to Grand St. etc.	155 44461	5	1	Apr 22 1918	May 11 1918	May 15 1918	Nov 2 1918	100	Angelo Panno	George Clark	24,138.75	27,899.50	4164.76	51670.82	B	Mar 18, 1918	9	9	44232.70	71414.77	1.47	97	60,012.00
2	No. 10th St. - 51st St. to Lincoln St. etc.	49736	5	1	June 4 18	June 11 18	July 2 18	Dec 31 18	120	Wm. G. Conroy	J. D. Mackey	24,308.70	32,006.58	2823.17	30701.55	B	Apr 16, 1918	8	7	27,271.71	34,433.16	1.55	30	40,012.00
2	51st St. from 4th to Lexington St. etc.	49736	5	15	June 14 18	July 12 18	July 24 18	Aug 24 20	300	Wm. G. Conroy	J. D. Mackey	213,000.00	214,030.00	24,493.00	374,716.10	B	May 31, 1918	3	4	376,073.20	346,433.00	1.03	172	307,074.00
2	Albany Ave. - Lexington St. to Corona Ave. etc.	49736	5	16	July 2 18	July 30 18	Aug 10 18	Aug 12 18	100	James J. Conroy	J. D. Mackey	20,175.00	20,501.00	4,602.75	37,113.12	B	May 16, 1918	4	7	31,642.75	36,602.75	1.18	36	40,685.51
2	Broad St. Liberty Ave. to Clinton Ave. etc.	49851	7	17	July 2 18	July 27 18	Aug 14 18	July 29 19	200	Angelo Panno	George Clark	32,022.50	57,739.25	5,463.25	69,271.13	B	Apr 26, 1918	6	4	56,404.25	54,623.25	1.23	33	70,171.45
2	Jerome St. Liberty Ave. to No. Convent Ave. etc.	50545	5	22	Dec 23 18	Feb 24 19	Mar 27 19	Mar 27 19	300	James J. Conroy	George Clark	104,325.00	231,088.00	363,819.00	376,644.79	B	June 28, 1918	6	6	363,828.00	322,839.00	1.33	157	315,970.24
2	Liberty Ave. - Albany Ave. to No. Convent Ave. etc.	50545	5	22	Aug 1 18	Sep 6 18	Oct 21 18	Sep 17 18	300	James J. Conroy	George Clark	35,000.00	35,000.00	35,000.00	35,327.04	B	June 28, 1918	6	6	35,327.04	35,327.04	1.00	36	35,327.04
2	50th St. from 1st to 2nd St. etc.	50546	5	23	Aug 16 18	Aug 20 19	Apr 7 19	Apr 7 19	250	H. M. Mayell Inc.	Jacob Thoms	11,500.00	14,771.75	20,068.10	20,346.07	B	Apr 26, 1918	7	7	20,181.00	31,624.10	1.56	113	44,680.14
2	50th St. from 1st to 2nd St. etc.	50546	5	23	Aug 16 18	Aug 20 19	Apr 7 19	Apr 7 19	250	H. M. Mayell Inc.	Jacob Thoms	11,500.00	14,771.75	20,068.10	20,346.07	B	Apr 26, 1918	7	7	20,181.00	31,624.10	1.56	113	44,680.14
2	Madison Ave. - Newham Green to No. 1st St. etc.	50546	5	29	Aug 15 19	Aug 30 19	Feb 25 19	Jan 21 19	150	Green Cont. Co.	George Clark	6,999.00	15,719.75	188,800.83	141,711.73	B	Apr 26, 1918	9	6	188,800.83	199,653.35	1.47	118	272,404.30
2	Woodland Ave. - Huntington St. to No. 1st St. etc.	50546	5	30	Aug 15 19	Aug 30 19	Mar 27 19	Mar 27 19	200	Angelo Panno	Jacob Thoms	6,999.00	15,719.75	188,800.83	141,711.73	B	Apr 26, 1918	9	6	188,800.83	199,653.35	1.47	118	272,404.30
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,000.00	18,029.50	20,502.93	B	Apr 16, 1918	5	6	16,022.50	18,244.90	1.27	101	22,215.00
2	Franklin St. - Fulton Ave. to Columbia St. etc.	50876	5	32	Mar 24 19	Apr 19 19	May 21 19	Apr 12 19	60	Franklin St. Co. Inc.	George Clark	10,422.25	17,00											

EXHIBIT C-1 (continued):

Word	Title of Contract	Comptroller's Contract Number	Severance Pay	Aids Awarded	Contract Signed	Ordered to Work Days after	Work started	Work completed	Allowance Contract Time in days	Contractor	Engineer's Estimates			Type of Sewer	Date of Final Authorization	Number of Bids	Bids		Range % High to Low Bid	% Bid To Final Estimate	Highest Bid	
											Field Engineer		Contractor's Bid				Total Final Cost	A				B
											Preliminary Estimate	Final Estimate											Low Type A	Low Type B
2	25'-35' ft. of 100' N. of Lane River to the 100' N. of Lane River etc.	65147	6	1	Apr 12-1923	May 17-23	Apr 23-23	July 17-23	120	James & McNeill, Architects & Planners Inc.	John Mackay	426175.00	528,000.00	564,000.00	No type	Aug 11-23	3	328,000.00	564,000.00	109	124	578,000.00
2	25'-35' ft. of 100' N. of Lane River to the 100' N. of Lane River etc.	65147	6	1	Apr 12-1923	May 17-23	Apr 23-23	July 17-23	120	James & McNeill, Architects & Planners Inc.	John Mackay	426175.00	528,000.00	564,000.00	No type	Aug 11-23	3	328,000.00	564,000.00	109	124	578,000.00
2	25'-35' ft. of 100' N. of Lane River to the 100' N. of Lane River etc.	65147	6	1	Apr 12-1923	May 17-23	Apr 23-23	July 17-23	120	James & McNeill, Architects & Planners Inc.	John Mackay	426175.00	528,000.00	564,000.00	No type	Aug 11-23	3	328,000.00	564,000.00	109	124	578,000.00

SHEET No. 7

Ward	Title of Contract	Comptroller's contract number	Sewer Bureau	Bids opened	Contract signed	Ordered to work	Work started	Work completed	Awarded Contract Time in days	Contractor	Field Engineer	Engineer's Estimates		Contractor's low bid	Total Final cost	Type of Sewer	Date of Final Abandonment	Ab of Bidders		Bids		Range of High to Low Bid	\$ Bid to Final Estimate	Highest Bid
												Preliminary Estimate	Final Estimate					A	B	Low Type A	Low Type B			
1	San Jose St - 150th St & 4th Ave. etc.	215 7539-9	7	July 9 '24	July 21 '24	Aug 3 '24	Aug 31 '24	Oct 11 '24	175	United Exp Corp	W.D. Oshrop	505,400.00	541,157.30	544,825.00	514,272.00	0	May 22, '25	2	2	527,715.00	546,915.00	158	101	720,115.00
2	20th Ave - Jackson Ave & Grand etc	215 7565-8	7	June 10 '23	June 22 '23	July 18 '23	July 25 '23	Aug 2 '23	65	McNah Bros Gar Co	H.P. Locke	37,600.00	40,119.70	37,737.95	39,312.29	0	May 17, '25	1	4	51,400.00	35,737.95	144	89	51,297.20
2	Washington St - 14th St & 1st Ave etc	215 7572-8	7	5 '23	5 '23	5 '23	5 '23	5 '23	30	John H Cross	T.J. Clarke	17,410.00	13,137.20	12,197.20	12,197.20	0	May 27, '25	1	5	17,640.00	12,137.20	145	91	17,640.00
3	Brownston Bldg. 3rd & Grand etc	216 7612-2	7	July 14 '24	Aug 19 '24	Sept 25 '24	Oct 11 '24	May 31 '25	250	Necoro Const Co	W.D. Oshrop	806,640.00	926,233.00	926,233.00	929,020.50	no type	June 19, '25	2	2	926,233.00	929,020.50	107	116	928,470.00
3	1924th St - 14th St & 2nd Ave etc	216 7593-9	7	June 14 '24	July 30 '24	Aug 18 '24	Aug 31 '24	Nov 20 '24	250	Jos Gallo	T.J. Clarke	159,485.00	78,819.35	725,634.00	187,627.95	0	June 19, '25	2	2	131,130.00	173,634.00	111	125	137,358.60
4	San Jose St - 150th St & 4th Ave etc	216 7668-7	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Angelo Bruno	W.D. Oshrop	234,700.00	270,000.00	799,063.00	817,161.71	0	June 19, '25	2	2	832,172.00	799,063.00	110	156	880,088.00
4	San Jose St - 150th St & 4th Ave etc	216 7668-8	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Pummet Donacci	W.D. Oshrop	834,700.00	477,053.00	663,443.50	671,783.47	0	June 19, '25	2	2	676,727.00	663,443.50	106	139	709,856.00
4	San Jose St - 150th St & 4th Ave etc	216 7668-9	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Quint Inc	W.D. Oshrop	834,700.00	777,457.00	1,104,117.00	1,122,461.49	0	June 19, '25	2	2	1,189,047.00	1,104,117.00	112	154	1,238,457.00
4	San Jose St - 150th St & 4th Ave etc	216 7668-10	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Muccini & Docker	W.D. Oshrop	234,700.00	318,589.00	564,187.50	513,376.87	0	June 19, '25	2	2	515,050.00	502,177.00	106	158	532,876.00
4	San Jose St - 150th St & 4th Ave etc	216 7668-11	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Vas H Johnson	J.D.C. Mackey	49,810.00	59,019.00	67,566.23	67,424.91	0	July 1, '25	2	2	71,864.25	64,776.25	123	110	79,417.00
4	San Jose St - 150th St & 4th Ave etc	216 7668-12	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Muccini & Docker	H.P. Locke	27,910.00	27,910.00	17,349.30	17,349.30	0	July 1, '25	2	2	18,057.00	17,349.30	174	84	30,267.45
4	San Jose St - 150th St & 4th Ave etc	216 7668-13	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Muccini & Docker	H.P. Locke	27,910.00	27,910.00	57,412.00	57,412.00	0	July 1, '25	2	2	57,412.00	57,412.00	172	183	59,771.00
4	San Jose St - 150th St & 4th Ave etc	216 7668-14	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Jos Gallo	T.J. Clarke	26,531.50	26,531.50	48,773.00	48,773.00	0	July 1, '25	2	2	57,009.15	46,086.00	152	120	49,971.65
4	San Jose St - 150th St & 4th Ave etc	216 7739-2	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Muccini & Docker	H.P. Locke	24,295.50	30,149.35	36,660.00	36,222.70	0	July 31, '25	5	5	37,009.15	36,086.00	152	120	49,971.65
4	San Jose St - 150th St & 4th Ave etc	216 7739-3	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Necoro Co	W.D. Oshrop	417,990.00	794,970.00	992,260.00	1,156,531.23	0	June 19, '25	2	2	1,087,224.00	992,260.00	126	125	1,239,270.00
4	San Jose St - 150th St & 4th Ave etc	216 7739-4	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Kennedy & Smith	H.P. Locke	25,112.50	27,712.30	37,153.30	37,251.25	0	May 25, '25	4	4	43,167.00	31,155.30	133	140	50,062.50
4	San Jose St - 150th St & 4th Ave etc	216 7739-5	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Jos Gallo	T.J. Clarke	26,531.50	26,531.50	50,040.00	52,832.80	0	May 25, '25	3	3	57,009.15	50,040.00	160	141	61,027.00
4	San Jose St - 150th St & 4th Ave etc	216 7739-6	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Necoro Const Co	W.D. Oshrop	377,440.00	315,010.00	471,150.00	479,820.44	0	Oct 2, '25	3	4	499,473.00	471,150.00	115	150	541,946.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-1	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Hunco Corp	W.D. Oshrop	248,740.00	45,676.00	740,754.00	762,674.45	0	Oct 23, '25	4	4	785,676.00	740,754.00	128	177	800,300.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-2	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	H.J. Allen Gar Co	W.D. Oshrop	348,740.00	390,750.00	689,657.00	689,657.00	0	June 19, '25	4	4	734,012.00	609,657.00	141	179	881,841.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-3	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Necoro Co	W.D. Oshrop	348,740.00	64,181.20	75,504.00	75,504.00	0	June 19, '25	4	4	734,012.00	609,657.00	141	179	881,841.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-4	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Marmo Panno	W.D. Oshrop	5,135.00	7,446.25	3,303.55	3,303.55	0	Oct 23, '25	6	7	7,864.25	5,267.25	208	71	10,948.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-5	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Rand P Gross	W.D. Oshrop	26,177.00	26,177.00	44,012.37	44,012.37	0	Oct 4, '25	3	3	50,228.00	44,012.37	164	163	68,007.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-6	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Jos Gallo	H.P. Locke	57,009.15	57,009.15	79,664.00	79,664.00	0	Dec 4, '25	3	4	99,239.71	79,664.00	239	97	119,726.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-7	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Kennedy & Smith	W.D. Oshrop	235,500.00	443,547.35	631,766.00	631,842.40	0	Mar 25, '26	6	6	673,546.00	631,766.00	127	144	809,152.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-8	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Humphreys & Mann Co	W.D. Oshrop	181,040.00	379,669.00	618,746.00	617,727.00	0	June 19, '25	5	5	716,444.00	617,727.00	135	155	837,035.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-9	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	W.D. Oshrop	W.D. Oshrop	248,042.00	368,042.00	585,852.93	585,852.93	0	June 19, '25	5	5	655,400.00	585,852.93	131	151	871,493.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-10	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	W.D. Oshrop	W.D. Oshrop	270,010.00	579,891.00	944,150.00	944,150.00	0	June 19, '25	5	5	1,135,411.00	944,150.00	120	157	1,248,647.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-11	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Kennedy & Smith	J.D.C. Mackey	58,040.00	209,990.00	219,990.00	219,990.00	0	Mar 25, '26	4	4	234,772.00	219,990.00	305	107	678,249.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-12	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Vas H Johnson	H.P. Locke	78,971.50	72,513.50	84,970.50	84,970.50	0	Mar 25, '26	3	3	92,031.80	84,970.50	155	117	131,318.20
4	San Jose St - 150th St & 4th Ave etc	216 7740-13	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Kennedy & Smith Inc	H.P. Locke	118,134.00	133,399.15	143,113.43	145,615.14	0	Mar 25, '26	3	4	167,919.40	143,113.43	135	108	194,278.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-14	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Gerome Petrosca	J.D.C. Mackey	31,510.00	33,952.95	37,881.00	37,881.00	0	Mar 25, '26	2	3	41,794.00	37,881.00	130	112	49,107.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-15	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Kennedy & Smith Inc	T.J. Clarke	30,738.00	44,340.10	36,400.00	40,163.77	0	Mar 25, '26	4	4	95,252.50	36,400.00	158	82	57,514.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-16	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Kennedy & Smith Inc	W.D. Oshrop	156,600.00	204,309.00	377,372.00	377,372.00	0	June 12, '26	4	6	418,013.00	377,372.00	153	135	573,749.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-17	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	W.D. Oshrop	W.D. Oshrop	56,600.00	234,914.50	399,079.00	404,454.40	0	June 19, '25	3	3	435,491.00	377,372.00	148	173	573,749.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-18	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	W.D. Oshrop	W.D. Oshrop	119,021.90	173,468.12	233,553.00	233,553.00	0	June 19, '25	4	6	285,971.00	233,553.00	171	195	879,379.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-19	7	Aug 3 '24	Aug 28 '24	Sept 25 '24	Aug 19 '24	Oct 22 '24	150	Vas H Johnson	W.D. Oshrop	31,044.00	34,040.50	34,040.50	34,040.50	0	June 17, '26	2	3	39,575.00	34,040.50	126	110	49,107.00
4	San Jose St - 150th St & 4th Ave etc	216 7740-20	7	Aug 3 '24																				

Sheet No 8

Ward	Title of Contract	Comptroller's Contract Number	Sewer Bureau No	Bids opened	Contract signed	Ordered to work 7 days after	Work started	Work completed	Amount contract time index	Contractor	Field Engineer	Engineer's Estimates		Contractors low bid	Total Final Cost	Type of Sewer	Date of Final Authorization	No of Bidders		Bids		Range % High/Low	% Bid to Final Estimate	Highest Bid	
												Preliminary Estimate	Final Estimate					A	B	Low Type A	Low Type B				
2	38055 from end of existing sewer to 175 of 84th Street to the intersection of 84th St	321 84156	7163	June 23 '27	June 11 '27	June 28 '27	June 8 '27	No date	300	Muccini & Decker	JDC Mackey	30 853.90	71 541.00	49 302.00	B	Apr 21 1927	1 5	97 547.90	71 592.00	137	72	97 774.00	100%		
2	Recker St. Calumet Ave. to Grand St. Ave	322 84819	7163	June 13 '27	June 24 '27	July 9 '27	June 17 '27	No date	200	"	H.P. Labella	47 610.00	56 172.00	50 244.00	B	May 19 1927	3 4	618 259.00	598 344.00	127	105	747 360.00	121%		
2	373 (B/A) Ave. - 84th St. to 100th St.	323 84815	7163	June 13 '27	July 17 '27	July 21 '27	June 27 '27	June 3 '27	60	James Galle	JDC Mackey	43 200.00	49 244.00	57 283.50	B	May 19 1927	0 7	No bidders	53 013.20	144	113	80 100.00	71%		
4	114th Ave. - Laffayette Ave. to 125th St. etc	24 84416	7163	June 13 '27	July 19 '27	July 21 '27	No date	No date	100	Geo S. Clark	"	19 041.50	24 456.50	16 504.40	B	May 19 1927	2 5	16 579.10	16 504.40	123	67	20 877.50	115%		
2	Ramsey St. Calumet Ave. to Belmont St.	325 84536	7163	June 22 '27	July 13 '27	July 28 '27	July 22 '27	July 12 '27	70	"	H.P. Labella	56 366.50	39 607.75	41 257.25	B	June 3 1927	1 5	50 259.70	41 217.85	152	104	62 658.55	127%		
4	Sulphur Blvd. 118th St. to 150th St. etc	326 84612	7163	June 22 '27	July 9 '27	July 25 '27	July 5 '27	No date	100	Angele Panno	Geo S. Clark	54 850.00	318 336.00	339 810.00	B	June 3 1927	2 5	222 044.00	339 810.00	149	107	397 412.00	157%		
4	Twickenham St. from end of existing sewer to 84th St. at corner of Belmont St.	324 84611	7163	June 22 '27	July 9 '27	July 24 '27	No date	No date	300	"	"	324 316.50	250 351.00	183 049.50	B	June 3 1927	2 7	439 911.00	250 351.00	203	77	308 993.00	117%		
4	114th Ave. - 157th St. to 173rd St. etc	328 84 772	7163	July 11 '27	July 22 '27	July 29 '27	No date	No date	250	"	"	702 750.00	834 190.00	693 630.00	No payments	June 16 1927	7 6	643 338.00	725 881.00	125	75	106 972.00	167%		
1	77th St. - 179th Ave. to 190th St. etc	329 84 911	7163	July 11 '27	July 8 '27	Aug 23 '27	Sept 6 '27	No date	60	New Cont. Co.	H.P. Labella	12 807.50	12 807.50	8 046.50	B	"	0 5	No bidders	8 046.50	202	69	17 819.96	136%		
1	Porter Ave. - 179th Ave. to 190th St. etc	330 84 910	7163	July 11 '27	July 8 '27	Aug 23 '27	Aug 29 '27	No date	75	"	"	21 900.00	24 384.70	17 684.64	B	"	1 6	21 392.35	17 684.45	210	67	38 230.12	175%		
2	85th Ave. - Broadway to N.Y. Cass St. R.O.s	331 84 893	7163	July 11 '27	July 11 '27	Aug 24 '27	Aug 20 '27	No date	180	Geo A. Everett	"	67 630.50	12 940.05	47 586.82	B	"	0 7	No bidders	41 292.25	172	84	105 200.99	127%		
2	Coastway Ave. - 58th St. to 60th St.	332 84 848	7163	July 11 '27	July 8 '27	Aug 18 '27	Aug 24 '27	No date	30	New Cont. Co.	"	7 085.00	8 583.00	7 679.00	B	"	0 5	"	7 639.00	133	89	10 181.23	144%		
2	Reservoir Ave. - 58th St. to Belmont St.	333 84 849	7163	July 11 '27	July 8 '27	Aug 24 '27	Sept 14 '27	No date	60	"	JDC Mackey	16 300.00	21 833.80	20 316.00	B	"	0 5	"	20 316.00	147	93	19 838.51	127%		
2	24th St. - Full Ave. to Broadway	334 84 848	7163	July 11 '27	July 3 '27	Aug 15 '27	July 3 '27	No date	90	Geo H. Johnson	H.P. Labella	22 940.00	41 631.80	23 516.20	B	"	0 4	"	19 316.70	130	95	31 368.00	147%		
2	63rd St. (summit) - 64th St. to Belmont St.	335 84 829	7163	July 11 '27	July 3 '27	Aug 15 '27	July 18 '27	Oct 11 '27	60	New Cont. Co.	"	16 600.00	20 683.51	17 254.00	B	"	0 4	"	17 254.00	162	88	28 878.72	166%		
2	Kingsland Ave. - Broadway to Warner Ave	336 84 829	7163	Aug 2 '27	Aug 22 '27	Sept 9 '27	July 3 '27	No date	150	James Galle	"	73 707.50	32 174.70	27 941.19	B	"	0 8	"	17 946.19	177	85	138 327.00	187%		
2	Hayes Ave. - 80th St. to Broadway etc	337 84 825	7163	Aug 22 '27	Sept 8 '27	Sept 28 '27	Sept 3 '27	No date	150	Earl Peterson	"	42 685.00	51 354.00	47 655.50	B	July 28 1927	0 7	"	47 655.50	135	93	64 260.55	136%		
2	23rd St. - 24th St. to Belmont St.	338 84 820	7163	Aug 22 '27	Sept 19 '27	Oct 10 '27	Sept 8 '27	No date	50	New Cont. Co.	JDC Mackey	24 500.00	17 401.00	19 307.00	B	"	0 5	"	14 307.00	126	82	18 074.25	117%		
2	Reservoir Ave. - 79th St. to Belmont St.	339 84 848	7163	Sept 6 '27	Sept 3 '27	Oct 25 '27	Sept 30 '27	No date	60	Anthony Menzies & Co.	H.P. Labella	10 400.00	19 887.50	18 841.48	B	"	0 5	"	18 841.48	112	95	31 060.00	157%		
1	Spring Hill Ave. - Van Dusen St. to Belmont St.	340 84 829	7163	Sept 6 '27	Sept 3 '27	Oct 21 '27	Oct 26 '27	No date	20	James Galle	"	7 700.00	7 333.00	5 840.00	B	Sept 28 1927	2 5	8 319.90	5 840.00	143	78	8 332.50	100%		
1	107th Avenue - 110th St. to Belmont St.	341 84 841	7163	Oct 20 '27	Nov 3 '27	Nov 25 '27	No date	No date	20	"	"	4 340.00	3 080.00	3 275.00	No payments	Feb 11 1927	2 5	4 438.50	3 275.00	142	106	4 899.00	148%		
3	16th St. - 33rd St. to Belmont St. (existing) etc	342	7163	Nov 23 '27	"	"	"	"	60	Muccini & Decker	"	8 350.00	24 998.50	26 678.00	"	Oct 13 1927	1 4	19 246.00	26 680.00	149	107	39 009.00	150%		
4	111th Ave. - 112th St. to Belmont St.	343 84 819	7163	Nov 7 '27	Nov 23 '27	Dec 12 '27	No date	No date	35	David A. Gross	Geo S. Clark	8 530.00	9 601.00	6 411.00	A	"	1 5	6 411.00	7 468.00	124	67	7 916.60	93%		
4	147th Ave. - 150th Ave. to Super Ave	345	7163	Nov 18 '27	"	"	"	"	120	James Galle	"	738 000.00	215 750.50	208 340.00	"	Oct 22 1927	5 8	237 820.00	218 360.00	147	93	519 898.00	239%		
4	149th St. - 150th Ave. to Super Ave	346	7163	Nov 18 '27	"	"	"	"	110	Edward J. Kelly, Jr.	"	24 425.00	39 252.10	27 671.41	"	"	3 8	49 180.50	27 671.41	192	70	53 029.60	107%		
2	50th Ave. (summit) - 65th St. to Belmont St.	347	7163	Nov 28 '27	"	"	"	"	120	Kennedy & Smith Inc.	"	82 490.00	90 055.50	56 989.20	"	Nov 10 1927	4 0	74 143.44	56 989.20	166	63	94 457.80	116%		
4	Wheatland Ave. - 173rd St. to Belmont St.	347	7163	Nov 28 '27	"	"	"	"	150	James Galle	"	218 600.00	350 652.50	273 724.70	"	"	7 0	285 581.50	273 724.70	122	83	355 042.90	126%		
												3 404 063.30	2 948 268.97												
												Final Estimate		Contractors Low Bid											
Street #1												2,721,286.85	1,979,444.13												
2												1,894,748.60	1,842,472.18												
3												1,755,228.60	1,705,708.98												
4												345,179.95	424,691.23												
5												6,421,569.37	7,078,794.10												
6												9,355,339.00	10,472,664.08												
7												12,360,244.97	15,453,778.07												
0												3,401,063.30	2,968,268.97												
												37,767,610.27	41,869,769.74												
														B = 110.8%											
														A											
														878 175.44											
														3051,689.97											
														248,498.53											
														86.11%											
														123224.12											
														No date = Work not completed 12/23/27											
														No payments to A Dec 31/27											

EXHIBIT C-163.

(*Concrete Reinforcement-Handbook published by American Steel Wire Co.*)

AMERICAN STEEL & WIRE CO.

Handbook and Catalogue of Concrete Reinforcement.

10

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American Steel & Wire Co.

February 3rd, 1908

INTRODUCTION

20 In presenting this Revised Edition of our Engineers' Handbook and Catalogue on Triangle Mesh Reinforcement for Concrete we have attempted to touch briefly not only the reinforcement for concrete but concrete itself. The data contained herein is the result of careful study by our Engineering Department, and also by some of the best known and accepted authorities.

30 Many paragraphs and chapters dealing with Reinforced Concrete are selected and reprinted by permission from text books, bulletins, and other publications, with due mention of the source and authority in each instance.

Tables giving the weights and fabric per square foot, number, sizes, spacing and areas of wires and longitudinal strands of Triangle Mesh Woven Wire Reinforcement are given on pages 110, 111 and 112, and tables of Resisting Moments, Thicknesses of Slabs, Diagrams, etc., occur on pages 74 to 89, inclusive.

40 By the use of Tables 1 to 12, inclusive (No. 1 being found on page 74), giving the resisting moments of reinforced concrete slabs, suitable fabric may be selected to use either with or without bars for all kinds of loads and spans and conditions met with in the construction of buildings, bridges and reinforced concrete in general. In these tables we have assumed different allowable stresses in the steel, namely, 16,000, 18,000, and 20,000 pounds per square inch, depending on its elastic limit, and different proportions of cement, sand and stone in the concrete. We, however, recommend in general using a 1:2:4 mixture for floors or other structures subjected to high stresses.

EXHIBIT C-163 (*continued*):

While we recommend the use of a fabric made with a mild steel we can furnish it in any grade of steel desired.

10 Triangle Mesh Woven Wire Reinforcement for Concrete is made with either solid or stranded longitudinal members, properly spaced by means of diagonal or cross wires so arranged as to form a series of triangles between the longitudinal or tension members; the longitudinal members being invariably spaced 4 inches apart, the cross wires either 2 inches or 4 inches, as desired, providing either a 2-inch or 4-inch mesh. The sizes of both longitudinals and cross wires are varied in order to provide the cross sectional areas of steel required to meet the conditions.

Triangle Mesh Reinforcement, we believe, is the most efficient material on the market for the purposes:

20 It provides a more even distribution of the steel, reinforcing in every direction.

Tension of carrying members accurately spaced.

A most perfect mechanical bond.

When a specific size of fabric or area of steel is specified it is impossible to leave out any portion of the reinforcement.

Minimum cost of installation.

Easily handled and stored on the work.

30 Low cost of inspection.

An absolutely continuous action from one end of the structure to the other.

Higher elastic limits with the same quality of steel due to cold drawing.

Every ounce of steel is tested, as it cannot be cold drawn without showing defects, if any.

40 Distributes the stresses due to a concentrated load over a greater area.

Triangle Mesh Reinforcement is the only design of woven wire fabric in which the cross or diagonal wires assist the longitudinal or tension members in carrying the load.

While reinforcing fabrics are made both galvanized and not galvanized, we strongly recommend the latter, due to the

EXHIBIT C-163 (*continued*):

fact that a much better adhesive bond is provided and also greater strengths. In the case of a galvanized wire the adhesion between the reinforcement and the concrete is to the coating on the steel and not to the steel itself, and also in the galvanizing process the steel is annealed or softened, thereby reducing its elastic limit and ultimate strength.

- 10 It is a well-known fact that steel thoroughly imbedded in a proper mixture of concrete does not rust, and in the case of a smooth round rod used as reinforcement it is more desirable to have a thin surface coat of rust, than if it were perfectly bright and smooth, provided the rust has not penetrated sufficiently far to pit the steel and produce a scale. This slight coating of rust provides a rougher surface and therefore a better bond.

AMERICAN STEEL & WIRE COMPANY.

- 20 Concrete Reinforcement Dept.
Chicago New York Denver
115 Adams St. 30 Church St. 1st Nat. Bank Bldg.
San Francisco
16th & Folsom Sts.
United States Steel Products Co., 30 Church St., New York
Export Representatives

30 REINFORCED CONCRETE.

In dealing with the uses and properties of reinforced concrete, we reprint, by permission, Chapter I, from "Reinforced Concrete," by Buel & Hill:

CHAPTER I.—ECONOMIC USE AND PROPERTIES OF REINFORCED CONCRETE.

- 40 Concrete alone, considered as a building material, is nothing more nor less than a kind of masonry. The distinguishing features between rubble masonry and concrete are really confined to the methods of mixing and placing the materials. The results obtained with rubble masonry made of very small stone and with concrete made of large stone would be practically identical. The old Roman concrete was made with large stones, and may be classified either with rubble or concrete masonry. The value of either rubble or concrete as a material for construction

EXHIBIT C-163 (*continued*):

depends largely on the quality of the cement used and the care exercised in the mixing and placing. Examples of masonry structures composed of large stones reinforced or tied together with iron rods and bars are found in the works of all periods, but usually only in connection with cut-stone masonry. The cost of such reinforcement was very great compared with the additional strength secured, and with rubble masonry the mechanical difficulties involved and the comparative cost render it impracticable.

10 *Reinforced Concrete.*—With the advent of modern concrete the facilities with which reinforcing rods or bars of metal may be embedded anywhere in the mass of the masonry was soon seen and taken advantage of. The compressive resistance of concrete is about ten times its tensile resistance, while steel has about the same strength in tension as in compression. Volume for volume steel costs about fifty times as much as concrete. For the same sectional areas steel will support in compression thirty times

20 more load than concrete, and in tension three hundred times the load that concrete will carry. Therefore, for duty under compression only, concrete will carry a given load at six-tenths of the cost required to support it with steel. On the other hand, to support a given load by concrete in tension would cost about six times as much as to support it with steel. These economic ratios are the *raison d'être* of reinforced concrete. If the various members of a structure are so designed that all of the compressive stresses are resisted by concrete and steel is introduced to resist the tensile stresses, each material will be serving the purpose for

30 which it is the cheapest and best adapted and one of the principles of economic design will be fulfilled.

Other important advantages secured in the combination of concrete and embedded steel are that the protection of the metal elements from corrosion is practically perfect; that, with properly selected ingredients, the fire and heat resisting qualities are very high, perhaps surpassed by no other building material except fire-brick; and, in many cases, that the substantial appearance of a masonry structure is obtained at about the cost of a

40 more or less temporary unprotected steel structure. When intelligently reinforced with steel, concrete becomes a material suitable and economical for beams, floors, and long columns, tanks, reservoirs, conduits, and sewers; admirably adapted to arch construction, and often economical for dams and retaining-walls. Even in concrete that is not subjected to tension or flexure it is often desirable to introduce steel reinforcement to prevent the occurrence of cracks due to shock or settlement, or other causes.

EXHIBIT C-163 (*continued*):

Properties of Concrete.—A knowledge of the properties of materials is the first requisite for safe and economic designing of structures. The properties of reinforced concrete comprise not only those of the concrete and of the steel elements considered separately, but may be said to include those properties or characteristics of the composite mass that control the distribution of stresses between the elements of the combination of units and determine the nature of their interrelation. Such properties as are required by the practical engineer or architect in intelligent designing are here assembled in concise form, with values assigned to them that are considered to be safe and conservative deductions from the most recent experiments accessible. The scope and purpose of this work does not permit of an elaborate exposition of all the recent experiments nor of an exhaustive discussion of the deductions to be drawn therefrom.

Portland-cement concretes only will be considered. Concrete made with natural slag, or Puzzolanic cements, although adapted to many uses, do not possess the qualities desirable for reinforced concrete structures, and all the experiments known to the writer, on which the theories of reinforced concrete are based, have been with Portland-cement concretes. The object of reinforcing concrete with steel is to secure greater strength or safety, or both, than can be attained with concrete alone; and excepting a few special cases, where the concrete is used principally for a filling or to add mass to the construction, concrete made with Portland cement will generally be found the most economical for equal strength, safety and durability.

The properties of concretes vary with their age and with the proportions and quality of the ingredients. The values given here are for concretes made with (1) true Portland cement having a tensile strength per square inch neat, in 7 days of 450 to 650 lbs., and in 28 days of 540 to 750 lbs.; (2) silica sand, not necessary sharp nor coarse, but absolutely clean, and preferably a mixture of fine and coarse; and (3) good, hard, screened broken stone or clean gravel. The proportions of cement to sand generally used in the mortar or matrix, and for which there are reliable experimental data, vary from 1 of cement to 1 of sand up to 1 of cement and 6 of sand; and the proportion of mortar or matrix to the aggregate (broken stone or gravel) is from 100 to 110 per cent of the voids of the latter.

This method of specifying the proportions, by cement to sand in the mortar or matrix and by mortar or matrix to voids

EXHIBIT C-163 (*continued*):

10 in the aggregate is here adopted because it is believed that the ratio of matrix to aggregate, where the latter is good clean material, does not affect the strength of the concrete, except in so far as sufficient matrix should be provided to fill the voids in the aggregate. Other things being equal, the strength of the concrete will be proportional to the strength of the mortar, and the maximum strength for a given matrix or mortar will be attained when all voids are filled. In practice this requires a volume of matrix about 10 per cent. in excess of the voids in the aggregate. Thus, if by mixing several sizes of broken stone or gravel, the proportion of voids to be filled is reduced from 45 per cent. or 50 per cent. down to 30 per cent., the proportion of matrix, cement and sand, to aggregate may be considerably reduced without reducing the strength of the concrete or affecting its properties. Where cement or sand are dear and stone and gravel are cheap advantage may be taken of this method to reduce the cost of the concrete very materially.

20 The values here given are for concretes seven days, and one, three, and six months old. Those values should be used which correspond to the age at which the structure may be subject to its full load.

30 *Compressive Strength.* Concrete is more often used in compression than in any other way, since it is more economical and has heretofore been considered more reliable under compressive strains than under transverse or tensile strains. Until very recent years engineers and architects hardly gave serious consideration to the value of concrete as a material to resist bending or tensile stresses, but at the present time comparatively few hesitate to use it in beams and similar situations where it is partly subjected to tensile stress, and considerable number of eminent members of both professions have constructed works where the tensile strength of the concrete is taken advantage of. The best practice, where any tensile strains can occur, is to reinforce the section with steel. The two chief factors that determine the compressive strength of a concrete are its age and the proportion of sand to cement in the matrix. The quality of the cement, sand, and aggregate have more or less influence on the resulting concrete, but with any good brand of modern high-burned Portland cement, clean sand, and clean, hard stone, substantially the same results may be secured. Factors of far greater weight are the manner and conditions of mixing and placing, and the personal equation of the operator. On this account it is extremely difficult to harmonize or draw conclusions from the large

EXHIBIT C-163 (*continued*):

number of isolated tests that have been made by independent investigators under widely varying conditions and often with different objects in view.

A set of experiments made at the Watertown Arsenal for Mr. George A. Kimball, Chief Engineer of the Boston Elevated R. R., in 1899, are the most homogeneous and systematic set of tests that have as yet been published, and are given in Table I.

From these tests Mr. Edwin Thatcher has deduced formulas for the ultimate strength of concretes. They give results that agree with the average of the experiments and can be entirely relied upon for concretes carefully made from good materials. They are as follows: The ultimate compressive strength in pounds per square inch of concrete:

20	7 days old =1,800—200	(volume of sand)		,
		(volume of cement)		
	1 month old =3,100—350	(do.)		,
	3 months old =3,820—460	(do.)		,
	6 months old =4,900—600	(do.)		,

These formulas give the results shown in Table II.

Tensile Strength.—The tensile strength may be safely placed at one-tenth of the compressive strength, and the modulus of transverse rupture, $f = \frac{M}{S}$ at about 1 6/10 that of the tensile strength. Tetmajer gives the ratio as follows for Portland-cement mortars consisting of 1 of cement to 3 of sand by weight:

$$\text{Tensile strength} = \frac{(\text{compressive strength})}{(8.64 + 1.8 \log. \text{ of age in months})}$$

Shearing Strength.—M. Mesnagen states that the shearing strength of concrete is from 1.2 to 1.3 times the tensile strength. Bauschinger gives the shearing strength of concrete four weeks old at 1.25 times the tensile strength, and at two years old 1.5 times the tensile strength. A paper on the "Shearing Resistance of Reinforced Concrete," by S. Zipkes, translated by Mr. Leon S. Moisseiff, in "Cement," for March, 1906, gives the average shearing strength, at the appearance of the first cracks, at 81 lbs. per square inch. At the time of rupture, he found the average

EXHIBIT C-163 (continued) :

to be 357 lbs. per square inch. Prof. Moersch ("Cement", July, 1893) obtained an average shearing resistance of 400 to 440 lbs. per square inch. Prof. Moersch's beams were tested at three months old, whereas Mr. Zipkes' specimens were all tested at an age of 50 days. Considering the difference in the age of the specimens, the agreement is fair.

10 TABLE I.—*Showing Compressive Strength of Concrete as Determined by Tests Made at Watertown Arsenal in 1899.*

Mixture 1 : 2 : 4.

Compressive Strength, Pounds per Square Inch.

	Brand of Cement	7 Days	1 Month	3 Months	6 Months
	Atlas	1,387	2,428	2,966	3,953
	Alpha	904	2,420	3,123	4,411
20	Germania	2,219	2,642	3,082	3,643
	Alsen	1,592	2,269	2,608	3,612
	Average	1,525	2,440	2,944	3,904

Mixture 1 : 3 : 6.

Compressive Strength, Pounds per Square Inch.

	Brand of Cement	7 Days	1 Month	3 Months	6 Months
30	Atlas	1,050	1,816	2,538	3,170
	Alpha	892	2,120	2,355	2,750
	Germania	1,550	2,174	2,486	2,930
	Alsen	1,438	2,114	2,349	3,026
	Average	1,232	2,063	2,432	2,969

Mixture 1 : 6 : 12.

Compressive Strength, Pounds per Square Inch.

40	Brand of Cement	7 Days	1 Month	3 Months	6 Months
	Atlas	594	1,090	1,201	1,583
	Alpha	564	1,218	1,257	1,532
	Germania	759	987	963	815
	Alsen	417	873	844	1,323
	Average	583	1,042	1,066	1,313

EXHIBIT C-163 (continued) :

TABLE II.—*Showing Ultimate Compressive Strength of Concrete as Determined by Thacher's Formulas.*

		Age.			
Mixture.		7 Days	1 Month	3 Months	6 Months
10	1 : 1 : 3	1,600	2,750	3,360	4,300
	1 : 2 : 4	1,400	2,400	2,900	3,700
	1 : 2½ : 5	1,300	2,225	2,670	3,400
	1 : 3 : 6	1,200	2,050	2,440	3,100
	1 : 3½ : 7	1,100	1,875	2,210	2,800
	1 : 4 : 8	1,000	1,700	1,980	2,500
	1 : 5 : 10	800	1,350	1,520	1,900
	1 : 6 : 12	600	1,000	1,060	1,300

TABLE III.—*Showing Modulus of Elasticity of Concrete as Determined by Tests at Watertown Arsenal in 1899.*

20

Mixture 1 : 2 : 4.

Brand of		Modulus of Elasticity between Loads of 100 to 600.			
Cement.		7 Days	1 Month	3 Months	6 Months
30	Atlas	2,778,000	3,125,000	4,167,000	3,125,000
	Alpha .....	.....	2,083,000	4,167,000	3,125,000
	Germania	2,500,000	.....	3,571,000	4,167,000
	Alsen	2,500,000	2,778,000	2,778,000	4,167,000
	Average...	2,592,000	2,662,000	3,670,000	3,646,000

Mixture 1 : 3 : 6.

Brand of		Modulus of Elasticity between Loads of 100 to 600.			
Cement.		7 Days	1 Month	3 Months	6 Months
40	Atlas	1,677,000	3,125,000	2,778,000	3,571,000
	Alpha .....	.....	2,083,000	3,571,000	4,167,000
	Germania	2,273,000	2,273,000	2,778,000	3,125,000
	Alsen	1,667,000	2,273,000	2,778,000	3,571,000
	Average ...	1,869,000	2,438,000	2,976,000	3,608,000

EXHIBIT C-163 (*continued*):

Mixture 1 : 6 : 12.

Brand of		Modulus of Elasticity between Loads of 100 to 600.			
	Cement.	7 Days	1 Month	3 Months	6 Months
	Atlas .....	.....	1,316,000	1,136,000	1,786,000
	Alpha .....	.....	1,667,000	1,786,000	1,923,000
10	Germania ....	.....	961,000	2,083,000	1,786,000
	Alsen .....	.....	1,562,000	1,562,000	1,786,000
	Average ...	.....	1,376,000	1,642,000	1,820,000

20 *Modulus of Elasticity.*—It has been said that no property of materials of construction is as uniform and reliable as the modulus of elasticity. This may be true of the modulus of elasticity of concrete, but the great variation in its value, as determined by the experiments heretofore published has left the matter very much in the dark. Its value has been stated all the way from 750,000 to 5,000,000. This has been a discouraging condition for conservative constructors, and, no doubt, has greatly retarded the introduction of reinforced concrete in important works. The Watertown Arsenal tests in 1899 give values for the modulus of elasticity *E* of concrete as shown in Table III.

From Table III the following formulas have been deduced, giving values very close to the averages of the experiments and sufficiently exact for all practical purposes. For concrete:

30

$$\begin{aligned}
 &7 \text{ days old, } E=2,600,000-700,000 \frac{(\text{ volume of sand })}{(\text{ volume of cement })} -2, \\
 &1 \text{ month old, } E=2,900,000-300,000 \left(\begin{array}{l} \text{do.} \\ \text{do.} \end{array} \right. -1), \\
 &3 \text{ months old, } E=3,600,000-500,000 \left(\begin{array}{l} \text{do.} \\ \text{do.} \end{array} \right. -2), \\
 &6 \text{ months old, } E=3,600,000-600,000 \left(\begin{array}{l} \text{do.} \\ \text{do.} \end{array} \right. -3),
 \end{aligned}$$

If the term $\frac{\text{volume of sand}}{\text{volume of cement}} -c$ is zero or less than

40 zero (negative), the entire term is to be considered zero. In other words, all negative values must be considered as zero. Table IV shows the moduli of elasticity as determined by the above formulas. These values are sufficiently reliable for all ordinary purposes, and are probably as near to the truth as any that can be deduced from the experiments at present available. A large number of carefully executed experiments will be required to determine these values with greater precision.

EXHIBIT C-163 (continued) :

TABLE IV.—*Showing Moduli of Elasticity of Concrete as determined by formulas.*

				Age			
Mixture				7 Days	1 Month	3 Months	6 Months
10	1	: 1	: 3 ...	2,600,000	2,900,000	3,600,000	3,600,000
	1	: 2	: 4 ...	2,600,000	2,600,000	3,600,000	3,600,000
	1	: 2½	: 5 ...	2,250,000	2,450,000	3,350,000	3,600,000
	1	: 3	: 6 ...	1,900,000	2,300,000	3,100,000	3,360,000
	1	: 3½	: 7 ...	1,550,000	2,150,000	2,850,000	3,300,000
	1	: 4	: 8 ...	1,200,000	2,000,000	2,600,000	3,000,000
	1	: 5	: 10 ...	500,000	1,700,000	2,100,000	2,400,000
	1	: 6	: 12 ...	.....	1,400,000	1,600,000	1,800,000

20 Mr. W. H. Henby has given forty-eight determinations of the modulus of elasticity under tensile stress and eighteen under compressive stress, but the conditions were varied so that they can only be compared in groups of two or three tests with constant conditions, and as would naturally be expected, the results were very erratic and are not conclusive. Prof. Wm. H. Burr concludes that the same values may safely be used for the modulus of elasticity in tension as in compression.

30 The values of E are only given for loads between 100 and 600, since these limits include the practical range of safe working stresses per square inch. For purposes of computing the ultimate strength, which would be for loads from 600 to 4,000 lbs., E would have considerably lower values. For loads between 1,000 and 2,000 lbs. the values would be from one-half to two-thirds of those given for loads between 100 and 600 lbs. For loads over 2,000 lbs. satisfactory data are not known to the writer. Table V gives values of the modulus of elasticity for stresses up to 2,000 lbs. per square inch as determined at the Watertown Arsenal in the series of tests made for Mr. Geo. A. Kimball, Chief Engineer of the Boston Elevated Railroad, in 1899. These determinations show that the modulus of elasticity is very much less at stresses
40 between 1,000 and 2,000 lbs. per square inch than between 100 and 600 and 1,000 lbs. per square inch, but they are not sufficiently comprehensive to form the basis of any satisfactory rule or formula for the ratio of the modulus of elasticity to the stress per square inch.

EXHIBIT C-163 (continued):

TABLE V.—*Showing Reduction in Value of E_c with Increasing Loads. Values Given are the Mean of Those for Several Experiments with Several Standard Brands or Portland Cement.*

Age	Concrete 1. 2. 4.			Concrete 1. 3. 6.		
	100-600	100-1,000	1,000-2,000	100-600	100-1,000	1,000-2,000
7 days ..	2,592,000	2,053,000	1,351,000	1,869,000	1,529,000	
1 mo. ...	2,662,000	2,444,000	1,462,000	2,438,000	2,135,000	1,219,000
3 mos. ..	3,670,000	3,170,000	2,157,000	2,976,000	2,656,000	1,805,000
6 mos. ..	3,646,000	3,567,000	2,581,000	3,608,000	3,503,000	1,868,000

Professors Boeck and Melan found a value of E at about 750,000 in connection with the Austrian experiments, where a number of arches were tested to destruction. In calculations of ultimate strength by formulas, assumed values of E ranging from 1,500,000 to 750,000, according to the mixture, age, and the ultimate load per square inch, would seem to agree more nearly with the average of previous experiments than values of E corresponding to loads much less than the ultimate strength.

Two important points to be noted in connection with this subject are that the elastic limit of concrete, so far as it has been determined, is very close to the ultimate strength, and that its stress-strain diagram is a curve, instead of being practically straight line as it is with steel inside of the elastic limit. The nature of the curve cannot be determined from the limited number of determinations that have been published.

Working Loads.—In Table VI are given what are considered safe working loads, in pounds per square inch, and properties for concretes in which the mortar or matrix is 1 of cement to 2 of sand and 1 of cement to 3 of sand, and in which all the voids in the aggregate are filled. According to present practice, these mixtures will about cover the range for reinforced concrete.

Properties of Steel.—The following properties of steel for use in computing reinforced concrete sections, with the values assigned to them, will be used herein. These values are believed to be safe, but may be varied as conditions require, according to the judgment of the designer:

Ultimate strength, 58,000 to 66,000 lbs. per square inch.

Elastic limit, 55 per cent. of the ultimate strength.

EXHIBIT C-163 (*continued*):

Modulus of elasticity, 29,000,000.

Working stress, factor of 4, 15,000 lbs. per square inch.

Working stress, factor of 5, 12,000 lbs. per square inch.

Rate of expansion per degree Fahrenheit, 0.00000648 to
0.00000686.

10

Relations Between Concrete and Steel.—The character of the relations that exist between the concrete and steel elements of reinforced concrete combinations depends first on the design of the section. If the two elements act independently in resisting the stresses, so that either the one or the other might carry all the load, it may be called a *composite design*.

20 If some of the forces are resisted entirely by the steel and other forces resisted entirely by the concrete, so that if the element resisting one force failed the entire section would fail, it may be called a *combination design*.

If the disposition of the steel and the concrete in the section is such that the two elements act as a single unit, all stresses being divided between the concrete and the steel, where the latter occurs, and that the entire omission of the steel would only result in reducing the strength of the section, it may be called a true *monolithic design*.

30 While many composite designs have been loosely classed with "concrete-steel," they really have little in common with the combination and monolithic designs. Since the concrete and the steel are independent of each other, and either one may carry all the load, it is clear that each element should be calculated independently and like an all-concrete or an all-steel section, as the case may be. This is not to imply that the concrete may not stiffen the steel and prevent it from buckling, but as they do not act together as a combination or unit, and as the steel does not reinforce the concrete, except in the manner that any additional and independent section may reinforce another, designs of this
40 type should scarcely be classed with concrete steel or reinforced concrete.

EXHIBIT C-163 (*continued*):

TABLE VI.—*Showing Safe Working Stresses for Concrete.*

	Mixture	1 to 2 Matrix				1 to 3 Matrix				
		Age		1 Month		6 Months		1 Month		6 Months
	Safety factor	6	5	6	5	5	5	5	5	5
10	Compression, lbs.*	400	500	600	700	340	400	500	600	
	Tension, lbs.	40	50	60	70	35	40	50	60	
	$f = \frac{M}{S}$	64	80	96	112	56	64	80	97	
	Shearing	50	62	75	87	44	50	62	75	
	E	2,600,000		3,600,000		2,300,000		3,360,000		
20	Rate of expansion per degree Fahrenheit	(Clark) . . . . .		.00000795		(Rae and Dougherty) .00000655 for 1 : 3 : 5 concrete		(Rae and Dougherty) .00000561 for 1 : 2 mortar		
	Adhesion to iron or steel metallic surface, ultimate	(Bauschinger)		570 to 640 pounds per square inch		(Hatt)		636 to 756 pounds per square inch		
30	Safe working adhesion			60 to 100 pounds per square inch						

Combination designs include concrete-steel beams after the concrete on the tension side has been strained beyond the point of rupture, which will occur in a well-designed beam long before the ultimate strength of the beam is reached. Concrete beams

* These values for compression are intended for use with the straight-line formulas only. For the formulas of the parabolic type they should be reduced, as the latter give larger moments of resistance (M_o) than the straight-line formulas for the same value of compression in the extreme fibers (f_c).

Note.—Prof. Hatt also found that the friction of smooth round rods embedded in concrete after they started to slip was from 50 per cent. to 70 per cent. of the adhesion.

For concrete not reinforced with steel, use two-thirds the values given in the tables for tension and $f = M \div S$.

EXHIBIT C-163 (continued) :

reinforced with steel, under loads that produce maximum tensile stresses in the concrete less than the ultimate strength, act as a single unit and may be classed as monolithic.

The most important characteristics or properties required to determine the distribution of stresses between the concrete and steel are the relations between the following :

10

A_c = area of the section of the concrete.

A_s = area of the section of the steel.

E_c = the modulus of elasticity of the concrete.

E_s = the modulus of elasticity of the steel.

Under direct compression or tension the stresses will be distributed between the two elements in the proportion of $F_c:F_s :: A_c E_c:A_s E_s$, where

20

F_c = the total stress in the concrete

and

F_s = the total stress in the steel.

From this is derived the equation

$$F_s = F_c \frac{A_s E_s}{A_c E_c}, \dots \dots \dots (1)$$

30

and if $f_c = \frac{F_c}{A_c}$ = the stress per square inch in the concrete and

$f_s = \frac{F_s}{A_s}$ = the stress per square inch in the steel, we have

$$f_s = f_c \frac{E_s}{E_c}, \dots \dots \dots (2)$$

40

which is to say that the stress per square inch in the two elements is directly proportional to their respective moduli of elasticity. This is derived directly from the definition of the modulus of elasticity which is the ratio of the stress per unit of section to the deformation. When the modulus of elasticity for steel is stated to be 29,000,000, it means that one pound per square inch tension or compression will stretch or compress the section an amount equal to its length divided by 29,000,000, and if E_c , for

EXHIBIT C-163 (*continued*):

the concrete, is 1,933,333, one pound per square inch will stretch or compress it an amount equal to its length divided by 1,933,333.

$$E_s = 29,000,000$$

If $\frac{E_s}{E_c} = \frac{29,000,000}{1,933,333} = 15$, and if the same intensity of stress per

10

square inch exists in both the concrete and the steel, the concrete will be deformed fifteen times as much per unit of length as the

$$E_s$$

steel, or in the ratio $\frac{E_s}{E_c}$. If, however, the stress per square inch

$$E_c$$

in the steel is fifteen times that in the concrete, or in the ratio of $E_s : E_c$, then the deformation will be the same per unit of length in both. Unless this latter condition maintains in every part of a concrete and steel structure of any description the surfaces of the two elements in contact will slide over each other or the concrete near the steel element will be strained beyond its elastic limit or its ultimate resistance.

20

While it is the invariable practice to meet this condition in the design of arches, columns, etc., concrete-steel beams are quite generally designed on the theory that the steel does all the work on the tensile side of the neutral axis. There is no doubt whatever that the concrete on the tensile side of a well-designed reinforced concrete beam will fail long before the ultimate strength of the beam is reached, since most all of the tests to destruction have demonstrated it to be so. This theory will be treated at some length in the chapter on beams.

30

Coefficient of Expansion.—The thermal changes in reinforced concrete have ceased to be a matter for discussion from a practical viewpoint, and have been relegated to the laboratories for the determination of the last decimal in the rates of expansion. Some of the most recent and reliable determinations made by Rae and Dougherty at Columbia University and by Prof. W. D. Pence at Purdue University gave the rate of expansion for Portland-cement concrete with various proportions of sand and stone or gravel, such as are generally used in practice, at 40 0.00000545 to 0.00000655 per degree Fahrenheit. The later value by Rae and Dougherty is perhaps the more reliable, as the experiments were conducted with great care. Clark gives the rate at 0.00000795, which averaged with the mean of Prof. Pence's determination, 0.00000545, gives 0.00000670. This is less than 2½ per cent. greater than the value given by Rae and Dougherty.

EXHIBIT C-163 (*continued*):

The rate of expansion per degree Fahrenheit for wrought-iron and steel is given by Kent at 0.00000648 to 0.00000686, and by U. S. Reports on Iron and Steel at 0.00000617 to 0.00000676. The mean of these is about 0.00000657. From this it appears that the difference in the rate for concrete and for steel is only a fraction of 1 per cent.

10 Aside from this the large number of reinforced concrete structures that have been exposed to the weather in severe climate for years without any indication of injurious effect from thermal changes is a sufficient proof that if there is any difference in the rate for the two materials, it is not enough to be of consequence.

20 *Adhesion Between Concrete and Steel.*—Next in importance to the ratio between the stress per square inch and the moduli of elasticity is the adhesion between the concrete and the steel. Table VI gives the ultimate and safe working values of this property in pounds per square inch. In the design of any combination or monolithic member of reinforced concrete the bond between the two elements is of vital importance. In the majority of cases met in practice, the relation between the elements is such that the entire stress in the steel must be transmitted to it by this bond of adhesion. When the shear per foot run between the steel and concrete exceeds the safe working adhesion, resort must be had to a mechanical bond. Various devices have been used to obtain an effective bond, such as corrugating or twisting square or flat rods or bars, driving rivets in flat bars, 30 the projecting heads of which serve the purpose, and deforming round rods so that they are made up of alternate round and flat sections but with the same sectional area at every point.

40 Some engineers have objected to the use of square or flat sections on the ground that the sharp re-entering angles formed in the concrete weaken the latter and induce cracks to start from the angle when subjected to loads or shocks. In cast-iron, a material that has several properties similar to those of concrete, re-entering angles greatly weaken the sections, and therefore castings are generally boldly filleted at such angles. The writer does not know of any tests that throw light on this question, but notwithstanding the fact that considerable concrete has been reinforced with square and flat steel, it would seem to be safer and conservative practice to avoid all sharp re-entering angles in concrete. By far the larger part of all the reinforced concrete in Europe has been made with round rods or wires. In some cases steel angles, I-beams, or T's have been used, but squares and

EXHIBIT C-163 (*continued*):

flats, if used at all, do not seem to have met with general favor. Tests more recently made in America indicate a considerable gain in ultimate strength of reinforced-concrete beams when rods are used that give a mechanical bond, as compared with beams made with plain rods.

10 As this second edition is just going to press, reports on the effect of the California earthquake on buildings of different types of construction are just beginning to come in. These are as yet too meagre to form the basis of any conclusion. It is worthy of note, however, that the buildings with steel frames have stood the test very well, and that, of the Leland Stanford University Buildings, at Palo Alto, the damage was confined almost entirely to those with brick or stone masonry walls, while some buildings with monolithic concrete walls, not reinforced, escaped with little or no injury. Some of these buildings had concrete floors, reinforced with twisted rods, which are reported to have
20 stood satisfactorily. It would seem to be prudent, in designing reinforced concrete buildings, in localities subject to earthquake, to plan the reinforcing steel members so that they would be everywhere tied together and of such strength that they would be in stability without assistance from the concrete.

The late Mr. Geo. S. Morrison, in an address approving the principle of reinforced concrete, referred to such construction as "concrete structures with metal structures inside." If the writer interprets this correctly, Mr. Morrison referred to structures in
30 which the metal elements alone would form a complete and stable structure though not necessarily one of sufficient strength to carry the required loads. This conception of a reinforced concrete structure seems to the writer to be the correct one, but, of course, it is not the cheapest that can be built. Many errors are made in attempting to keep down first cost, and such errors enter into a larger proportion of the structures built during the early stages of the development of any new method or system of construction than they do afterwards. As an example of this, all of our metal bridges in the United States were built too light, even
40 for the loads then in vogue, and we have come to adopt much heavier details than would previously have been used for the same duty. The writer believes that this applies with a special force to reinforced-concrete construction and that the development of design will tend toward the idea of making the embedded metal parts at least capable of supporting themselves in their position in the structure without assistance or connections from the concrete in which they are to be embedded. Or, course, this

EXHIBIT C-163 (*continued*):

does not refer to all kinds of structures, but more especially to reinforced-concrete buildings. The Melan system of arch construction is a good illustration of this idea, as its reinforcement consists of a perfect metal arch, which is, in stability, without any assistance from the concrete and is some times made sufficiently strong to carry the entire load.

10

COSTS.

In considering a material to be used in building, one of the first things that an owner asks is, "What is the cost," and usually this means the first cost, forgetting to consider the most important factor, the cost of maintenance and repairs, and the insurance, which runs on year after year.

20 The first is practically the whole cost in using Reinforced Concrete, as compared to other building materials, and this varies according to the character of the construction and the purchase price of materials.

The following paragraphs selected from Page 24 of Taylor & Thompson's volume, "Concrete Plain and Reinforced," contain some interesting data:

APPROXIMATE COST OF CONCRETE.

30 The cost of concrete depends more upon the character of the construction and the conditions which govern it than upon the first cost of the materials. In a very general way, we may say that when laid in large masses or in a very heavy wall, so that the construction of the forms is relatively a small item, the cost per cubic yard in place is likely to range from \$4 to \$7. The lower figure represents contract work under favorable conditions with low prices for materials, and the higher figure small jobs and inexperienced men. Similarly, we may say that for sewers and arches, where centering is required, the price may range from \$7 to \$14 per cubic yard. Thin building walls, under 40 eight inches thick may cost from \$10 to \$20 per cubic yard, according to the character of construction and the finish which is given to the surface.

These ranges in price seem enormous for a material which is ordinarily supposed to be handled by unskilled labor, but it must be borne in mind that skilled workmen are required for constructing forms and centers, and often the labor upon these

EXHIBIT C-163 (*continued*):

may be several times that of mixing and placing the concrete. As a rule, unless the job is a very small one or under the personal supervision of a competent engineer, it is cheaper and more satisfactory to employ an experienced contractor than day labor. Green men under an inexperienced foreman may not be counted upon to mix and lay over one-half the amount of concrete that will be handled by a skilled gang under expert superintendence.

10 A close estimate of cost may be reached, in cases where the conditions are known in advance, by taking up in detail and then combining the various units of the material and labor as outlined below.

Cost of Cement. As the price of Portland cement varies largely with the demand, it is necessary to obtain quotations from dealers for every purchase. It is such heavy stuff that the freight usually enters largely into the cost, and quotations should therefore be made f.o.b. the nearest point of delivery to the work. The
20 cost of hauling by wagon may be readily estimated by assuming that a barrel of cement weighs 400 pounds (gross), and that a pair of horses will haul over an average country road a load of, say 5,000 pounds, traveling in all a distance of 20 to 25 miles in a day, that is, 10 to 12½ miles with load. This assumes, of course, that the teams are good and properly handled.

Having found the cost of the cement per barrel, delivered, the approximate cost per cubic yard is at once obtained from the table on page 17. If, for example, the cost is \$2 per barrel and
30 proportions 1:2½:5 are selected, the cost of the cement per cubic yard of concrete will be $1.29 \times \$2.00 = \2.58 .

Cost of Sand. The cost of sand depends chiefly upon the distance hauled. With labor at 15 cents per hour, the cost of loading (including the cost of the cart waiting at pit) may be estimated, if handled in large quantities, at 18 cents per cubic yard, or on a small job at 27 cents per cubic yard. For hauling add one cent for each 100 feet of distance from the pit. The additional cost of screening, if required, will vary with the coarseness
40 of the material; but 15 cents per cubic yard may be called an average price for this, unless the sand is obtained by screening the gravel, when no allowance need be made. After finding the cost of one cubic yard of sand, the cost of the sand per cubic yard of concrete is readily figured from the table referred to. If, for example, the cost of sand screened, loaded and hauled 1,000 feet is 52 cents per cubic yard, the cost per cubic yard of concrete for proportions 1:2½:5 will be $0.45 \times \$0.52 = \$0.23\frac{1}{2}$.

EXHIBIT C-163 (continued):

10 *Cost of Gravel or Broken Stone.* If broken stone is used upon a small job for the coarse aggregate, it is usually purchased by the ton or cubic yard. A 2000-lb. ton of broken stone may be considered as averaging approximately 0.9 cubic yards, although differences in specific gravity cause considerable variation. A two-horse load is generally considered $1\frac{1}{2}$ to 2 yards, the latter quantity requiring very high sideboards. The cost of screening gravel, if this is necessary, while a very variable item, may be estimated at 35 cents per cubic yard. The cost of loading gravel into double carts, with labor at 15 cents per hour, may be estimated on a small job at 38 cents per cubic yard. If handled in large quantities 25 cents is an average cost. The cost of loading, includes loosening and also the cost of the cart waiting at the pit. Hauling costs about one cent per cubic yard additional for each 100 feet of distance hauled under load. If, to illustrate, the cost of gravel picked, screened, loaded and hauled 1000 feet is 83 cents per cubic yard, the cost of the gravel per cubic yard of concrete for proportions 1:2 $\frac{1}{2}$:5 will be $0.91 \times \$0.83 = \$0.75\frac{1}{2}$.

For distances up to 300 feet both sand and gravel can be hauled more economically by wheelbarrows than by teams. The cost of loading wheelbarrows is about half the cost of loading carts, while the cost of hauling with barrows per 100 feet is about four times greater.

30 *Cost of Labor.* With an experienced gang working at the rate of 15 cents per hour, the cost of mixing and laying concrete, if shoveled directly to place from the mixing platform, will average about 80 cents per cubic yard, in addition to the work on forms. If, as is usually the case, the concrete is wheeled in barrows, 9 cents per cubic yard must be added to the above price for the first 25 feet that the barrows are wheeled under load, and $1\frac{1}{4}$ cents for each additional 25 feet wheeled. With other rates of wages, the cost may be considered as proportional. With a green gang, the cost will be nearly double the above figures, but as the men become worked in and organization perfected, the cost should approximate more nearly the prices given.

40 The labor on forms is not included in the above. This is an extremely variable item. The cost of building rough plank forms (not including cost of lumber) on both sides of a 5-foot wall may be as low as 14 cents per cubic yard of concrete, with other thicknesses of wall in inverse proportion. On elaborate work the price, which is really dependent upon the face area, may reach several dollars per cubic yard of concrete.

EXHIBIT C-163 (continued):

THE STRENGTH OF CONCRETE.

The strength of concrete varies (1) with the quality of the materials; (2) with the quantity of cement contained in a cubic yard of the concrete; and (3) with the density of the mixture.

10 We may say that the strongest and most economical mixture, consists of an aggregate comprising a large variety of sizes of particles, so graded that they fit into each other with the smallest possible volume of spaces or voids, and enough cement to slightly more than fill all of these spaces or voids between the solids of the aggregate. It is obvious that with the same aggregate the strongest cement will make the strongest concrete.

20 On important construction the various materials to be used should be carefully tested, and specimens of the mixture selected made up in advance and subjected to test. As a guide to the loads which concrete will stand in compression,—that is, under vertical loading where the height of the column or mass is not over, say, 12 times the least horizontal dimension,—we may give the following approximate figures as safe strengths, after the concrete has set at least one month, for the proportions which have previously been selected in this article as typical mixtures.

30 The figures, compared with the results of recent experiments on 12-inch cubes, allow a factor of safety of six at the age of one month, or eight at the age of six months, and are based on conservative practice. The relative strengths of the different mixtures are calculated from original investigations of the authors discussed in Chapter XIII.

Safe Strength of Portland Cement Concrete in Direct Compression.

Proportions	Pounds per square inch.	Tons per square foot.
1 : 2 : 4	410	29
1 : 2½ : 5	360	25
40 1 : 3 : 6	325	23
1 : 4 : 8	260	18

With a large mass foundation, take values one-eighth greater.
With a vibrating or pounding load, take one-half these values.

The tensile strength of concrete is very much less than the compressive strength. Experiments made by the authors, with

EXHIBIT C-163 (*continued*):

mixtures of average proportions, give the ultimate fiber stress in beams as about one-eighth the breaking strength in compression.

STEEL FOR REINFORCING.

10 While there may or may not be advantages in using a high carbon, high tensile strength steel in reinforcing-concrete, the opinion in general seems to be in favor of a medium or mild steel. A tensile strength of 64,000 lbs. per square inch is about the minimum breaking point of ordinary mild commercial steel, while high carbon, high tensile strength steel will often run as high as 150,000 lbs. per square inch, and if used, less steel is required. But owing to the brittle nature of high carbon steel, as well as the difficulty in securing a uniform quality, it appears more dangerous to use.

20 The Coefficient or Modulus of Elasticity being one of the governing factors in reinforcing concrete, and this remaining the same in either a high or low carbon steel, it is usually more desirable to use a mild or commercial steel for reinforcing purposes.

We reprint below by permission on this subject, "Quality of Reinforcing Steel," from Page 291 "Concrete Plain & Reinforced," by Taylor & Thomson:

30 *Quality of Reinforcing Steel.*—It is generally recognized that in beam design the yield point of the steel shall be considered as the point of failure of this material in a reinforced beam. Tests show that when the metal reaches its yield point, the beam sags, and this deflection, due to the stretch of the steel, and in some cases to the slipping of the steel because of its reduced cross-section, is likely to produce crushing in the concrete.

40 The yield point of ordinary mild steel purchased in the open market, as determined by the drop of the beam in testing (the true elastic limit is several thousand pounds lower), cannot safely be fixed at a higher value than 30,000 pounds per square inch, although frequently, and in fact in the majority of cases, a value of at least 36,000 pounds and in many cases 40,000 pounds, will be found.

High steel, that is, steel containing a high percentage of carbon, has a much higher yield point than mild steel. If of first-class quality,* a minimum yield point may be placed at 50,000 or

* See Specification for First-class Steel, p. 38.

EXHIBIT C-163 (*continued*):

55,000 pounds per square inch and much of it will reach 60,000 pounds. The ultimate strength should be not less than 105,000 pounds per square inch. Thus, if it can be safely employed in reinforced concrete, it is adapted to carry much higher stress than mild steel, and, conversely, a smaller percentage of it is required for the same moment of resistance. Many engineers do not approve of the use of high steel because of its brittleness, when of poor quality, and the danger of sudden accident, and because of the fact that it is prohibited in ordinary structural steel work.

Mild steel, that is, ordinary market steel, is manufactured and sold under such standard conditions that it may be safely used without test. High steel, on the other hand, must be very thoroughly tested. When tested, however, as per our specifications, page 38, it is entirely safe and to be preferred to mild steel. The objection to it for reinforced concrete is based largely upon the use of a poor quality of material. Another objection which has been raised is that before the elastic limit is reached, the stretch in the high steel may produce an excessive cracking in the concrete in the lower portion of the beam, and thus expose the steel to corrosion. The mere fact that cracks are visible does not prove that they are dangerous, because the steel is always designed to take the whole of the tension. This point remains to be definitely settled, but Mr. Considere's and Professors Talbot's and Turneure's tests indicate that there is no dangerous cracking even with high steel until the yield point of the steel is reached. This fact can be positively determined by cutting sections from reinforced concrete beams which have been strained nearly to the elastic limit, and testing them for corrosion by the methods employed by Prof. Charles L. Norton. (See p. 427.) A yield point in steel of 30,000 pounds per square inch corresponds to a stretch of 0.0010 of its length and a yield point of 50,000 to a stretch of 0.00167. (See p. 290.)

A steel with a high modulus of elasticity would be particularly serviceable for reinforced concrete, because the higher the modulus of elasticity of a material, the less is the deformation under any given loading. Unfortunately, however, a high carbon steel has substantially the same modulus of elasticity (30,000,000 lb. per sq. in.) as ordinary merchant steel.

The brittleness feared in high steel is less dangerous in reinforced concrete than in many classes of structural steel work because the concrete protects it from shock, and also because

EXHIBIT C-163 (*continued*) :

smaller sections of steel are used in concrete beams than in steel beams, and the large and irregular shapes of the latter render them much more sensitive to irregular cooling during the process of their manufacture.

10 It may be stated, then, if the stretching of high steel when pulled to its allowable working stress is proved not to form dangerous cracks in the concrete, that high carbon steel, say 0.56% to 0.60% carbon, of the quality used in the United States for making locomotive tires, is always better than mild steel for reinforced concrete provided the steel is well melted and rolled, and is comparatively free from impurities, such as phosphorus. However, a high carbon steel, unless limited by chemical analysis, and made under careful inspection, is in danger of being more brittle than low carbon steel. Its use, therefore, should be limited strictly to work important enough to warrant the ordering of a special steel and the taking of sufficient trouble on the part of
20 the purchaser to insure strict adherence to the specification. Under such circumstances, the use of high steel is attended with much economy. In other words, since manufacturers cannot always be depended upon to exactly follow specifications of this nature. It is necessary that an inspector be sent to the works, or else that the steel be purchased from a reliable dealer who has had it thus carefully tested.

30 The specifications for first-class steel on page 38 are sufficiently explicit so that steel which comes up to them can be safely used. A steel which can be employed with safety for all the locomotive and car wheels of the country certainly cannot be discarded as unsafe for concrete, provided similar precautions are taken in its purchase.

From Page 68, "Reinforced Concrete," by Buel & Hill :

40 *Grade of Steel.*—The quality of steel used in reinforcing concrete should be as carefully specified as for an all-steel structure doing the same duty. Some engineers advocate the use of high steel, on account of its high elastic limit, which recent tests show gives a higher ultimate strength to the beam. The breaking load for beams having the proper amount of reinforcement appears to be at about the elastic limit of the steel. In most cases, and certainly in structure subject to shock or impact, the writer considers it better and more conservative practice to use medium or mild structural steel, except for reinforcement for thermal and shrinkage stresses only, where high steel appears to be preferable.

EXHIBIT C-163 (*continued*):

PROTECTION OF STEEL OR IRON FROM CORROSION.

10 Most tests which have been conducted of steel imbedded in concrete have resulted in positive proofs of the protection offered by Portland cement concrete, not only from corrosion or rust, but from the most severe fire that is liable to occur. Of course, the steel must be imbedded of sufficient depth in the concrete to obtain results,—from one to two inches being usually accepted as a safe distance from the surface. While these results are not as readily obtained with a cinder concrete, yet by being thoroughly wet and well mixed, they should be.

20 Many engineers condemn cinder concrete owing to its extremely porous nature, thereby allowing the moisture and air to penetrate to the steel, which in a comparatively short time will rust it out entirely. In many instances the corrosion of steel in cinder concrete has been attributed to the sulphur contained in the cinders; this, however, is not now accepted as the cause, but is due to the fact that it has not been mixed thoroughly and sufficiently wet.

Cinders often contain Oxide of Iron, and when this is the case, and the mixture is not sufficiently wet to give the steel a thorough coating with cement, it quickly corrodes any steel with which it comes in contact.

30 The following pages: "Preservation of Iron in Concrete," reprinted from Chapter XII, "Reinforced Concrete," by Buel & Hill, contains some interesting tests on this subject:

40 *Preservation of Iron in Concrete.*—It has generally been assumed that iron or steel embedded in concrete does not corrode, and many instances are cited of embedded steel being removed from concrete quite as clear and bright after a long period of exposure to the elements as it was when first embedded. It should be noted, however, that an occasional instance is cited to show that under certain circumstances metal embedded in concrete will corrode. As the durability of concrete-steel requires that the steel shall be permanently protected from corrosion, this question is an important one and it has received consideration from a number of experts. The commonly accepted theory accounting for the protection from rust of iron embedded in concrete has been recently stated by Prof. Spencer B. Newberry as follows:

The rusting of iron consists in oxidation of the metal to the condition of hydrated oxide. It does not take place at ordinary

EXHIBIT C-163 (*continued*):

temperatures in dry air or in moist air free from carbonic oxide. The combined action of moisture and carbonic acid is necessary. Ferrous carbonate is first formed; this is at once oxidized to ferric oxide and the liberated carbon dioxide acts on a fresh portion of metal. Once started the corrosion proceeds rapidly, perhaps on account of galvanic action between the oxide and the metal. Water holding carbonic acid in solution soon, if free from oxygen, acts as an acid and rapidly attacks iron. In lime water or soda solution the metal remains bright. The action of cement in preventing rust is now apparent. Portland cement contains about 63 per cent. lime. By the action of water it is converted into a crystalline mass of hydrated calcium silicate and calcium hydrate. In hardening it rapidly absorbs carbonic acid and becomes coated on the surface with a film of carbonate, cement mortar thus acting as an efficient protector of iron and captures and imprisons every carbonic-acid molecule that threatens to attack the metal. The action is, therefore, not due to the exclusion of the air, and even though the concrete be porous, and not in contact with the metal at all points, it will still filter out and neutralize the acid and prevent its corrosive effect.

The use of cement washes and plasters for the specific purpose of protecting iron and steel from rust is quite common and has extended over a long period of time. Cement paint is largely used by the railway companies of France to protect their metal bridges from corrosion. Two coats of liquid cement and sand are applied with leather brushes. After investigation and careful tests the engineers of the Boston Subway adopted Portland-cement paint for the protection of the steel beams of that structure. Iron spirit-tanks for European distilleries are universally painted on the inside with Portland-cement paint to prevent corrosion. In the United States it is a frequent practice to coat the inside of steel salt-pans, sulphate digesters, etc., with cement plaster to prevent corrosion. Regarding the damage from corrosion by the sulphur in the cinders of cinder concrete Prof. Newberry expresses himself as follows:

The fear has sometimes been expressed that cinder concrete would prove injurious to iron on account of the sulphur contained in the cinders. The amount of this sulphur is, however, extremely small. Not finding any definite figures in this point, I determined the sulphur contained in an average sample of cinders from Pittsburg coal. The coal in its run state contains a rather high percentage of sulphur, about 1.5 per cent. The cinders proved to contain only 0.61 per cent. sulphur. This

EXHIBIT C-163 (*continued*):

amount is quite insignificant, and even if all oxidized to sulphuric acid it would at once be taken up and neutralized in concrete by the cement present, and would by no possibility attack the iron.

10 In connection with this statement it may be noted that in the demolition in 1903 of a tall steel-frame building in New York City, which was built in 1898 and had practically all of its framework except the columns embedded in cinder concrete, the steel removed showed practically no rust which could be considered as having developed after the metal was embedded.

20 Tests of a reliable character, made to determine the efficiency of concrete in protecting embedded metal from corrosion, are comparatively few. The most important ones which have been published are those of Mr. Breuillie of France and those of Prof. Charles L. Norton of Boston, Mass. Mr. Breuillie's tests were extended in character and the conclusions drawn from them by the experimenter were: (1) That the cement attacked the iron; (2) that water dissolved the composition which formed at the contact of the two materials; (3) that the adhesion of the steel to the cement disappeared when water passed through the concrete for a certain time; (4) that the weight of the iron salts which adhered to the steel and the normal adhesion between the steel and the concrete increased with time; (5) in all cases the action of the cement on the iron prevented rust and removed the rust from metal which had been allowed to corrode before being embedded.

30 The tests conducted by Prof. Charles L. Norton of the Massachusetts Institute of Technology, Boston, Mass., were of a somewhat different character from those of Mr. Breuillie. Briquettes or blocks were made of neat cement; of 1 part cement and 3 parts sand; of 1 part cement and 5 parts broken stone, and of 1 part cement and 7 parts cinders. Portland cement was used, and was tested chemically and physically and found good. The cinders when washed down with a hose-stream and dried tested alkaline, and analysis revealed very small amounts of sulphur. In each block there was embedded a $\frac{1}{4}$ -in. rod, a piece of soft sheet steel 6×1×232 in., and a 6×1-in. strip of expanded metal. 40 These blocks were exposed as follows: one-quarter of them in sealed chests containing an atmosphere of steam, air, and carbon dioxide; one-quarter in a similar chest with an atmosphere and steam, and one-quarter on a table in the open air of the testing-room. At the end of three weeks the blocks were carefully cut open, and the steel examined and compared with specimens which

EXHIBIT C-163 (*continued*):

had lain unprotected in the corresponding chests and in the open air.

10 The results of the examinations were as follows: The unprotected specimens consisted of rather more rust than steel. The specimens embedded in neat cement were perfectly protected. Of the remaining specimens hardly one had escaped serious corrosion. The location of the rust-spot was invariably coincident with either a rod in the concrete or a badly rusted cinder. In the more porous mixtures the steel was spotted with alternate bright and badly rusted areas, each clearly defined. In both the solid and the porous cinder concrete many rust-spots were found, except where the concrete had been mixed very wet, in which case the watery cement had coated nearly the whole of the steel, like a paint, and protected it. The following are Prof. Norton's conclusions from his tests:

20 (1) Neat Portland cement, even in thin layers, is an effective preventative of rusting.

(2) Concrete, to be effective in preventing rusting, must be dense and without voids and cracks. It should be mixed quite wet when applied to the metal.

(3) The corrosion found in cinder concrete is mainly due to the iron oxide, or rust, in the cinders and not to the sulphur.

30 (4) Cinder concrete, if free from voids and well rammed when wet, is about as effective as stone concrete in protecting steel.

(5) It is of the utmost importance that the steel be clean when bedded in concrete. Scraping, pickling, a sand-blast, and lime should be used, if necessary, to have the metal clean when built into a wall.

40 At first sight the conflicting testimony which has been quoted appears to have but little solid ground upon which the practicing engineer can base a decision as to the probable damage from rust of iron or steel embedded in concrete. A brief analysis will show, however, that this is not actually the case. In the first place there are many instances where steel embedded in concrete has shown no signs of rust upon removal. None of the evidence presented disputes this fact. Secondly, steel removed from concrete which contained cracks or voids has in many instances shown rust, always at the points where the cracks and voids were located. None of the evidence presented disputes this

EXHIBIT C-163 (*continued*):

fact. Thirdly, the theory that the concrete covering filters out and renders innocuous the corrosive elements so completely as to protect the steel even where it is not in contact with the concrete is disputed by the results of Prof. Norton's tests. Fourthly, Prof. Norton's tests show that where the concrete is so closely in contact with steel as to completely cover it with cement there is no corrosion. This fact is not disputed by any of the other evidence. 10 Fifthly, Prof. Norton's tests show that wet concrete mixtures more certainly insure the close contact of the steel and concrete at all points than do dry mixtures. This fact is not disputed by any of the other evidence. Sixthly, Prof. Norton's contention that the steel should be perfectly cleaned before it is bedded in concrete is controverted by the tests of Mr. Breuille, which show that bedding in concrete will remove the rust from previously 20 corroded steel. Seventhly, all the evidence presented indicates that the sulphur content of the cinders is not a serious element of danger in cinder concrete and that, other conditions being the same, cinder concrete and stone concrete are about equally efficient in preventing the rusting of embedded steel. The useful conclusion which the practicing engineer can draw from all this is that, so far as danger from subsequent rusting is concerned, he can confidently embed steel or iron reinforcement in either cinder or stone concrete if he secures a close contact between the concrete and steel at all points, and if no cracks develop in the concrete to expose the metal to attack.

30

FIRE PROTECTION.

The value of concrete as a fireproofing is apparently unquestionable, not alone from laboratory experiments, etc., but from fires which have actually occurred in buildings where this material has been employed. (See Fire Test Report on page 127.)

The following from Page 431 of Taylor & Thompson's volume, *Concrete Plain & Reinforced*, contains some very interesting results of both tests and actual fires:

40

Numerous experimental tests* have been made showing the value of concrete as a fire-resisting material, but the best proof of its ability to resist the heat of a severe fire—such as is liable to occur in an office or factory building—lies in the fact that concrete actually with stood very fires more successfully

* See References, Chapter XXIX.

EXHIBIT C-163 (*continued*):

than have terra-cotta and various other so-called fireproof materials.

The reinforced concrete factory of the Pacific Coast Borax Co. at Bayonne, N. J., passed through a severe fire in 1902. Still more recently, in 1904, occurred the conflagration at Baltimore in which many buildings materials utterly failed.

10 Such practical tests, further confirmed by numerous experiments with test buildings of reinforced concrete, have proved that while in a severe fire, where the temperature ranges from 1600° to 2000° Fahr., the surface of the concrete may be injured to a depth of from $\frac{1}{2}$ to $\frac{3}{4}$ inch, the body of the concrete is unaffected, so that the only repairs required consist of a coating of plaster, and even this only in rare instances.

20 Tests upon small briquettes of cement placed in a furnace indicate that the strength of cement is destroyed by a heat reaching a dull, red color,† but as stated below, in an actual fire, the injured material protects the rest of the concrete so that the danger is theoretical rather than real.

30 *Fire in Borax Factory.* The fire in the 4-story reinforced concrete factory of the Pacific Coast Borax Company,‡ built entirely of concrete except the roof, utterly destroyed the contents of the building, the roof, and the interior framework, but the walls and floors remained intact except in one place where an 18-ton tank fell through the plank roof and cracked some of the floor beams, and in one place on the outside of the wall where the surface of the concrete was slightly affected. The fire was so hot that brass and iron castings were melted to junk. A small annex, built of steel posts and girders, was completely wrecked, and the metal bent and twisted into a tangled mass.

40 *Baltimore Fire.* The effect of the fire upon the concrete in various buildings located in the center of the burned districts of Baltimore is best appreciated by an examination of the reports of experts upon the fire. Capt John S. Sewell, in his report to the Chief of Engineers, U. S. A.,* in referring to the fire in one of the buildings built with reinforced concrete columns, beams, and arches, writes:

† Digest of Physical Tests, Vol. I, p. 217.

‡ See p. 463.

* *Engineering News*, March 24, 1904, p. 276.

EXHIBIT C-163 (*continued*):

It was surrounded by non-fireproof buildings, and was subjected to an extremely severe test, probably involving as high temperature as any that existed anywhere. The concrete was made with broken granite as an aggregate. The arches of the roof and the ceiling of the upper story were cracked along the crown, but in my judgment very slight repairs would have restored any strength lost here. Cutting out a small section — say an inch wide — and caulking it full of good strong cement mortar would have sufficed. The exposed corners of columns and girders were cracked and spalled, showing a tendency to round off to a curve of about 3 in. radius. In the upper stories, where the heat was intense, the concrete was calcined to a depth of from $\frac{1}{4}$ to $\frac{3}{4}$ inch, but it showed no tendency to spall, except at exposed corners. On wide, flat surfaces, the calcined material was not more than $\frac{1}{4}$ -inch thick, and showed no disposition to come off. In the lower stories, the concrete was absolutely unimpaired, though the contents of the building were all burned out. In my judgment, the entire concrete structure could have been repaired for not over 20% to 25% of its original cost. On March 10, I witnessed a loading test of this structure. One bay of the second floor, with a beam in the center, was loaded with nearly 300 pounds per sq. ft. superimposed, without a sign of distress, and with a deflection not exceeding $\frac{1}{8}$ -inch. The floor was designed for a total working load of 150 pounds per sq. ft. The sections next to the front and rear walls were cantilevers, and one of these was loaded with 150 pounds per sq. ft. superimposed, without any sign of distress, or undue deflection.

Captain Sewell concludes as a result of the examination of this and other buildings containing reinforced concrete construction:

As the material is calcined and damaged to some extent by heat, enough surplus material should be provided to permit of a loss of say $\frac{3}{4}$ -inch all over exposed surfaces, if the structure is to be exposed to fire; moreover, all exposed corners should be rounded to a radius of about 3 inches. This latter precaution would add much to the resistance of all materials used in masonry—whether bricks, stone, concrete or terra-cotta—if they are to be exposed to fire.

Concrete Versus Terra-Cotta. Prof. Norton, in his report on the Baltimore fire to the Insurance Engineering Experiment Station,* says:

* *Engineering News*, June 2, 1904, p. 529.

EXHIBIT C-163 (*continued*):

Where concrete floor arches and concrete-steel construction received the full force of the fire it appears to have stood well, distinctly better than the terra-cotta. The reasons I believe are these; First, because the concrete and steel expand at sensibly the same rate, and hence when heated do not subject one another to stress, but terra-cotta usually expands about twice as fast with increase in temperature as steel, and hence the partitions and floor arches soon become too large to be contained by the steel members which under ordinary temperature properly enclose them. Under this conditions the partition must buckle and the segmental arches must lift and break the bonds, crushing at the same time the lower surface member of the tiles.

When brick or terra-cotta are heated no chemical action occurs, but when concrete is carried up to about 1 000° Fahr. its surface becomes decomposed, dehydration occurs, and water is driven off. This process takes a relatively great amount of heat. It would take about as much heat to drive the water out of this outer quarter-inch of the concrete partition as it would to raise that quarter-inch to 1 000° Fahr. Now a second action begins. After dehydration the concrete is much improved as a non-conductor, and yet through this layer of non-conducting material must pass all the heat to dehydrate and raise the temperature of the layers below, a process which cannot proceed with great speed.

Cinder Versus Cinder Concrete. Prof. Norton compares the action of stone and cinder concrete in the Baltimore fire as follows:

Little difference in the action of the fire on stone concrete and cinder concrete could be noted, and as I have earlier pointed out, the burning of the bits of coal in poor cinder concrete is often balanced by the splitting of the stones in the stone concrete. I have never been able to see that in the long run either stood fire better or worse than the other. However, owing to its density the stone concrete takes longer to heat through.

Further experiments are required to determine the relative durability under extreme heat of concrete made with different kinds of broken stone. It seems probable, from the composition of the rock, that hard trap or gravel may be preferable to limestone, slate, or conglomerate as fire-resisting material.

EXHIBIT C-163 (*continued*):

Thickness of Concrete Required to Protect Metal from Fire.
The conclusion reached by Prof. Norton † from tests upon concrete arches is that two inches of good concrete gives perfect assurance of safety in case of fire, even if the steel to be protected is in the form of I-beams. Rods of small dimensions can be more effectively coated, and it appears evident from the various tests and from practical experience in severe fires that 1½ inches of concrete around steel rods is sufficient protection. The Pacific Borax Company's fire and other similar tests indicate that in slabs of reinforced concrete, ½ inch to ¾ inch affords ample protection. Secondary members, such as cross girders, or slabs of long span, should have a thickness of concrete outside of the steel varying from ¾ inch to 1½ inch. Although in slabs protected by only ½ inch of concrete, the latter may be softened by an extreme fire, and the metal exposed when it is struck by the stream from a hose, the metal in the majority of cases would still remain practically uninjured, and it is questionable economy to put an excess of material where there is so little probability of its being needed, and where a failure would merely produce local damage.

THEORY OF FIRE PROTECTION.

Mr. Spencer B. Newberry, in an address delivered before the Associated Expanded Metal Companies, Feb. 20, 1902,* gives the following explanation of the fire-proof qualities of Portland cement concrete:

The two principal sources from which cement concrete derives its capacity to resist fire and prevent its transference to steel are its *combined water and porosity*. Portland cement takes up in hardening a variable amount of water, depending on surrounding conditions. In a dense briquette of neat cement the combined water may reach 12%. A mixture of cement with three parts sand will take up water to the amount of about 18% of the cement contained. This water is chemically combined, and not given off at the boiling point. On heating, a part of the water goes off at about 500° Fahr., but the dehydration is not complete until 900° Fahr. is reached. This vaporization of water absorbs heat, and keeps the mass for a long time at comparatively low temperature. A steel beam or column embedded in concrete is thus cooled by the volatilization of water in the surrounding

† *Insurance Engineering*, Dec., 1901, p. 483.

* *Cement*, May, 1902, p. 95.

EXHIBIT C-163 (*continued*):

cement. The principle is the same as in the use of crystalized alum in the casings of fireproof safes; natural hydraulic cement is largely used in safes for the same purpose.

10 The porosity of concrete also offers great resistance to the passage of heat. Air is a poor conductor, and it is well known that an air space is a most efficient protection against conduction. Porous substances, such as asbestos, mineral wool, etc., etc., are always used as heat-insulating material. For the same reason cinder concrete, being highly porous, is a much better non-conductor than a dense concrete made of sand and gravel or stone, and has the added advantage of lightness. In a fire the outside of the concrete may reach a high temperature, but the heat only slowly and imperfectly penetrates the mass, and reaches the steel so gradually that it is carried off by the metal as fast as it is supplied.

20 MODULUS OR COEFFICIENT OF ELASTICITY.

Results of testing concrete for its Modulus of Elasticity for the same mixtures or proportions vary greatly. This is probably due to the exactness necessary in measuring the deformation of concrete. The Modulus of Elasticity of steel varies from 28,000,000 lbs. to 31,000,000 lbs. per square inch; 29,000,000 or 30,000,000 being the values usually accepted for steel. Those for concrete, of course, vary with the proportion or the mixtures.

30 The following "Modulus of Elasticity," reprinted from Taylor & Thompson's, "Concrete Plain & Reinforced," Page 285 suggests the values for the Modulus of Elasticity of concrete:

Modulus of Elasticity. The modulus of elasticity of steel varies from 28,000,000 pounds per square inch to 31,000,000 pounds per square inch; 30,000,000 is customarily taken as an average value, and is the value which we have adopted.

40 The modulus of elasticity of concrete, a very important factor in reinforced concrete design, is considered in the preceding chapter, page 265. As there stated, it varies with the materials of which it is composed and with the proportions of these materials, also with the method of mixing and placing the concrete.

As tentative values for use in reinforced design, the authors suggest the following moduli for concrete mixed of the wet consistency usually employed in beams:

EXHIBIT C-163 (*continued*) :

	Proportions	Modulus of Elasticity lbs. per sq. in.
	(1 : 1½ : 3	4 000 000
Broken Stone or	(1 : 2 : 4	3 000 000
Gravel Concretes	(1 : 2½ : 5	2 500 000
	(1 : 3 : 6	2 000 000
	(1 : 5 : 8	1 500 000
10 Cinder Concrete	1 : 2 : 5	850 000

It is probable that eventually these values will be found too low for dense, well-graded mixtures, which are gradually replacing those proportioned by rule of thumb methods. The authors have found a modulus of about 4 000 000 in 12-inch concrete cubes mixed 1 : 2 1-3 : 4 2-3, the crushing strength of which was about 5 000 pounds per square inch at the end of two months.

20 The higher the modulus of elasticity of the concrete, the lower should be the percentage of steel and the greater the depth of the beam for symmetrical design, that is, maintaining fixed relation of pull in steel to pressure in concrete.

From tests of Prof. W. Kendrick Hatt * the modulus of elasticity in tension appears to be of similar value to the compressive modulus. Earlier experimenters concluded that the modulus is lower than in compression. A knowledge of the tensile modulus is, however, of less consequence than the other because the tensile resistance of concrete is not usually considered.

30 It is probable that there is an increase in the modulus of elasticity of concrete with age, but experiments by the author indicate that this is very slight.

Recent tests,† contrary to former ideas, indicate that under different loadings there may be slight change in the modulus of elasticity of a given concrete until near to its crushing strength. This fact is of importance in fixing the distribution of stresses in the beam.

40 *Elongation or Stretch in Concrete.* The question of "Elongation or Stretch in Concrete," is dealt within the succeeding paragraph, reprinted from Page 287 of Taylor & Thompson's volume.

* Journal Association Engineering Societies, June, 1904, p. 323.

† See Discussion on Concrete, by Sanford E. Thompson, International Eng. Congress, St. Louis, 1904.

EXHIBIT C-163 (*continued*):

According to tests of Prof. Turneure, already mentioned, concrete under a pull, as in the lower portion of a beam, will usually stretch, 0.0001 to 0.0002 of its length, that is, 0.01% to 0.02%, before showing minute cracks or "water-marks." Cracks become readily noticeable at a stretching varying, in different specimens, from 0.0003 to 0.0010 of their length. The concrete in a reinforced beam stretches similarly to the concrete in a plain beam except that in the latter the beam breaks when the limit of stretch is reached, while if reinforced, the pull is borne partly by the steel and partly by the concrete, and they both stretch together up to the point that cracks so minute at first as to be almost invisible occur in the concrete.

The action of the reinforced concrete is shown in the deflection curve in Fig. 89. The inclination of this curve changes at about the same load that is required to break a similar beam or plain concrete.

The diagram shows a typical result of Prof. Talbot's tests of the deformation of the concrete and the deformation of the steel, the deflection of the beam, and the various measured positions of the neutral axis during flexure. Among other conclusions, Prof. Talbot draws the following:

1. The composite structure acts as a true combination of steel and concrete in flexure during the first or preliminary stage, and this stage lasts until the steel is stressed to, say 3,000 pounds per square inch, and the lower surface of the concrete is elongated about of its length.

2. During the second or readjustment stage there is a marked change in distribution of stresses, the neutral axis rises, the concrete loses part of its tensional value, and tensile stresses formerly taken by the concrete are transferred to the steel. During this stage minute cracks probably exist, quite well distributed, and not easily detected.

3. In the third or straight-line stage the neutral axis remains nearly stationary in position and the concrete gradually loses more of its tensional value. Visible cracks appear and gradually grow larger, though no change in the character of the load-deformation diagram results. It would seem probable that at these cracks the stress in the steel is more than is indicated by the average deformation for the full gage length.

EXHIBIT C-163 (continued) :

Prof. Talbot states that at the load when the curve changes character,—which in the beam shown in the diagram is about 8 000 pounds total load,—there are probably invisible cracks in the lower portion of the beam. This change in direction of the curve, indicating a suddenly increased load upon the steel, is strong proof of the loss in tensional resistance of the concrete. Prof. Turneure, moreover, in his experiments, at loads somewhat
10 beyond the point of change in direction, actually discovered these minute cracks. He tested his beams upside down, that is, the load was applied upward, and the minute cracks or water-marks were shown by hair lines on the wet surface of the concrete. Prof. Turneure * says :

It has been found that by testing the beams when somewhat moist, a crack is made visible when exceedingly small, it appearing first as a narrow, wet streak perhaps $\frac{1}{8}$ -inch wide and a little later as a dark hair-like crack. It was not necessary to
20 search for the lines with a microscope as under these conditions they were readily found.

That the wet streak, called a “water-mark” hereafter, shows the presence of an actual crack was demonstrated last year by sawing out a strip of the concrete containing such a water-mark; the strip fell apart at the water-mark.

In the plain concrete no water-marks or cracks were observed before rupture. Comparing the observed and calculated elongations of the reinforced concrete with those for the plain
30 concrete at rupture it will be seen that the initial cracking in the former occurs at an elongation practically the same as in the latter.

The significance of these minute cracks is an open question. It has been supposed that concrete reinforced by steel will elongate about ten times as much before rupture as will plain concrete. These experiments show very clearly that rupture begins at about the same elongation in both cases. In the plain concrete total failure ensues at once; in the reinforced concrete rupture
40 occurs gradually, and many small cracks may develop so that the total elongation at final rupture will be greater than in the plain concrete. In other words, the steel develops the full extensibility of a non-homogeneous material that otherwise would have an extension corresponding to the weakest section.

* Proceedings American Society for Testing Materials, 1904.

EXHIBIT C-163 (continued):

BONDING OLD AND NEW CONCRETE.

Too much attention cannot be paid by constructors or contractors to the bonding of old and new concrete. In most instances, sufficient care is not given to this in construction. The following from Page 376 of "Concrete Plain & Reinforced," Taylor & Thompson, should be carefully noted:

10 In a foundation or other structure where the strain is chiefly compressive, the surface of the concrete laid on the previous day should be cleaned and wet, but no other precaution is necessary. Joints in walls or in other locations liable to tensile stress are coated with mortar, which should be richer in cement than the mortar in the concrete, proportions 1 : 2 being commonly used.

20 Some engineers spread the cement dry upon the wetted surface of the old concrete, while others make it into a mortar: the latter method is necessary in many cases to seal the joints between the top of the old concrete and the bottom of the raised forms.

30 The adhesive strength of cement or concrete is much less than its cohesive strength, hence in building thin walls for a tank or other work which must be water-tight, the only sure method is to lay the structure as a monolith, that is, without joints. If the wall is to withstand water pressure and cannot be built as a monolith, both horizontal and vertical joints must be first thoroughly cleaned of all dirt and "laitance" or powdery scum, wet, and then covered with a very thin layer of either neat cement or 1 : 1 mortar, according to the nature of the work. As an added precaution, one or more square or V-shaped sticks of timber, say 4 or 6 inches on an edge, may be imbedded in the surface, or placed vertically at the end of a section, of the last mass of concrete laid each day. In some instances large stones have been partially imbedded in the mass at night for doweling the new work next day.

40 In the New York Subway, work was commenced with no provision for bonding horizontal layers, but it was soon found that more or less seepage occurred, and in one case where a large arch was torn down the division line between two days' work was distinctly seen. Accordingly, at the end of each day's concreting a tongue-and-grooved joint was formed by a piece of timber 4 inches square partly imbedded in the top layer. This was removed before resuming work.

EXHIBIT C-163 (*continued*):

Roughening the surface after ramming or before placing the new layer will aid in bonding the old and new concrete.

EFFECT OF FREEZING.

10 The much discussed subject of the effect of freezing or frost upon Portland cement concrete seems to still be a question in the minds of many. This is possibly due, in some cases, to the confusion of Natural and Portland cements. Most natural cements are completely ruined by freezing, while Portland cements seem uninjured.

Numerous tests and investigations have been made in recent years, both in practical work and laboratories; the results being that the only permanent injury is to the surface, which may scale off in frozen before setting, and that the hardening and setting is retarded.

20 In practice the materials are often heated which causes the cement to set more quickly; or a limited amount of salt may be added to the water, with apparently no injury to the concrete.

The following reprinted from Chapter XIX, Taylor & Thompson's volume, "Concrete Plain & Reinforced," is most interesting:

30 Numerous experimental tests have been made, chiefly in the United States, where the effect of frost is a more serious question than in England, France, or Germany, to determine the effect of freezing temperatures upon hydraulic cements. Although the conclusions of different experimenters are not in perfect accord, it is the generally accepted belief, corroborated by tests under the most practical conditions and by the appearance of concrete and mortar in masonry construction, that the ultimate effect of freezing upon Portland cement concrete and mortar is to produce only surface injury.

40 In their practice and research the authors have never discovered a case, either in laboratory work or in practical construction, where Portland cement concrete or mortar laid with proper care has suffered more than surface disintegration from the action of frost. They do not wish to imply however, that it is always expedient to lay Portland cement masonry in freezing weather, for the expense of laying is increased, and it is much more difficult to satisfactorily mix and place the materials. Mortar for brick and stone masonry freezes in the tubs and in

EXHIBIT C-163 (*continued*):

the joints, while in laying concrete the surface freezes unless measures are taken to prevent it, and any dirt or "laitance" which rises to the surface of wet mixtures is hard to remove. It is a well-known fact that a thin crust about 1/16 inch thick is apt to scale off from granolithic or concrete pavements which have frozen, leaving a rough instead of a troweled wearing surface, and the effect upon concrete walls is often similar. It may be
10 stated as a general rule that concrete work should, if possible, be avoided in freezing weather, although if circumstances warrant the added expense, with proper precaution and careful inspection mass concrete may be laid with Portland cement at almost any temperature.

Most Natural cements, on the contrary, are seriously injured by frost especially by alternate freezing and thawing, and while occasional cases are on record, especially in heavy stone masonry in which the weighted joints have thawed slowly, where
20 Natural cement mortar has been laid in freezing weather without serious results, numerous examples might be cited where even after several years the concrete or mortar was but slightly better than sand and gravel. Mr. Thompson has observed this result in Natural cement mortar laid during the comparatively warm winter of North Carolina on days when the temperature was considerably above freezing at the time of laying, and also in the cold climate of Maine where the mortar froze as it left the frowel and did not thaw until spring.

30 The settlement of the masonry when thawing is often a serious characteristic of Natural cements. Stone masonry walls laid in freezing weather in Natural cement mortar may settle as much as 1/2 inch in the height of a window jamb.

Experiments upon Natural cement mortars have not positively confirmed the judgment reached by nearly all engineers experienced in construction in freezing weather. Occasional tests are recorded in which such mortars, especially when subjected to a uniformly cold temperature and then suddenly thawed, have
40 attained full strength, but these are insufficient to warrant the use of any except Portland cements when frost is likely to occur before the mortar is thoroughly dry.

The prevention of injury from frost in certain cements may be due, at least in part, to the internal heat produced when setting. In the interior of a large mass, some cements, especially high grade Portlands, attain a high temperature. (See p. 130.)

EXHIBIT C-163 (*continued*) :

CLASSIFICATION OF CEMENTS.

Chapter V. reprinted by permission from "Concrete Plain and Reinforced," by Taylor & Thompson :

10 From an engineering standpoint, limes and cements may be classified as

- Portland cement.
- Natural cement.
- Puzzolan cement.
- Hydraulic lime.
- Common lime.

20 Typical analyses of each are presented in the following table. The composition of Natural cement, even different samples of the same brand, is so extremely variable that their analyses cannot be regarded as characteristics of locality.

Typical Analysis of Cements.

30

	PORTLAND CEMENT		NATURAL CEMENT						COMMON LIME		
	Lehigh Valley ¹ (mixed rock)	Western ² (marl and clay)	AMERICAN		ENGL ³ H	FRENCH		Puzzolan Cement ⁷ Hydraulic Lime (Le Tie) ⁸ 1	Lime ⁹	Magnes'n Lim ¹⁰	
			Eastern Hoschdale ⁴	Western Louisville ⁵	Roman ⁶	Vassy ⁶	Crappiers ⁶				
Silica SiO ₂	21.31	21.93	18.38	20.42	25.48	22.60	26.5	28.95	21.70	1.03	1.12
Alumina Al ₂ O ₃	6.89	5.98	15.20	4.76	10.30	8.90	2.5	11.40	3.19	1.27	0.68
Iron Oxide Fe ₂ O ₃	2.53	2.35		3.40	7.44	5.30	1.5	0.54	0.66		
Calcium Oxide CaO	62.89	62.92	35.84	46.64	44.54	52.69	63.0	50.29	60.70	97.02	58.51
Magnesian Oxide MgO	2.64	1.10	14.02	12.00	2.92	1.15	1.0	2.96	0.85	0.68	39.69
Sulphuric Acid SO ₃	1.34	1.54	0.93	2.57	2.61	3.25	0.5	1.37	0.60		
Loss on Ignition	1.39	2.91	3.73	6.75	3.68	6.11	5.0	3.39	12.20		
Other constituents	0.75		11.46	3.74	1.46			0.30	0.10		

40

¹W. F. Hillebrand, Society of Chemical Industry, 1902, Vol. XXI.
²W. F. Hillebrand, Journal American Chemical Society, 1903, 25, 1180.
³Clifford Richardson, *Brickbuilder*, 1897, p. 229.
⁴Stanger & Blount, *Mineral Industry*, Vol. V., p. 69.
⁵Candlot, *Ciments et Chaux Hydrauliques*, 1898, p. 174.
⁶La Chatelier, *Annales des Mines*, September and October, 1893, p. 36.
⁷Report of the Board of U. S. Army Engineers on Steel Portland Cement, 1900, p. 52.
⁸Candlot, *Ciments et Chaux Hydrauliques*, 1. 98, p. 24.
⁹Rockland Rockport Lime Co.
¹⁰Western Lime and Cement Co.

EXHIBIT C-163 (*continued*):

PORTLAND CEMENT.

Portland cement is defined by Mr. Edwin C. Eckel of the U. S. Geological Survey as follows: "By the term Portland cement is to be understood the material obtained by finely pulverizing clinker produced by burning to semi-fusion an intimate artificial mixture of finely ground calcareous and argillaceous materials, this mixture consisting approximately of 3 parts of lime carbonate to 1 part of silica, alumina and iron oxide."

The definition is often further limited by specifying that the finished product must contain at least 1.7 times as much lime, by weight, as of silica, alumina, and iron oxide together.

The only surely distinguished test of Portland cement is its chemical analysis and its specific gravity. (See pp. 64 and 65.) In the field it may often be recognized by its cold bluish gray color (see p. 113), although the color of Puzzolan and of some Natural cement is so similar that this is by no means a positive indication.

The term *Natural Portland Cement* arose from the discovery in Boulogne-sur-Mer, France, as early as 1846, of a natural rock of suitable composition for Portland cement. A similar discovery in Pennsylvania gave rise to the same term in America, but the manufacturers soon found it necessary to add to the cement rock a small percentage of purer limestone. Since the chemical composition of Portland cement, as defined above, is substantially uniform regardless of the materials from which it is made, in the United States the terms "natural" and "artificial" are meaningless.

In France, cements intermediate between Roman and Portland are called "natural Portlands." *

Sand Cement. Sand or silica cement is a mechanical mixture of Portland cement with a pure, clean sand very finely ground together in a tube mill or similar machine. For the best grades the proportions of cement to sand are 1 : 1, although as lean a mixture as 1 : 6 has been made to compete with Natural cements. The coarser particles in any Portland cement have little cementitious value, hence if a portion of the cement is replaced by inert matter and the whole ground extremely fine, its

* Candlot's Ciments et Chaux Hydrauliques, 1898, p. 164.

EXHIBIT C-163 (*continued*):

advocates maintain that the product is scarcely inferior to the unadulterated article. As made in the United States, the mixture is ground so fine that 95 per cent of it will pass through a sieve having 200 meshes to the linear inch, and all of the 5 per cent residuum is said to be sand. In other words, all of the cement passes a No. 200 sieve.

10

NATURAL CEMENT.

Natural cement is "made by calcining natural rock at a heat below incipient fusion, and grinding the product to powder." * Natural cement contains a larger proportion of clay than hydraulic lime, and is consequently more strongly hydraulic. Its composition is extremely variable on account of the difference in the rock used in manufacture.

20

Natural cements in the United States in numerous instances bear the names of localities where first manufactured. For example, Rosendale cement, a term heard in New York and New England more frequently than Natural cement, was originally manufactured in Rosendale. Ulster County, N. Y. Louisville cement first came from Louisville, Ky. The James River, Milwaukee, Utica, and Akron are other Natural cements named for localities.

30

The United States produces a few brands of "Improved Natural Hydraulic Cement," intermediate in quality between Natural and Portland, by mixing inferior Portland cement with Natural cement clinker.

In England the best known Natural cement is called Roman cement. Occasionally one hears the term Parker's cement, so called from the name of the discoverer in England.

LE CHATELIER'S CLASSIFICATION OF NATURAL CEMENTS.

40

In France there are several classes of natural cement. Mr. H. Le Chatelier † classifies Natural Cements as those obtained "by the heating of limestone less rich in lime than the limestone for hydraulic lime. They may be divided into three classes:

* Professional Papers, No. 28, U. S. Army Engineers, p. 33.

† Procédés d'Essai des Matériaux Hydrauliques, Annales des Mines, 1893.

EXHIBIT C-163 (continued):

“Quick-setting cements, such as Vassy and Roman (Ciments a prise rapide, Vassy, romain);

“Slow-setting cements (Ciments a prise demi-lente);

“Grappiers cements (Ciments de grappiers).

10 “*Vassy Cements* are obtained by the heating of limestone containing much clay, at a very low temperature, just sufficient to decarbonate the lime. They are characterized by a very rapid set, followed afterwards by an extremely slow hardening, much slower than that of Portland cements.”

“They differ from Portland cements by containing a much higher percentage of sulphuric acid, which appears to be one of their essential elements, and a much lower percentage of lime.

20 “*Slow Setting Cements*, by the high temperature of calcination, approach Portland cements, but the natural limestones never possess the homogeneity of artificial mixtures, so that it is impossible to avoid in these cements the presence of a large quantity of free lime.” The composition of these products varies from that of the Vassy cements to that of the real Portlands.

30 “*Grappiers Cements* are obtained by the grinding of particles which have escaped disintegration in the manufacture of hydraulic limes. These grappiers are a mixture of four distinct materials, two of which, completely inert, are unburned limestone and the clinkers formed by contact with the siliceous walls of furnaces, and two of which, strongly hydraulic, are unslacked lime and true slow-setting cement. It is necessary that the latter should predominate in the grappiers for their grinding to give a useful product. The grappier of cement is obtained regularly only by the heating of a limestone but slightly aluminous and containing about three equivalents of carbonate of lime for one of silica; its production necessitates a heating at high temperature.

40 “These grappiers cements are even more apt to contain free lime than the Natural cements of slow set which are obtained by the heating of limestone containing much more alumina. Because of their constitution, also, the grappiers cements may vary greatly in composition since they are produced by the grinding of a mixture of grains of cement and of various inert materials. The cement grains have very nearly the composition of tricalcium silicate ($\text{SiO}_2 \cdot 3 \text{CaO}$).”

EXHIBIT C-163 (*continued*):

PUZZOLAN OR SLAG CEMENT.

Puzzolan cement is the product resulting from mixing and grinding together in definite proportions slaked lime and granulated blast furnace slag or natural puzzolanic matter (such as puzzolan, santorin earth, or trass obtained from volcanic tufa).

10

The ancient Roman cements belonged to the class of Puzzolans. They were made by mechanically mixing slaked lime with natural puzzolana formed from the fusion of natural rock found in the volcanic regions of Italy. In Germany, trass, a volcanic product related to Puzzolan, has been used with lime in the manufacture of cements.

20

Blast furnace slag is essentially an artificial puzzolana, formed by the combustion in a blast furnace, and the puzzolan or slag cements of the United States are ground mixtures of granulated blast furnace slag, of special composition, and slaked lime.

A Board of Engineers officers, U. S. A., presented in 1901 the following conclusion,* based, undoubtedly, on the exhaustive studies upon the subject made by a previous Board † having the same chairman, Major W. L. Marshall:

30

This term (slag or Puzzolan cement) is applied to cement made by intimately mixing by grinding together granulated blast-furnace slag of a certain quality and slaked lime, without calcination subsequent to the mixing. This is the only cement of the Puzzolan class to be found in our markets (often branded Portland), and as true Portland cement is now made having slag for its hydraulic base, the term "slag cement" should be dropped and the generic term Puzzolan be used in advertisements and specifications for such cements.

40

Puzzolan cement made from slag is characterized physically by its light lilac color; the absence of grit attending fine grinding and the extreme subdivision of its slaked lime element; its low specific gravity (2.6 to 2.8) compared with Portland (3 to 3.5); and by the intense bluish green color in the fresh frac-

* Professional Papers, No. 28, p. 28.

† Report of the Board of U. S. Army Engineers on Steel Portland Cement, 1900, p. 52.

EXHIBIT C-163 (*continued*):

ture after long submersion in water, due to the presence of sulphides, which color fades after exposure to dry air.

10 The oxidation of sulphides in dry air is destructive of Puzzolan cement mortars and concretes so exposed. Puzzolan is usually very finely ground, and when not treated with soda sets more slowly than Portland. It stands storage well, but cements treated with soda to quicken setting become again very slow setting, from the carbonization of the soda (as well as the lime) element after long storage.

Puzzolan cement properly made contains no free or anhydrous lime, does not warp or swell, but is liable to fail from cracking and shrinkage (at the surface only) in dry air.

20 Mortars and concretes made from Puzzolan approximate in tensile strength similar mixtures of Portland cement, but their resistance to crushing is less, the ratio of crushing to tensile strength being about 6 to 7 to 1 for Puzzolan, and 9 to 11 to 1 for Portland. On account of its extreme fine grinding Puzzolan often gives nearly as great tensile strength in 3 to 1 mixtures as neat.

30 Puzzolan permanently assimilates but little water compared with Portland, its lime being already hydrated. It should be used in comparatively dry mixtures well rammed, but while requiring little water for chemical reactions, it requires for permanency in the air constant or continuous moisture.

Puzzolan material has been suggested by Dr. Michaelis, of Germany, and Mr. R. Feret, of France (see chapter XVIII), as a valuable addition to Portland cement designed for use in sea water.

HYDRAULIC LIME.

40 The hydraulic properties of a lime,—its ability to harden under water,—are due to the presence of clay, or, more correctly, to the silica contained in the clay. Hydraulic lime is still used to quite an extent in Europe especially in France, as a substitute for hydraulic cement. The celebrated lime-of-Teil of France is a hydraulic lime.

Mr. Edwin C. Eckel states * that "theoretically the proper composition for a hydraulic limestone should be calcium car-

* *American Geologist*, March, 1902, p. 52.

EXHIBIT C-163 (*continued*):

bonate 86.8%, silica 13.2%. The hydraulic limestones in actual use, however, usually carry a much higher silica percentage, reaching at times to 25%; while alumina and iron are commonly present in quantities which may be as high as 6%. The lime content of the limestones commonly used varies from 55% to 65%."

- 10 Although the chemical composition of hydraulic lime is similar to Portland cement, its specific gravity is much lower, lying between 2.5 and 2.8.†

In the manufacture of hydraulic lime the limestone of the required composition is burned, generally in continuous kilns, and then sufficient water is added to slake the free lime produced so as to form a powder without crushing.

COMMON LIME.

- 20 The commercial lime of the United States is "quicklime," which is chiefly calcium oxide (CaO).

30 Lime is now manufactured by a continuous process. Limestone of a rather soft texture, so as to be as free as possible from silica, iron and alumina, is charged into the top of the kiln which may be, say, 40 ft. high by 10 ft. in diameter. The fuel is introduced into combustion chambers near the foot of the shaft, and the finished product is drawn out from time to time through another opening in the bottom of the shaft. The temperature of calcination may range from 1400° Fahr. (760° Cent.) to, at times, 2,000° Fahr. (1,090° Cent.). The product (see analysis, p. 47), in ordinary lime of the best quality, is nearly pure calcium oxide (CaO). Upon the addition of water the lime slakes, forming calcium hydrate (CaH₂O₂), and, with the continued addition of water increases in bulk to twice or three times the original loose and dry volume of the lump lime as measured in the cask. In this plastic condition it is termed by plasterers "putty" or "paste."

- 40 The setting of lime mortar is the result of three distinct processes which, however, may all go on more or less simultaneously. First, it dries out and becomes firm. Second, during this operation, the calcic hydrate, which is in solution in the water of which the mortar is made, crystalizes and binds the mass to-

†. Candlot's Ciments et Chaux Hydrauliques, 1898, p. 26.

EXHIBIT C-163 (*continued*):

gether. Hydrate of lime is soluble in 831 parts of water at 78° Fahr.; in 759 parts at 32° and in 116 parts at 140°. Third, as the per cent. of water in the mortar is reduced and reaches five per cent., carbonic acid begins to be absorbed from the atmosphere. If the mortar contains more than five per cent., this absorption does not go on. While the mortar contains as much as 0.7 per cent. the absorption continues. The resulting carbonate probably unites with the hydrate of lime to form a sub-carbonate, which causes the mortar to attain a harder set, and this may finally be converted to carbonate. The mere drying out of mortar, our tests have shown, is sufficient to enable it to resist the pressure of masonry, while further hardening furnishes the necessary bond.*

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Magnesian Limes evolve less heat when slaking, expand less, and set more rapidly than pure lime. A typical analysis is given on page 47.

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Hydrated Lime is a powdered slaked lime (calcium hydrate). It is manufactured by treating finely ground common lump lime with water of a certain temperature, and then cooling and screening it through a very fine screen.

FINISHING SURFACES OF REINFORCED CONCRETE.

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Objections are often heard as to the unsightly appearance of concrete buildings when finished. With a little care concrete structures may be made as beautiful to the eye as buildings built of any other material.

The following chapter, XVII, reprinted from Buel & Hill's volume, "Reinforced Concrete," will be found most interesting on this subject, dealing with the numerous finishes which may be applied at very little cost.

CHAPTER XVII.—FACING AND FINISHING EXPOSED
CONCRETE SURFACES.

40
The difficulty of securing an even-grained surface of uniform color on concrete work is one of the most annoying which builders of such work have to overcome. Concrete work is sub-

* The authors are indebted to Mr. Clifford Richardson for this paragraph.

EXHIBIT C-163 (*continued*):

ject to various sorts of surface imperfection, but the two most common imperfections are roughness or irregular surface texture and variability of color or discoloration. Either of these imperfections is capable of disfiguring an otherwise sightly structure, and the task of avoiding them is one which warrants serious attention from those undertaking work in reinforced concrete. Unfortunately practice has not settled upon a solution of the problem, hence its consideration here is rather a record of experience than a set of instructions which can be followed with the certainty that successful results will ensue.

Causes of Roughness and Discoloration.—There are several conditions which may result in a concrete surface of uneven texture and with mechanical roughnesses, such as projections, bulges, ridges, pits, bubble-holes, and scales. One of these is imperfections in the molds. The use of rough lagging of uneven thickness and with open cracks and allowing the forms to become distorted and warped are certain to leave their impress upon the plastic concrete in the form of ridges, tongues, and bulges. Failure to pack the concrete filling tightly and evenly against the mold will result in rough places. Lack of homogeneity in the concrete is another prolific cause of variation in the surface texture of concrete work. This lack of homogeneity may result from failure to mix the concrete materials thoroughly and evenly in the first place, or the segregation of the coarse and fine parts of the mixture during its deposition and ramming into place. In both cases the result is a material of alternate coarse and fine texture. Dirt of cement adhering to the molds will leave pits in the concrete surface, and the pulling away of the concrete in spots when it adheres to the molds when they are removed will cause similar roughness.

Variations in the color of concrete surfaces probably result from a variety of causes. Some of these are obvious and others are difficult to determine with any exactness. Roughness or uneven surface texture is a common cause of variation in color, since the alternate rough and smooth parts weather differently and collect and hold dirt and soot in different degrees. Another cause of variation in color is the use of different cements in adjacent parts of the surface work. No two cements are of exactly the same shade of color, and the concrete made of them partakes of this variation. In a similar manner sand of different shades of color or of different degrees of cleanliness will cause a cloudy and streaky appearance in concrete. Dirt adhering to the molds will frequently stain the adjacent concrete surface.