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IN THE

Supreme Court of the United States

STATES OF WISCONSIN, MINNESOTA, OHIO, and PENNSYLVANIA, *Complainants,* *vs.* STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, *Defendants.* STATES OF MISSOURI, KENTUCKY, TENNESSEE, LOUISIANA, MISSISSIPPI, and ARKANSAS, *Intervening Defendants.*	No. 5, Original.
STATE OF MICHIGAN, *Complainant,* *vs.* STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, et al., *Defendants.*	No. 8, Original.
STATE OF NEW YORK, *Complainant,* *vs.* STATE OF ILLINOIS and THE SANITARY DISTRICT OF CHICAGO, et al., *Defendants.*	No. 9, Original.

RETURN OF THE SANITARY DISTRICT OF CHICAGO AND THE STATE OF ILLINOIS TO THE RULE TO SHOW CAUSE ENTERED HEREIN ON OCTOBER 10, 1932.

FRED KLEIN CO., 24 PRINTERS, CHICAGO.

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SUBJECT INDEX

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now come THE SANITARY DISTRICT OF CHICAGO, a public municipal corporation, and the

STATE OF ILLINOIS*, by William Rothmann, Frank Johnston, Jr., Joseph B. Fleming and Oscar E. Carlstrom, Attorney-General of Illinois, their solicitors, and submit this, their return to the rule to show cause entered herein on October 10, 1932, and respectfully show to the court:

Paragraph 6 of the decree of this honorable Court, entered herein on April 21, 1930, reads in part as follows:

> "That on the coming in of each of said reports, and *on due notice to the other parties,* any of the parties to the above entitled suits, complainants or defendants, may apply to the court for such action or relief, * * * * as may be deemed to be appropriate."

No notice was given to either the Sanitary District or the State of Illinois of the intended filing by the states of Wisconsin, Minnesota, Ohio and Michigan of their "Application for the appointment of an officer or officers of the court to carry out the above decree made and entered in the above entitled causes on April 21, 1930" (for convenience hereinafter sometimes designated the "application").

Wide publicity was given to the matter in the public press a number of days prior to the actual date of filing, and it was from the public press that the respondents first learned of the intended filing of the application.

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*For convenience, The Sanitary District of Chicago will at times be referred to individually as the Sanitary District or the District, and the State of Illinois and The Sanitary District of Chicago, when referred to collectively, will be called respondents. The Board of Trustees of the Sanitary District will be designated as the Trustees.

The rule to show cause reads in part as follows:

> "THEREFORE, it is ordered by this court that THE SANITARY DISTRICT OF CHICAGO show cause, by printed return, on or before Monday, November 7, 1932, why it has not taken appropriate steps to effect compliance with the requirements of the decree of this court in these causes dated April 21, 1930, (281 U. S. 696)."

A rule similar in all respects to the foregoing was likewise directed to the State of Illinois.

In view of the language of the rule it is conceived by the respondents to be unnecessary to file a detailed answer to the application, but rather that there should be filed a "return" setting forth what has been done by the respondents in furtherance of performance of the requirements of the decree, the reasons why a greater amount of progress has not been made and a statement of what reasonably can be expected to be accomplished within the next 6.16 years.

Nevertheless the application contains some averments to which it is deemed appropriate to make reply.

The application is replete with expressions attributing to the respondents negligence, incompetence, bad faith, and willful obstruction, avoidance and circumvention in the performance of the decree. These expressions are based on nothing more substantial than unwarranted inference and conjecture. In so far (if at all) as it may be necessary to do so, the respondents emphatically deny that there has been on their part or the part of either of them either negligence, incompetence or bad faith.

The respondents further deny that on their part there has been at any time "effort to delay, avoid and circumvent the performance of the decree" as averred in the application. Hereinafter will be set forth in detail just what has been done, together with a full exposition of the circumstances (over which neither of these respondents had any control) which have operated to hinder and delay the execution of the program of construction of sewage treatment and disposal projects.

The District has not been able fully to carry out its original program of construction within the time limits as proposed at the time of the hearings before the Special Master in these causes. Unforeseen obstacles have been encountered which have impeded the execution of the original plan with respect to construction. The causes for the District's inability to adhere to its original construction program hereinafter will be discussed; and it will be shown that such obstacles are being overcome and eliminated, and that sufficient work will be done within the time required to enabled the District to carry out the terms of the decree in every detail.

REQUIREMENTS OF DECREE.

The decree (281 U. S. 696) has for its purpose the carrying out of the conclusions set forth in the opinions of this court announced on January 14, 1929, (278 U. S. 367) and April 14, 1930, (281 U. S. 179). The decree is silent with respect to the specific measures to be taken by respondents to effect compliance with its provisions. In the opinion of April 14, 1930, (281 U. S. 179, 198, 199), the court approved

the recommendations of the Special Master relating to the limitations to be put on the quantities of water to be diverted from Lake Michigan, to-wit, (1) On and after July 1, 1930, an annual average diversion not to exceed 6500 cubic feet per second, in addition to that drawn for domestic purposes; (2) on and after December 31, 1935, an annual average limited to 5000 c. f. s., in addition to domestic pumpage; (3) when the whole system for sewage treatment is completed, the average annual diversion should be limited to 1500 c. f. s., in addition to domestic pumpage, which should be accomplished on or before December 31, 1938.

The decree embodies the recommendations of the Special Master of the above program for diminution of diversion with the qualification that the limitation specified to be effective after December 31, 1935, be carried out *"unless good cause be shown to the contrary.*

The court in its opinion approved the recommendation of the Master that the whole sysem of sewage treatment works be completed by December 31, 1938, and that the West Side treatment works be completed and in operation not later than December 31, 1935, subject to *"any modification that necessity may show should be made."* (281 U. S. 179, 199). The decree contains no specific requirements concerning a program of construction. In the opinion of this Court rendered on April 14, 1930, 281 U. S. 179, the Court said (197):

> "The defendants have submitted their plans for the disposal of the sewage of Chicago in such a way as to diminish so far as possible the diver-

sion of water from the Lake. In the main these plans are approved by the complainants. The master has given them a most thorough and conscientious examination. *But they are material only as bearing on the amount of diminution to be required from time to time and the times to be fixed for each step, and therefore we shall not repeat the examination.*" (Italics ours.)

The decree contains no directions with respect to the progress of the work necessary to effect compliance with its terms concerning the amount of the diversion except the requirement that the District file semi-annual reports setting forth the progress made in the construction of the sewage treatment plants and appurtenances outlined in the program as proposed by the District, and setting forth also the extent and effects of the operation of the sewage treatment plants, respectively, that shall have been placed in operation, and also the average diversion of water from Lake Michigan, from the time of the decree down to the date of the report. These reports have been duly filed.

In referring to the contemplated controlling works in the Chicago river which the Master found should be completed within a certain time in order to make possible the limited diversion proposed, the court expressly stated that its judgment dealt "only with the amount [of the diversion] and the time". (281 U. S. 179, 198).

COMPLIANCE WITH REQUIREMENTS OF DECREE.

The Sanitary District has complied with the terms of the Decree. The reduction in diversion of water

from Lake Michigan to an annual average of not exceeding 6,500 cubic feet per second was made on July 1, 1930. Since that date, the diversion has averaged

6,497 c. f. s. for the last 6 months of 1930,
6,500 c. f. s. for the year 1931, and
6,415 c. f. s. for 10 months (January to October), 1932.

Semi-annual reports were filed with the Clerk of this honorable Court on July 1, 1930, Janauy 1, 1931, July 1, 1931, January 1, 1932 and July 1, 1932, setting forth the progress made in the construction of sewage treatment works of The Sanitary District, the extent of operation of the sewage treatment plants, and the average diversion of water from Lake Michigan.

Subdivision IV of the application avers that the dates and amounts of reductions in the diversion were fixed by findings of fact as to the time in which works to purify the sewage of Chicago could be constructed and placed in operation. These dates were (Report of Special Master on Re-reference, pages 142 and 146):

	To be completed
North Side Treatment Works and Batteries A and B of Imhoff Tanks at West Side Treatment Works	July 1, 1930
Calumet Treatment Works	December 31, 1933
West Side Treatment Works	December 31, 1935
Southwest Side Treatment Works	December 31, 1938

In the same report of the Special Master, on the same page, 146, is the statement: "that the foregoing requirements as to times of completion include allowances for ordinary contingencies but not for strikes or *other occurrences beyond the control of the Sanitary District* or its contractors."

The foregoing schedule, so far as it relates to the *Construction* program, was not embodied in the decree.

Though there is in the Decree no absolute requirement of strict adherence to these dates, nevertheless, it has been the endeavor of the Sanitary District to complete these works in the order named and to put them in operation as nearly as possible to the dates specified.

PROGRAM OF CONSTRUCTION ADOPTED AFTER ENTRY OF DECREE.

Prior to the entry of the decree, the engineers of the Sanitary District estimated that 12 years were required for the completion of works of sufficient capacity to treat the sewage originating within the boundaries of the Sanitary District so as to permit of the reduction of the quantity of water withdrawn from Lake Michigan to 1500 second feet without undue pollution of the waters below the southerly end of the District's main channel.

The works which were deemed necessary to effect adequate treatment of sewage were and are (including works then already completed):

(a) 250 miles of intercepting sewers, of which 37 miles are of an internal diameter of 15 feet and over.

Size Equivalent Diameter	Length
3 feet and less	41 miles
4 ft. to 6 ft.	99 miles
7 ft. to 9 ft.	53 miles
10 ft. to 12 ft.	12 miles
13 ft. to 14 ft.	8 miles
15 ft. and over	37 miles
Total	250 miles

(b) Sewage treatment plants known, respectively, as:

1. The North Side Works.
2. The West Side Works.
3. The Southwest Side Works.
4. The Calumet Works.
5. The Desplaines River project.

(c) Sundry pumping stations, miscellaneous plants and sewers.

(d) Chicago River Controlling Works.

The estimated costs of those portions of the foregoing works which were to be completed subsequently to April 21, 1930, was $179,744,438.58.

Upon the entry of the Decree a program was laid out by the engineering department of The Sanitary District for construction of all the sewage treatment works made necessary by the Decree, in a reasonable and orderly sequence, with provision for such rate of progress as would insure completion by December 31, 1938. Under this schedule, the Calumet project was to be completed by the end of 1933, except the Calumet City intercepting sewer, which was to be completed by 1938. Extensions to the North Side plant were to be made in 1931, or 1932, and additional sewers in this project were to be constructed by 1938. The sedimentation part of the West Side treatment plant, with the principal West Side intercepting sewers, were to be completed by the end of 1933. The activated sludge portion (complete treatment) of the West Side plant was to be completed by the end of 1936 and all the West Side sew-

ers were to be completed before the end of 1938. Construction of the Southwest Side treatment plant was to be started in 1935 and completed by the end of 1938. The Southwest Side sewers were to be constructed between 1936 and 1938, inclusive. This program allowed about two years for needed investigation of the Stockyards and Packingtown wastes and for negotiations with industries producing said wastes and allowed ample time for the design of the Southwest Side plant. It provided for a reasonably even distribution of the physical construction and a reasonable distribution of the costs of the same over the 8.7 year period allowed by the Decree.

PROGRESS MADE IN CONSTRUCTION PROGRAM.

The North Side sewage treatment plant was placed in part operation in October, 1928. On April 21, 1930, it was treating the sewage of about 344,000 people. This was increased to 681,000 people by June 24, 1930, and to 980,000 people (the total estimated population in the area) by August, 1930. (Semi-annual report of January 1, 1931).

Battery A of the West Side sewage treatment plant was placed in operation on June 2, 1930, treating the sewage of 248,000 people, and Battery B was completed and placed in operation in the early part of July, 1930, bringing the total treatment in this plant up to 510,000 persons. Sewage from Section 2 of the West Side sewer was added to the plant on October 1, 1931, increasing the amount of treatment to 729,000 persons.

The work above described was accomplished in reasonable compliance with the Master's conclusions, and the District's construction program.

In **Subdivision V** of the application, the District's semi-annual reports of progress are tabulated, and it is stated that progress "has been at all times meager and inadequate and much of the time negligible". What is here said in reply is applicable also to subsequent subdivisions of the application, a large part of which consists of repetition in varied forms of the asserted lack of progress.

At the hearings before the Special Master, in April, 1929, the Sanitary District presented certain figures, contained in defendants' exhibits 1385, 1386 and 1387, showing the costs of sewage treatment construction (a) completed, (b) under contract, and (c) estimated for the future. These figures were as of December 31, 1928, and were as follows:

Defendants' Exhibit 1385:	
Completed Works	$ 63,355,422.76
Defendants' Exhibit 1386:	
Works under contract and completed	18,562,180.07
Total completed	$ 81,917,602.83
Works under contract, but not completed	$ 11,473,683.00
Defendants' Exhibit 1387:	
Future work	176,166,000.00
Total future	$187,639,683.00

The grand total estimated cost of all completed sewage treatment works and all proposed future construction was thus $269,557,285.83 as of December 31, 1928.

During the interim between December 31, 1928, and April 21, 1930, the total design and construction expenditures on both old and new contracts were $7,895,244.42. These expenditures reduced the future estimated expenditures as of April 21, 1930, to $179,744,438.58.

The completed work as of April 21, 1930, the date of the decree, in terms of construction costs, aggregated $89,812,847.25.

During the period between April 21, 1930, and June 1, 1932, expenditures aggregating $10,306,832.67 were made on sewage treatment construction, increasing the total expenditure for completed works to $100,119,679.92 and reducing the future work (according to 1929 estimates) to $169,437,605.91. During this same period contracts were let on the Calumet project, totaling $4,936,000.00 and on the West Side project totaling $8,700,000.00, an aggregate of $13,636,000.00.

The expenditures on sewage treatment construction between June 1, 1932, (the date of cost summaries for the last report filed with this Court) and October 14, 1932, have been as follows:

Calumet project	$ 19,907.03
North Side project	196,307.58
West Side project	164,830.85
Southwest Side project	3,727.80
Total	$384,773.26

The completed work on sewage treatment construction, as of October 14, 1932, is as follows:

Calumet project	$ 20,848,594.33
North Side project	37,086,741.52
West Side project	41,643,399.15
Southwest Side project	276,323.81
Miscellaneous Plants and Sewers	595,978.63
Chicago River Controlling Works	53,415.74
Total	$100,504,453.18

On the basis of these figures $10,691,605.93 has been spent on construction between April 21, 1930, and October 14, 1932, and, as stated, contracts have been let for $13,636,000.00.

Below are tabulated by periods the work accomplished as measured by construction costs:

April 21 to June 1, 1930	$ 503,214.54
June 1 to December 1, 1930	4,836,163.05
December 1, 1930, to June 1, 1931	1,079,369.53
June 1 to December 1, 1931	3,607,347.21
December 1, 1931, to June 1, 1932	280,738.34

At the present time uncompleted work which is actually under contract amounts to $8,793,000.00. Work for which plans and specifications are completed and which is ready immediately to advertise for bids amounts to approximately $2,500,000.00. Thus it will be seen that if money could be obtained nearly $9,000,000.00 worth of work could be in progress at this minute and an additional $2,500,000.00 within a few weeks. In addition to the foregoing, contracts for additional work aggregating between $2,000,000.00 and $3,000,000.00 can be let within sixty days from the date of assurance that funds will be available.

More progress has been made than is indicated by

the figures of actual expenditures submitted in the reports to the Supreme Court. Plans and specifications are ready on Sections 5 and 6 of the West Side sewer, estimated at $2,455,000.00. Plans are practically completed on Sections 7 and 1-A of the West Side sewer and on the Evergreen Park, South Park Avenue, Colfax Avenue, California Avenue and Harvey sewers in the Calumet project, estimated at $5,175,000.00. These figures amount to almost 5 per cent of the total program. Plans were practically completed for Imhoff tanks for the Calumet treatment plant late in 1930 when it was decided to defer this work until a determination was made as to whether Imhoff tanks, heated digestion tanks or incineration of sludge was most feasible for this step in the sewage treatment process. Later developments have proved the wisdom of this decision. If incineration of sludge is the ultimate choice, considerable time and money will be saved on construction. As a result of this delay, the Calumet plant will not be completed by December 31, 1933, but it can be completed before the next reduction in the diversion on December 31, 1935.

In the report to the Supreme Court of July 1, 1932, it was stated that aside from designing and preparation of plans, no construction work was done on the sewage treatment program in six months between December 1, 1931, and June 1, 1932, except on one small contract on the West Side project for a sludge filtering and drying unit. This was a unit for experimenting on the incineration of sludge. The reason for this lack of progress was fully explained. It was solely and simply *lack of money.* Yet this six months' period is selected by complainants (page 9 of appli-

cation) as a basis for computations of an absurd length of time for the performing of all the work.

In **Subdivision VI** of the application, the statement is made that the reduction in diversion provided by the decree after December 31, 1935, was predicated upon the completion of the Calumet, North Side and West Side projects and the installation of controlling works in the Chicago River. The specific complaint is "that the Calumet project has not been completed, that the West Side project has not been completed, that no contracts have been let for substantial parts of this project, and that no steps have been taken to design or construct the controlling works in the Chicago River or to seek or obtain the approval of the War Department for plans and location."

The sedimentation portion of the West Side treatment plant will be practically completed when the existing contracts are carried out. All the necessary West Side sewers can be completed in two and one-half years from the time of resumption of construction work. Hence, this plant can be ready by December 31, 1935. The activated sludge portion of this plant cannot be completed by December 31, 1935, but it can be completed by the end of 1936.

The Calumet project can be completed by December 31, 1935, which is the date fixed by the decree for diminution of the amount of diversion to 5,000 c. f. s.

As of April 21, 1930, 16.7 per cent of the total sewage originating within the Sanitary District was being treated. The semi-annual report of the District filed on July 1, 1932, shows (page 9) that 31.6

per cent was being treated, showing an increase of approximately 15 per cent of the total sewage treated as of the last mentioned date.

CAUSES OPERATING TO OBSTRUCT AND DELAY PERFORMANCE OF ORIGINAL PROGRAM.

In no wise admitting that appropriate measures have not been taken to effect completion of the construction program by December 31, 1938, and on the contrary insisting that all possible measures have been taken, it is respectfully submitted that lack of funds, due to circumstances beyond the control of these respondents, has for the time being interrupted the execution of the program. The reasons for the lack of funds, affecting the general progress of the work, and other unavoidable causes or alleged causes of delay impeding the progress of specific portions of the work and certain alleged derelictions of the respondents are hereinafter discussed.

(a) Lack of Funds.

In common with practically all sections of the United States, The Sanitary District of Chicago financially is suffering as a result of the existing deplorable business and economic collapse. But, in addition, the Sanitary District is a special sufferer from delay in the collection of taxes and nonpayment thereof, (over which it has no control) which are due mainly to the reasons hereinafter outlined.

The Sanitary District has the power to levy taxes but it is not a collecting body. Section 12 of the act creating the District (Cahills Ill. Rev. Stat. 1931

Chap. 42, Par. 349, page 1208) provides that the Board of Trustees

> "Shall cause the amount to be raised by taxation in each year, to be certified to the county clerk on or before the second Tuesday in August, as provided in section 122 of the general revenue law. All taxes so levied and certified shall be collected and enforced in the same manner and by the same officers as state and county taxes and shall be paid over by the officer collecting the same to the treasurer of the Sanitary District, in the manner and at the time provided by the general revenue law."

Section 3 of the Revenue Act of 1898, (Cahill's Ill. Rev. Stat. 1931, Chap. 120, Par. 314, page 2367), provides for a Board of Assessors of five members for Cook County, in which the Sanitary District is located.

Section 144 of the Revenue Act (Cahill, Ill. Rev. Stat., Chap. 120, Par. 162, page 2336), provides that:

> "The treasurers of counties under township organization and the sheriffs of counties not under township organization shall be ex-officio county collectors of their respective counties."

Cook County, the county within which The Sanitary District of Chicago is included, is under township organization. Its county treasurer is ex-officio county collector. Certain taxes are payable in the first instance to township collectors but ultimately to the county collector. No taxes are paid directly to the Sanitary District except by the county collector. The Sanitary District has no power to collect any taxes directly from the taxpayer.

Thus it will be seen that the Sanitary District possesses no power or authority and no control over the assessing or the collection of taxes.

Since 1898 the assessing machinery of Cook County consisted of an elected board of five assessors and a board of review of three members, likewise elected. (For present purposes it is not important to note that there were also township assessors who were ex-officio deputy county assessors.)

Whether justly so or not, in recent years there has existed a quite general belief that in the valuation of property for tax purposes and in the making of assessments, much discrimination and favoritism were practiced, resulting in great inequalities as between properties similarly situated. So widespread and universal became the distrust of and lack of confidence in these boards that there arose a demand for their abolition, and replacement with some simpler machinery. This demand gradually increased in volume until it resulted in legislation which hereinafter will be adverted to.

For many years taxes on personal property were inadequately assessed and collected. Real estate paid upwards of seventy-five per cent of the total taxes collected in Cook County. Improvidence and extravagance of former city and state administrations resulted in astonishing increases of taxes. Owners of real estate complained bitterly of the tax burden.

Subsequently to the completion of the revaluation and re-assessment hereinafter referred to, organiza-

tions of "real estate taxpayers" came into being and by means of extensive mail and radio propaganda acquired a very large membership. The purpose of these associations was to contest the validity of the tax levies for the years 1928, 1929 and 1930, and to procure reductions of the taxes on real estate. Members were advised to refuse to pay their taxes. A great many of them (probably nearly all) did so. This resulted in the withholding of payment of taxes on many thousands of parcels of real estate. The movement became what might be called a taxpayers' "strike." That strike to some extent still persists, although undoubtedly it has disintegrated to a considerable extent and very shortly will be completely broken for reasons which will hereinafter appear.

One or more of these organizations instituted suits of various sorts to prevent the collection of taxes. One of those suits was brought in the Superior Court of Cook County to enjoin the collection of taxes for the year 1930. A decree dismissing the bill for want of equity was affirmed by the Supreme Court of Illinois in December, 1931, *(Bistor, et al. vs. Board of Assessors, et al.,* 346 Ill. 362.) Plaintiffs then filed to the October term of the Supreme Court of the United States a petition for a writ of certiorari, (No. 343). That petition has been denied.

One Cesar resisted an application in the County Court of Cook County for judgment for taxes for the year 1928 and sought to have the entire assessment declared invalid on the ground that large amounts of personal property were omitted from the assessment rolls. A judgment of the County Court, holding the tax levy invalid in its entirety, was reversed by

the Supreme Court of Illinois. *(McDonough vs. Cesar,* 349 Ill. 372.) A petition for rehearing was denied at the present October term. Appellee prayed and was allowed a stay of sixty days to enable her to file with the Supreme Court of the United States a petition for certiorari.

Early in 1928 the State Tax Commission of Illinois ordered a revaluation and re-assessment of all the taxable real property in Cook County. It was estimated that this could be completed within six months. As a matter of fact, it required more than two years. During that time no taxes whatever were paid in Cook County. Consequently, *for a period of more than two years all municipalities in Cook County, including the Sanitary District, were without any income whatsoever derived from taxes.*

The revaluation and re-assessment had not been completed when the stock market crash of 1929 came on, followed by the rapidly accelerating general disorganization, disintegration and cessation of business activities, accompanied by a tremendous slump in values of real estate and other property, and the complete or partial destruction of incomes.

An epidemic of bank failures in Cook County of unprecedented magnitude resulted in the loss or tying up of the funds of many thousands of depositors, leaving many of them entirely without available funds.

It resulted that when the time came that taxes again could be received, large numbers of people were unable to obtain funds with which to pay them. That condition still exists to some extent, though a steady and accelerating improvement is in progress.

In consequence of these circumstances large amounts of taxes which the District should have received are unpaid and delinquent. The levies were duly made and filed, but collections were seriously retarded. The amounts levied for the years 1928, 1929 and 1930, and the amounts received by this defendant from the County Collector up to October 26, 1932, pursuant to the levies, are as follows:

Total Amount of Levy	Amount Collected	Percentage Unpaid
1928.....$20,700,455.00	1928.....$15,737,862.80	24%
1929..... 24,518,343.75	1929..... 17,093,115.82	30%
1930..... 21,725,603.75	1930..... 11,884,515.56	45%
$66,944,402.50	$44,715,494.18	

As shown by these figures, the sum of $22,228,908.32 remains unpaid on the levies for the years 1928, 1929 and 1930, an amount exceeding the total amount of the levy in 1928 and the total amount of the levy in 1930.

The 1931 taxes which under ordinary conditions would have been collected by May 1, 1932, have not yet been extended for collection. The amount of the 1931 levy duly filed is $18,875,953.75, which is made up of $5,000,000 for corporate purposes and $13,875,953.75 for bonds and interest. An aggregate of $41,104,862.07, or approximately two years' taxes, which the District should have received were past due and unpaid up to October 26, 1932.

Included in the above mentioned sum of $41,104,862.07 of uncollected taxes, is the approximate amount of $28,400,000 which had been levied for the payment of maturing principal of outstanding bond issues and interest thereon. The non-payment of

these taxes left the District without means to pay bond interest and maturing principal, and resulted in defaults which, on November 1, 1932, amounted to $10,972,135.00.

The Sanitary District was forced to suspend payments to its contractors on November 1, 1931, with the result that practically all contract work has stopped, pending the resumption of payments. Regular payments were suspended on salaries to employees as of November 15, 1931. Measures have been taken to reduce expenditures to the minimum, consistent with the continuance of necessary activities. Forces have been drastically reduced. All salaries have been reduced from ten to twenty per cent, and employees have been paid only a portion of their salaries at irregular intervals since November 15, 1931.

As a direct consequence of all of these circumstances, and in sympathy with general market conditions, the bonds of the Sanitary District which heretofore have been considered "gilt-edged," began to slump in price and finally became unsalable at any price which the District felt it would be justified in accepting.

The Sanitary District of Chicago has the power to issue bonds in an aggregate amount not to exceed five per cent of the assessed valuation of the taxable property within the district. The 1930 valuation (latest available) is $4,404,063,447. Based on this valuation the District has power to issue bonds in an aggregate amount of $220,200,000. These bonds cannot be issued, however, without legislative authorization or approval by public referendum, ex-

cept such as shall be issued for payment of land damages, etc. Outstanding at the present time are bonds aggregating about $107,000,000.

At the present time the Sanitary District has available in its treasury unsold bonds for sewage construction purposes, the issuance of which has been authorized by popular vote or by legislative acts, of an aggregate principal amount of approximately $43,614,000. These bonds consist of $7,614,000 remaining unsold out of a $27,000,000 issue authorized by the General Assembly in 1929, and an entire issue of $36,000,000 remaining unsold which was authorized by legislative action on July 1, 1931. (Section 9 of the Sanitary District Act, Cahill's Ill. Rev. Stat. Chap. 42, Par. 345, pages 1206-1207.)

The latter issue of $36,000,000 of bonds was submitted to public referendum on February 24, 1931, and was approved by the voters, but a petition for a recount was instituted on March 28, 1931 in the Superior Court of Cook County, which presented the possibility of a long delay in the sale of the bonds. The Sanitary District, in order to expedite issuance of the bonds, caused to be introduced in the Illinois General Assembly an act to validate the bonds, which was passed in June 1931 and became effective on July 1, 1931.

Because of the conditions which have been related, the District has been unable to sell the bonds mentioned, aggregating $43,614,000.

By July 1, 1930, the slump in the general business, financial and market conditions had become so serious that the market for Sanitary District bonds had

become very unsettled. Up to that time the District's bonds had been readily salable, usually at par and accrued interest and occasionally at a slight premium.

On June 4, 1931, bonds aggregating $535,000.00 par value were advertised for sale. The best offer received was 95.236. This the Trustees considered inadequate and the offer was rejected.

The next offering was $1,680,000 par value of bonds, offered for sale on August 20, 1931, for which the best price obtainable was 95.489, and for which they were sold. For the bonds which were next offered for sale on or about November 5, 1931, no bids whatever were received. Since that date the Trustees have made diligent and vigorous efforts to find purchasers for bonds. Banks in Chicago, New York, Boston and Philadelphia, insurance companies, dealers in investment securities, and others in various cities of the United States were canvassed, without success.

At intervals the Trustees have advertised for bids for the purchase of bonds but none has been received from any responsible bidder.

Quotations appearing in the public press were investigated with a view to getting in contact with parties who might desire to purchase bonds. In every instance, however, the fact proved to be that quotations were based upon gossip of speculators without substantial financial resources, and up to the present time no responsible party has been found who would make a firm offer to purchase any substantial amount of the bonds at any price.

Below is shown a tabulation of the amounts of bonds sold and the prices realized therefor subsequently to April 21, 1930:

June 26, 1930	$6,000,000.00	98.304
August 21, 1930	1,395,000.00	102.667
August 20, 1931	1,680,000.00	95.489

Prior to January 1, 1932, no default in respect to any indebtedness of the Sanitary District ever occurred. Since January 1, 1932, owing to failure of the taxpayers of the Sanitary District to pay their taxes, as hereinafter explained, the District has been compelled to default in the payment of bond principal and interest, aggregating, as of November 1, 1932, the sum of $10,972,135.00.

(b) Minor Causes of Delay.

More than a month's delay in the construction of Contract Section 3 of the West Side Sewer was caused by a disastrous fire occurring April 14, 1931, resulting in the loss of several lives.

A new wage rate law for construction work done by municipalities in Illinois, taking effect July 1, 1931, caused delays approximating a month in the letting of contracts for the Calumet pump and blower house and for the Calumet aeration tanks, operating galleries and final settling tanks. This wage rate law was declared unconstitutional by the Illinois Supreme Court in October 1931, and a further delay of about a month was caused in each of these contracts before proper adjustments could be made. A delay of about a month was also caused in the construction of Contract 4 of the West Side Sewer for the same reason.

Delay was encountered in the acquisition of land for the Calumet sewage treatment plant site. Financial difficulties arose. Efforts to acquire the site for the Southwest Side treatment plant have been actively opposed by owners of the property selected, and owners of other property in the neighborhood. However, any delay which might have resulted to the construction program from these delays in acquisition of sites, was negligible. The only delay which has been really important is that due to lack of money. All of these difficulties have been set forth in semi-annual reports to this honorable Court.

Because of the financial difficulties, approximately one year has been lost in the execution of the construction program. *In spite of these delays, it is believed that it is possible, if finances can be arranged within the next two or three months, to complete the entire sewage treatment construction program by the end of 1938.*

(c) Failure of War Department to Approve Plans for Controlling Works in the Chicago River.

In **Subdivision VI** complaint is made of lack of progress in construction of controlling works in the Chicago river.

The decree makes no mention of controlling works in the Chicago river. The construction of such works, however, was contemplated by the permit of March 3, 1925, from the Secretary of War, for diversion of water from Lake Michigan, which permit expired December 31, 1929. In compliance with the provision of said permit, the Sanitary District submitted plans for controlling works in the Chicago river to

the United States District Engineer at Chicago in November, 1926. This was made a matter of record in the trial of the case before the Supreme Court. These plans were transmitted to the Chief of Engineers of the United States Army and to the best knowledge and belief of the Sanitary District no further action has been taken regarding them.

Under the Rivers and Harbors Act of July 3, 1930, all of the waters constituting the Lakes to Gulf waterway, between Chicago and the Mississippi River were made a part of the authorized federal navigation project, including the main drainage canal and the Calumet-Sag canal of the Sanitary District. The War Department is now completing the Lakes-to-Gulf waterway and apparently proposes to use the main drainage canal and Calumet-Sag canal with the water levels as they are at present.

It is respectfully submitted that no further action regarding controlling works which would affect water levels in this government controlled and operated project is incumbent on the Sanitary District until the plans already submitted shall have been approved or rejected or until some official suggestion shall have been made regarding their modification. It is quite possible that the War Department does not wish this obstruction to navigation placed in the Chicago river.

At the hearing of this cause before the Special Master on re-reference, the testimony concerning the quantity of water necessary to be diverted from Lake Michigan so far as the needs of navigation were concerned was limited to the requirements of the port

of Chicago, within which were included the Chicago and Calumet rivers. The needs of those rivers were considered only from the standpoint that they were parts of the port of Chicago, and arms of Lake Michigan. The possibility that there was or would be need for water for navigation purposes between the government projects in the Chicago and Calumet rivers and the government project in the Illinois river was excluded from consideration because of the fact that at that time the Illinois and Desplaines rivers between Utica and Lockport, the main channel and the Calumet-Sag channel of the Sanitary District were not included within any authorized federal project.

The basis for the exclusion of the testimony was that the federal government was not concerned with the needs of navigation on waterways which were not parts of a federal project.

Since that hearing and since the decree of April 21, 1930, there has been a very material and important change in the status of those waterways which at that time were not parts of any authorized federal project but which since then have been made so, namely, the main and Calumet-Sag channels of the Sanitary District and those parts of the Illinois and Desplaines rivers between Utica and Lockport.

At the time of that hearing the status of the navigation channels between Lake Michigan and the Mississippi river was as follows:

Congress had passed the act of January 21, 1927, providing for a 9-foot navigation project in the Illinois river from Utica to its mouth and the United

States army engineers were proceeding with its construction.

The state of Illinois, under the Illinois Waterway Act, passed by the state legislature in 1919, was proceeding with the construction of the Illinois waterway, a 9-foot navigation project between Utica and Lockport. An appropriation of $20,000,000.00 was available for this work.

The Sanitary District of Chicago was operating the main sanitary and ship canal and the Calumet-Sag canal, which provided navigation facilities from Lockport to connections with the federal navigation projects in the Chicago and Calumet rivers.

The Chicago and Calumet rivers, in both of which navigation depths were maintained by the United States government, connected with Lake Michigan, forming the port of Chicago.

At the hearing no testimony was admitted concerning the needs of navigation towards the west from the port of Chicago, although General Jadwin, Chief of Engineers of the United States Army, who was called as a witness by Special Master Hughes, in a formal statement to the Court on the question of controlling works in the Chicago river, said:

> "The discussion does not modify in any respect the statement heretofore made that an average diversion of 5000 c. f. s. will be necessary to maintain navigation in the Illinois river as contemplated by existing authority of Congress and under the plans of improvement now under way." (Report of Special Master on re-reference, p. 109).
> Also,

> "With either of these systems navigation of the Illinois river as contemplated in the existing project will be impracticable unless the "basic diversion is fixed at or above 5000 c. f. s." (Report of Special Master on re-reference, p. 111).

Subsequently to the hearing, Congress passed the "Rivers and Harbors Act" of July 3, 1930, whereby it was provided that those portions of the Illinois and Desplaines rivers between Utica and Lockport, the main channel and the Calumet-Sag channel of the Sanitary District and the Little Calumet river were to become and thereafter be parts of a connected federal navigation project extending to and connecting with the federal projects in the Chicago and Calumet rivers. That act also authorized an appropriation of $7,500,000.00 to complete the construction work on the Illinois waterway, which was begun by the state of Illinois. That work is now being carried on by federal government forces. The completed waterway is expected to be opened in the spring of 1933.

From the foregoing, it is obvious that there has been a very material change in the situation since the hearing of these causes on re-reference. The waters of the Calumet-Sag canal, the main sanitary and ship canal, and of the Illinois waterway have become navigable waters of the United States. The need for protecting these navigable waters of the United States from pollution is probably as urgent now as was the need of protecting the waters of the port of Chicago, considered as an arm of Lake Michigan, at the time of the hearing.

It may be, in view of the very material changes

which have occurred, as recited, that before any final disposition shall be made of these cases, not only the question of the controlling works but the entire question of the quantity of diversion from Lake Michigan which should be permitted, should be reconsidered and reviewed, and it may be that it will become the duty of these respondents, under paragraph 7 of the decree, to take the initiative and to make application to this court for such review and reconsideration, in which event, no doubt, a re-reference and a taking of further testimony would be desirable.

(d) Opposition of Property Owners and Others to Site Selected for Southwest Side Treatment Works.

In **Subdivision VII** the complaint is that the site for the Southwest Side sewage treatment works has not been acquired.

As set forth in the District's semi-annual reports to the Court, an ordinance for the acquisition of a proposed site containing approximately 570 acres of land was passed by the Trustees on December 26, 1929. The site was indicated by the engineers of the District as suitable, as shown by the testimony before the Special Master.

Following the passage of that ordinance, numerous complaints were brought to the Trustees by citizens living in the neighborhood, private owners of property near the proposed site, and by the Board of Education of the city of Chicago, which owned and operated a grade school across 57th Street immediately south of the site, and, further, owned an

area of some 640 acres more or less about one-half mile south of the site, which at present is used as an aviation field, said School Board alleging that its property would be irreparably injured by the use of the site selected. An alternate site some six miles west was suggested by certain objectors.

The Trustees selected a committee of three disinterested, well known and public-spirited citizens, namely Sewell Avery, Robert Isham Randolph and Albert A. Sprague, and referred the choice of site to them for determination. Said committee brought in a report on or about July 14, 1930, recommending the use of the selected site between the Chicago and Alton Railroad and 51st Street, west of LaVergne Avenue and east of Austin Avenue. This report aroused a storm of protest from citizens, the School Board, and others. Thereupon the Trustees held public hearings, between July 31 and August 22, 1930, occupying four (4) days, at which property owners and their attorneys were heard. Many witnesses were called and testified in behalf of the objectors, including three engineers, Messrs. Howson, of Chicago, Gascoigne, of Cleveland, and Townsend, of Milwaukee. These three witnesses are the identical witnesses who appeared in the hearings before the Special Master and testified therein to their approval of the program of the Sanitary District.

In hearings before the Trustees, Mr. Howson denied that he had approved the particular site and averred he had only approved the type of plant. He further stated, "there are many possible and available sites for the location of the Southwest Side sewage plant," and that in his opinion the site now

owned by the District north of the main channel (some 500 acres on which are the West Side sewage treatment works) "is available for forty years to take care of both the west and southwest sides."

Mr. Townsend also stated that the West Side and Southwest Side works could be handled jointly on the West Side site. He admitted he had approved the program of the Sanitary District as presented to the Special Master.

While the matter was being studied in the fall, continued opposition developed. As a result, on January 22, 1931, (Proceedings 1931, pp. 293-294), the Board of Trustees repealed the ordinance of December 26, 1929.

In the meantime, the difficulties in operation found at the West Side works in the digestion of sludge led to the investigation of other means of sludge disposal,—in particular, by dewatering and incineration. The investigation indicated that if the method proved successful and was adopted, a much smaller area of land would be required than previously contemplated, because of the omission of the sludge drying beds. The necessity of a careful reconsideration of all features of the situation became apparent.

Tentative layouts have been made which indicate that the Southwest Side treatment plant might be constructed on a portion of the land heretofore acquired for the extension of the West Side works, if dewatering and incineration of sludge proves practicable. This was set forth in the semi-annual report to the Supreme Court on July 1, 1932, but apparently has escaped the attention of complainants.

In the meantime, also, shortage of funds had de-

veloped, so that there were no funds available for the acquiring of a site. Under all the circumstances it is deemed expedient to permit the matter to rest until the terminaion of tests on dewatering and incineration at the West Side, at which time the necessary computations will be made to determine the adaptability and practicability of the new procedure, and the amount of land required, both north and south of the main channel.

The engineers of the Sanitary District are of the opinion that the delay in acquiring this site will not operate to cause delay in the ultimate completion of the construction program by December 31, 1938.

(e) Opposition of Stockyards Industries.

In **Subdivision VIII** of the application the statement is made that an exhaustive study of the Stockyards and Packingtown wastes was made between 1912 and 1918 and that the U. S. District Engineer, on November 1, 1923, reported that the Sanitary District had complete information as to the processes best suited to the different kinds of sewage produced. Complainants criticize because the Sanitary District has not gone ahead with the design of the Southwest Side treatment works on the information gained between 1912 and 1918.

It is respectfully submitted that good engineering practice in the design of a sewage treatment plant involving the expenditure of approximately $36,000,000.00 requires a check upon the information obtained more than 15 years ago, regarding these industrial wastes, both as to quantity and as to quality. A study such as has been made during the past

two years is only the exercise of ordinary prudence, and the charge of bad faith and intent to delay is, to say the least, unreasonable.

The respondents deny *in toto* the allegation of complainants that "no attempt has been made to perform the decree in this important and controlling particular" and on the contrary, insist that every possible step has been taken which reasonably could be taken under all the circumstances. And respondents further insist that the District is entitled to sufficient time to permit conservation of resources by taking advantage of the improvements in the art.

Respondents further deny that the waste resulting from the slaughter of hogs, sheep and cattle has not changed, and aver from the best information obtainable that both the quantity and character of the wastes have changed as the processes used in the packing houses have been changed or modified.

Respondents admit that the District made an exhaustive study of the Stockyards and Packingtown wastes from 1912 to 1918, in part under the disadvantages of conditions brought about by the war. The District denies ever having announced that the problem of treating the stockyards wastes had been fully solved.

The history of the situation is as follows:

In 1912, the Sanitary District, with the cooperation of the packers, entered into a joint investigation of the wastes from the industry and its practicable treatment. The various known methods were first tried, and following the introduction of the activated sludge process, the investigations were extended in 1916 to cover the use of activated sludge,

and continued up to September, 1918. As a result of these tests, the packers admitted in 1917 that the activated sludge process could handle their wastes. The world war then interrupted the continuity of the work. Following the armistice, protracted negotiations between the packers and the District led to the drafting in 1919 of a tentative agreement for treating wastes in a community plant, the packers to pay sixty per cent of the costs of both construction and operation, the District to pay forty per cent. The negotiations failed in the fall of 1920 because of a disagreement over the details.

In 1921 and thereafter, the packers suffered tremendous inventory losses and for years the majority of them operated with little or no profit, and some of them at great loss, so that when an attempt was made in 1923 to resume negotiations, a flat refusal was met. Thereafter, in 1924, suits were started against all the packers, in both the federal and state courts, to enjoin the discharge of waste. In the state court a demurrer was sustained. On appeal to the Illinois Appellate court *Sanitary District of Chicago vs. Chicago Packing Co.,* 241 Ill. App. 288, the judgment was reversed and the cause remanded to the trial court, in June, 1926.

In the meantime, the General Assembly of Illinois passed an amendment to the Sanitary District charter (Acts 1927, Cahill's Illinois Revised Statutes, 1929, par. 343, sec. 1, p. 1108), empowering the Sanitary District to regulate industrial wastes and make a charge for service. Over the protests of the Illinois Manufacturers Association and others, on July 25, 1929, the Trustees passed an ordinance

(Proceedings 1929, pp. 357-360) for the regulation of industrial wastes, and instructed the District's Attorney to press the suit against the packers.

Various statements have been made from time to time by the packers that by changes in processes the waste material reaching the sewers had been greatly decreased. While the total kill in the Chicago area is approximately known from published compilations from various sources, including the U. S. Department of Agriculture, the proportion of waste and its change from 1917 has not been known, nor could it be ascertained in any other way than by a comprehensive survey of the industry, and accompanying tests.

Efforts were made to enter the various packing houses within the Sanitary District to ascertain the extent and type of the wastes produced. Entrance was denied by all the packers, upon repeated demands. Tests were then inaugurated on the main sewers leading from the area where the principal packing houses were located. These tests were carried on under difficulty in public streets. They began on July 6, 1930, and continued until about July 1, 1931.

The suit in the federal district court, Northern District of Illinois, Eastern Division, in equity No. 3848, (The Sanitary District of Chicago vs. Swift & Company, et al.), was re-opened and briefs filed by both sides in 1930 and 1931. On March 22, 1932, the cause was referred to a Master to take testimony, but owing to extensions of time granted the defendants to file answers, the cause was not at issue until June 1, 1932. It is expected that the taking of

testimony shortly will begin. The purpose of this suit is to establish the right of the Sanitary District to enter upon the property of the packers for the purpose of ascertaining the character and volume of wastes discharged into the public sewers, and the right to regulate the discharge of wastes.

The situation of this litigation will occasion no delay in the completion of the construction program.

The effect of the packing house wastes on the sewage treatment works design is important in three ways; the quantity of the waste, the quality of the waste, and the solids which must be handled. The waste from an industry producing a population equivalent of over 1,000,000 as of 1917, is certainly a factor which must be taken into account in the planning of sewage treatment works.

With the information now in hand, the necessary studies and computations are being made to determine the probable effect of Packingtown wastes on the Southwest Works.

What has above been said fully answers (if answer be needed) the averments of **Subdivision IX** of the application.

(f) Reduction of Personnel of District's Engineering Organization.

In **Subdivision X** of the application, the claim is made that the Sanitary District now maintains no engineering organization adequate to proceed with the performance of the decree. It is true, as was reported in the semi-annual report of July 1, 1932, that (due entirely to lack of funds) there has been a reduction in personnel of the engineering organization of the Sanitary District, having to do with

the sewage treatment construction program and that this reduction has amounted to 64 per cent between December, 1931, and June, 1932. However, the organization is not broken up. It is now a skeleton organization, composed of the key men in each division, those best acquainted with the work, and can be very quickly expanded into the necessary efficient working organization as soon as finances become available. No delay in the carrying out of the program will be caused by lack of engineering organization if finances are made available.

(g) Alleged Disregard and Defiance of Federal Government.

In **Subdivision XV** of the application, the statement is made that—

> "for many years The Sanitary District of Chicago willfully disregarded and defied the Federal Government and presumed upon the solicitude of the Federal Government for the health and welfare of the people of Chicago to prevent the Federal Government from enforcing this order and terminating the wrongful action of the District",

and from the opinion of Mr. Chief Justice Taft in *Wisconsin vs. Illinois,* 287 U. S., 367, is quoted; (pp. 419-420):

> "The Secretary of War and the Chief of Engineers in 1907 refused a permit by which there would be more than 4167 feet a second diverted. Advised that the District authorities proposed to ignore that limitation, the United States brought suit against the authorities of the District to enjoin any diversion in excess of that quantity, as fixed in an earlier permit."

Apparently much has been forgotten (or perhaps was unknown to the writer of the application) about the circumstances under which the original suit was filed by the United States against the Sanitary District and the purpose for which it was filed. In 1906, the Sanitary District made application to the Secretary of War for permission to construct the Calumet-Sag channel. The Secretary of War in 1907 refused to grant the permit on the ground that he did not believe he possessed the necessary authority. After a conference between officials of the Sanitary District, the President of the United States, and the Secretary of War, it was arranged that this question of authority should be settled in a friendly suit in the courts. Accordingly, on March 23, 1908, a suit was instituted in the Circuit Court of the United States for the Northern District of Illinois, by the United States, as complainant, against the Sanitary District to enjoin and restrain it from proceeding with the construction of the Calumet-Sag channel.

The fact that this was friendly litigation is evidenced by one of the paragraphs of the permit, granted June 30, 1910, by the Acting Secretary of War to the Sanitary District, authorizing the construction of the Calumet-Sag channel. This paragraph is as follows:

> "That this permission shall in no wise affect or in any manner be used in the *friendly* suit now pending in the Circuit Court of the United States for the Northern District of Illinois started by the United States of America against The Sanitary District of Chicago to determine the right of the said Sanitary District to divert from Lake Michigan for sanitary purposes an

amount of water in excess of that now being diverted, without having first obtained a permit from the Secretary of War."

The fact that the suit was a "friendly" suit was alluded to by Mr. Justice Holmes in his opinion in the case entitled "Sanitary District vs. United States", 266 U. S. 405, at page 432:

> "The permit subsequently granted on June 30, 1910, was with the understanding that it should not affect or be used in the 'friendly suit' then pending to determine rights."

Complainants in stating that the Sanitary District defied the Federal Government overlook the fact that the litigation was an agreed upon, friendly suit, and that it was instituted to determine legal rights concerning which there was doubt. The Sanitary District has not disregarded nor defied the Federal Government.

Subdivisions XI to XIV, inclusive, of the application, purport to deal with the financial situation. Most of the averments are inaccurate; some of them wholly at variance with the facts. This, perhaps, is attributable to lack of information on the part of the complainants. All are hereinbefore fully answered.

(h) Alleged "Neglect, Incompetence or Bad Faith" in Connection with Unsold Bonds.

In **Subdivision XI** of the application the charge is made that of an issue of $27,000,000.00 of bonds authorized by the General Assembly in 1929:

> "On June 1, 1930, $16,850,000.00 remained 'unissued'. On July 1, 1932, $7,614,000.00 * * * * still remained 'unissued'. * * * These facts thus establish that the total amount of bonds 'issued' by The Sanitary District of Chicago since and in the performance of this decree has not exceeded $10,236,000.00. * * *"

From the context or otherwise it is impossible to know in what sense the word "issued" was used. If used as meaning that the bonds were not prepared and executed and were not ready for delivery to purchasers, the statement is not correct. The fact is that not only the entire $27,000,000.00 authorized in 1929 but the $36,000,000.00 authorized in 1931 were "issued". They were ready to be sold and would have been sold so far as necessary if it had been possible to find a purchaser or purchasers. Of the aggregate of $63,000,000.00 so authorized, there were in fact sold an aggregate of nearly $20,000,000.00.

Apparently it is the contention of the complainants that the District should have sold all or a large portion of those bonds while there continued to be a market for them, and thereby have provided itself with the money necessary to continue to prosecute its construction program. To this argument there are at least four good and sufficient answers:

1. The Trustees were not more gifted with ability to see into the future than the general run of mankind. They did not foresee and surely cannot be blamed for failing to foresee what probably no other human being in the United States foresaw, namely, the complete collapse of the economic, financial, industrial and commercial structure, and the complete disappearance of any market for the bonds.

2. At no time subsequently to June 26, 1930, would it have been possible to sell all of the bonds remaining unsold or any large portion of them.

As early as midsummer of 1930 the capacity of the market to absorb the securities of the District had become very much limited. Banking houses and others among whom alone purchasers could be looked for were willing to purchase only in relatively small amounts and only upon assurances by the Trustees that no additional bonds would be offered for sale within specified periods and then only in limited amounts. Any effort to sell at one time or within a short period the entire amount of bonds available, would have failed absolutely, and moreover would have demoralized the market for the District's securities and injured dealers and others who had purchased them.

3. While the District's request for authority to issue the $27,000,000.00 of bonds hereinbefore referred to was pending in the general assembly, it was the object of vigorous opposition by the Chicago Bureau of Public Efficiency, the Civic Federation and other organizations of citizens, on the ground that if approved the Trustees might immediately sell the entire amount of $27,000,000.00, thereby causing substantial losses to the taxpayers in interest, etc. It became apparent that in the face of that opposition legislative approval could not be obtained. In order to satisfy the objectors and to cause them to withdraw their objections, the Trustees pledged themselves to sell said bonds, not en masse, but only from time to time and in amounts sufficient to produce moneys as needed. The Trustees were not disposed

to violate that pledge, but as it turned out, they could not have done so if they had chosen.

4. Assuming that it would have been possible to sell the entire amount of bonds available, and that they had been sold, that would have caused a tremendous loss to the taxpayers of the District in that the money would have brought no more than possibly 1½% interest from banks of deposit while the taxpayers would be paying 4½% interest on the bonds during a long period of time before ever the money would be required for the construction program.

(i) Alleged Dereliction of State of Illinois.

In **Subdivision XI** of the application (second paragraph), complaint is made of the fact that bond issues authorized by the general assembly were required to be submitted to referendum vote. If there is any point whatever in the complaint it must be in the implication that the referendum requirement in some way impeded or hindered the District, *subsequently to April 21, 1930,* in making necessary arrangements to finance its construction program. The utter fatuity of this contention must be apparent when it is considered that in the first paragraph of said Subdivision XI the complainants themselves state that:

> "In 1929 the Illinois General Assembly had authorized the Sanitary District of Chicago to issue $27,000,000.00 of bonds without referendum; and on June 1, 1930, $16,850,000.00 remained unissued, and on July 1, 1932, $7,614,000.00 out of the $27,000,000.00 of bonds so authorized by the Illinois General Assembly in 1929 still remained unissued."

The complaint against the State of Illinois becomes still more preposterous when it is considered that in July, 1931, the general assembly authorized the issuance of an additional $36,000,000.00 of bonds without a referendum, all of which still remain unsold.

In **Subdivisions XIII** and **XIV** of the application it is stated that "the credit and financial resources of the State of Illinois are more than ample to finance the performance of the decree", and it is complained that the state is derelict in not having used its credit and financial resources.

The implication is that the State of Illinois should have come to the aid of the District and supplied it with funds with which to continue the construction program.

In the absence of constitutional prohibitions, the methods by which conceivably this might have been accomplished were the following:

1. An issue and sale of bonds of the State of Illinois and a loan of the money to the District.

2. A guaranty by the State, of the bonds of the District, thereby making them more salable.

3. An appropriation by the general assembly out of general revenues of money to be loaned to the District.

4. The levying of an additional general or special state tax to provide money to be loaned to the District.

5. Authority to the District to levy increased or additional taxes.

6. Authority to the District to issue and sell without a referendum vote bonds for the entire sum of money needed to complete the entire construction program.

The answer to suggestions 1, 2, 3 and 4 above is found in the constitution of the State of Illinois, which among other things contains the following express prohibitions:

> "Article IV. Section 20. The state shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of any public or other corporation, association, or individual."

Section 18 of Article IV, after making certain provisions not here relevant, provides as follows:

> "No other debt, except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war (for payment of which the faith of the state shall be pledged) shall be contracted unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of the votes cast for members of the general assembly at such election. The general assembly shall provide for the publication of said law, for three months at least, before the vote of the people shall be taken upon the same; * * * *".

It is respectfully submitted that each and every one of the modes above suggested as numbers 1, 2, 3 and 4 would contravene the provisions of Section 20 of Article IV.

Suggestion number 5 obviously would be futile and ineffective. Inasmuch as a large part of the taxes which the District already has power to levy is delinquent and unpaid, it is perfectly obvious that it would be useless to levy larger amounts.

Likewise, suggestion (6) would have had no effect whatever in preventing the present situation. Obviously, since the District now has more than $40,000,000.00 of bonds which it is unable to sell, the situation could not be improved or remedied by giving it authority to sell an additional amount of bonds.

But it may be argued that in the exercise of the utmost possible diligence the state authorities should have proceeded to bring about such changes by amendment or amendments to the constitution as would have permitted the state to extend financial aid to the District. To this it may be answered that neither the members of the general assembly nor any other state authority are endowed with any greater degree of ability to see into the future than other human beings. We respectfully submit that no one in the State of Illinois or elsewhere foresaw the conditions which now exist.

We respectfully submit also that experience has demonstrated that it is extraordinarily difficult to amend the constitution of Illinois.

Two methods are provided by the instrument itself for its amendment. One is the calling of a constitutional convention. The other requires, first, the approval of a proposed amendment by a vote of two-thirds of all the members elected to each of the two

houses of the general assembly, and next, its submission to the electors of the state for adoption or rejection at the next election of members of the general assembly. It must be published in full at least three months preceding the election. Its approval requires the affirmative vote of a majority of all the electors voting at said election (and not merely a majority of those voting for or against the amendment).

A number of proposed amendments to the present constitution have failed because large numbers of voters did not take the trouble to vote at all on the proposition, and thus the proposition did not receive the affirmative votes of a majority of all the voters who voted at the respective elections.

The next election for members of the general assembly will occur on November 8, 1932. The most recent election for members of the assembly prior to the date last mentioned was that of November, 1930.

It is respectfully submitted that the State of Illinois has done all that human foresight reasonably could be expected to consider necessary in the premises. It conferred upon the District powers of taxation which were deemed ample and which under ordinary circumstances would have been ample. In June of 1929 it conferred upon the District power to issue and sell bonds of the par value of $27,000,000.00 without requiring submission to a referendum vote. Similarly, in June, 1931, it empowered the District to issue and sell an additional $36,000,000.00 of bonds.

In anything approximating normal conditions, the

powers above mentioned were amply sufficient to enable the District properly to finance its construction program.

CONSTRUCTION PROGRAM CAN BE COMPLETED BY DECEMBER 31, 1938.

(a) Improvement in Tax Situation.

Present indications are that the causes underlying the non-payment of taxes shortly will be removed. In February, 1932, legislation which had the approval of practically all civic and property owners' organizations, business and financial interests and public authorities of Chicago and Cook County, was adopted by the General Assembly whereby the elected boards of five assessors and three reviewers were abolished; in their stead were substituted one County assessor *appointed* by the Governor of the State and the President of the County Board of Cook County, and a Board of Appeals consisting of two members, one of whom was appointed by the President of the Cook County Board and the other by the Governor. These positions have been filled by men possessing the confidence of the public, who are now functioning. It is generally believed that their labors will result in more equitable assessments and in reductions in taxation and will make taxpayers more willing to pay their taxes.

As we have stated, one of the leading "taxpayers' strike" cases, *Bistor et al.* vs. *McDonough, County Treasurer,* 346 Ill. 362, resulted in a decision against the objecting taxpayers and this Court denied a petition for a writ of certiorari. Another suit, *McDon-*

ough, County Collector, vs. *Cesar* (349 Ill. 372) has been decided adversely to the objecting taxpayers by the Supreme Court of Illinois and a petition for re-hearing has been denied. Plaintiff has expressed her intention of seeking a review by this Court, and has obtained a "stay" of sixty days.

At the present time the city of Chicago, in cooperation with the county collector, the Sanitary District, the Board of Education, and other public bodies, is taking drastic measures to enforce collection of taxes now delinquent and has appointed an emergency commission to direct the carrying out of such measures. Among the measures which are proposed are:

1. Applications to the courts wherein receivership proceedings are pending for orders on receivers to pay delinquent taxes on the properties which are the subjects of the receiverships;

2. Applications to the courts for receiverships of properties, the owners of which are able to pay their taxes but refuse to do so;

3. Discontinuance by the city and other public bodies of services such as water supply, etc., to buildings the owners of which refuse to pay their taxes;

4. Investigation by a special grand jury of the doings of so-called "real estate owners" and "taxpayers" associations in advising and counseling the nonpayment of taxes with a view to proceedings against them on conspiracy charges;

5. Proceeding in the County Court to obtain as rapidly as possible the overruling of objec-

tions filed by property owners to the payment of their taxes;

6. Proceedings to levy on properties as to which objections have been overruled and possibly filing bills to foreclose tax liens.

Attorneys representing each of the principal taxing bodies have been detailed to confer and cooperate with the city and to study and devise, if possible, other methods of enforcing payment of taxes.

There is no doubt that in consequence of these activities there is an increasing disposition to abandon resistance and to pay taxes. Results are already evident. It is entirely within reason to believe that within a relatively short time the situation will be restored to approximately normal.

Unquestionably the clearing up of the tax situation will have a beneficial effect upon the market for municipal securities. It is entirely within reason to believe that with the resumption of the payment of taxes and with a refunding of the bonds now in default, it will again be possible for the District to sell its bonds and obtain funds with which to prosecute work on the construction program.

(b) Application for Loan from Reconstruction Finance Corporation.

On or about September 15, 1932, the Sanitary District filed with the Reconstruction Finance Corporation in Washington an application under the provisions of the act of Congress entitled the "Emergency Relief and Construction Act of 1932", for a loan to or contract with the District of $36,450,000.00,

such loan to be made by means of the purchase by the Reconstruction Finance Corporation of a like amount of the bonds of the Sanitary District.

Said application was made under the provisions of paragraph 1 of sub-section (a) of section 201 of said act.

The application specifies that the proceeds of the loan are to be used for the purpose of construction of sewage treatment works, intercepting sewers and adjuncts to said works. Specifically the proceeds are to be applied as follows:

The Calumet project	$13,674,000.00
The West Side project	22,426,000.00
The North Side project	350,000.00
Total	$36,450,000.00

In said application there was embodied every item of information called for by "circular number 3" of the Reconstruction Finance Corporation and with it there were filed copies of plans, specifications, contracts, etc., specified in said "circular number 3".

Since the filing of said application on September 15, 1932, the Attorney and other representatives of the Sanitary District several times have conferred with the directors of the Reconstruction Finance Corporation and their attorneys, by telephone and personal interviews and by correspondence. The matter has been diligently "followed up".

The Sanitary District and its representatives have been advised by the legal department of the Reconstruction Finance Corporation that the application is in proper form, that all information required has

been furnished, and that all the requirements of the Reconstruction Finance Corporation with respect to the furnishing of information, plans, specifications, contracts and exhibits have been complied with.

At the present time the only question with reference to whether or not the loan shall be made, upon which the Reconstruction Finance Corporation has not reached a definite conclusion is whether or not the project for which the loan is desired can be deemed to be "self-liquidating" within the meaning and intent of said "Emergency Relief and Construction Act of 1932".

The Trustees have been assured that they and their attorneys will be given opportunity by the directors of the Reconstruction Finance Corporation for a full hearing and discussion before the directors shall reach a definite conclusion. The Trustees are now awaiting notification of the time and place when such hearing can be had.

If said loan is granted, work on the construction program can be resumed at once. The amount applied for will be sufficient to finance the program for at least two years.

(c) Estimate of Possible Saving in Cost of Future Work.

(1) Probable Savings Due to Lower Prices of Labor and Material:

The future estimated expenditures as of April 21, 1930, for uncompleted work amounted to $179,744,438.58. This figure has been reduced to the sum of

$169,052,832.65 because of expenditures made up to October 14, 1932. Because of lower prevailing construction costs, the amount required to complete all projects will be considerably less than $169,052,832.65.

During the interim between December 31, 1928, and April 21, 1930, three new contracts were let on the West Side project at contract prices aggregating $868,000.00 on work which had been estimated at $1,123,000.00, at an indicated saving of $255,000.00.

During the period between April 21, 1930, and June 1, 1932, (the date of cost summaries in latest report to the Supreme Court), contracts were let on the Calumet and West Side projects as follows:

Project	Number of Contracts	Costs as estimated in Program 1929	Actual Contract Prices	Indicated Saving
Calumet	6	$ 6,611,000	$ 4,936,000	$1,675,000
West Side	11	12,100,000	8,700,000	3,400,000
Total.....	17	$18,711,000	$13,636,000	$5,075,000

These figures indicate that the total estimate of future work (as of April 21, 1930) could be reduced by $5,075,000.00 plus the $255,000.00 indicated saving prior to April 21, 1930, a total reduction of $5,330,000.00. The estimated cost of the entire sewage treatment construction program remaining to be done after April 21, 1930, on the basis of the 1929 estimates, could thus be reduced from $179,744,438.58 to $174,414,438.58.

The suggestion of a re-estimate of the future work in this construction program was made on page 10 of the semi-annual report of the Sanitary District

of January 1, 1932. Such an estimate is submitted herewith, in which proper account has been taken of reasonably reduced construction costs which probably will prevail up to the end of 1938 and in which more definite information as to the amount of sewage to be treated at the various plants has been given due consideration.

The estimated cost of future sewage treatment construction, based on present estimates, as of October 14, 1932, is as follows:

Calumet Project		
Treatment Works	$ 5,054,000.00	
Sewers	7,721,000.00	
		$ 12,775,000.00
North Side Project		
Treatment Works	$ 1,875,000.00	
Sewers	3,625,000.00	
		5,500,000.00
Southwest Side Project		
Treatment Works	$36,061,000.00	
Sewers	8,500,000.00	
Racine Ave. Pump. Sta.	4,000,000.00	
South Side Sewers	15,543,000.00	
		64,104,000.00
West Side Project		
Sedimentation Works	$ 2,185,000.00	
Activated Sludge Works	33,259,000.00	
Sewers	16,517,000.00	
		51,961,000.00
Miscellaneous Plants and Sewers		8,000,000.00
Chicago River Controlling Works		3,200,000.00
Total		$145,540,000.00
Work under contract		
Calumet Project	$ 4,035,000.00	
North Side Project	17,500.00	
West Side Project	4,758,000.00	
		$ 8,810,500.00
Grand Total future work		$154,350,500.00

On the basis of the foregoing revised estimates, the total cost of completed works and estimated future construction (estimated) will be $254,854,-953.18, which is $14,702,332.65 less than the total as estimated in 1929.

In this connection, moreover, it should be stated that the works contemplated by this program would have a capacity sufficient to take care of increases in quantity of sewage over a number of years following completion of the program. By including this "excess" capacity in the contemplated construction program, great economies in cost would be effected over the cost of constructing presently only the capacity actually needed and at a later date constructing additional capacity. If, however, it shall become necessary to do so, the construction of this "excess" capacity can be deferred, and thereby time can be saved in the completion of so much of the program as presently shall be actually necessary.

(2) Possible savings due to improved methods of "sludge" disposal.

Since July, 1932, the District has been experimenting with the de-watering and incinerating of sewage sludge at the West Side treatment works, in a specially constructed filtering and drying unit, on a scale never before attempted. ("Sludge" is the solid matter that is removed from sewage in the processes of treatment.) Results from this brief period of operation are satisfactory and indicate the probability that incineration of sludge is feasible and economical where the quantities to be handled are large. This de-watering and incineration of sludge

may bring about a major change in the methods of sludge disposal. It will have no effect on the activated sludge plant for the final treatment of the sewage. It may result in considerable saving in construction cost, in economy of space and in time of construction.

Sufficient experience has not yet been gained from the operation of this test incinerating plant to warrant the positive statement that incineration will replace the digestion and disposal of sludge in the future sewage treatment of the Sanitary District, although all indications point to that effect. If such is the ultimate conclusion, the estimated costs of future sewage treatment construction would be reduced by the following estimated amounts:

Calumet Works	$1,775,000.00
West Side Works	3,000,000.00
Southwest Side Works	5,000,000.00
Total	$9,775,000.00

The total estimate of future work, not under contract, would apparently be reduced from $145,540,000.00 to $135,765,000.00.

CONCLUSION.

The numerous charges of negligence, incompetence and bad faith, failure, neglect and refusal to carry out the decree, lack of effort in performance, obstruction, avoidance and circumvention of the performance of the decree, neglect and refusal adequately and reasonably to provide for financing, failure to levy and collect normal taxes, self-created disabilities, dereliction of duty, wilful disregard and defiance of the federal government, etc., etc., contained in the application of the complainants, are wholly without justification. The Sanitary District is not chargeable with the inability of the tax collecting agencies of Cook County to collect taxes and much less with the general business depression. In view of the impossibility of selling bonds which have already been authorized by the general assembly, it is folly to complain at the moment because the District has not the authority immediately to issue more bonds.

These respondents deny each and every of the averments that any act of these respondents has been done for the purpose or with the intent of attempting to delay, avoid and circumvent the performance of the decree of this court.

On the contrary, these respondents aver that at all times since the entry of the decree of this court, they have in good faith complied with the requirements thereof and have in good faith taken every possible step and every possible measure which appeared necessary or expedient to complete the program of construction by the time appointed by the decree for the reduction of diversion to the minimum quantity of 1500 c. f. s., to-wit, December 31, 1938. It is respectfully submitted that the work accom-

plished constitutes a record of achievement in the face of many and great difficulties and obstacles. Despite the opposition of and legal proceedings instituted by misguided individuals who failed to comprehend the importance of its construction program, the Sanitary District successfully overcame the obstacles and delays incident upon court procedure, injunctions, etc., by procuring legislation authorizing the issuance without a referendum of one bond issue of $27,000,000.00 and the validation of another issue totaling $36,000,000.00.

In spite of shortage of funds due to causes beyond its control and attributable chiefly to the greatest depression known in modern times, the District has made substantial progress in the execution of its construction program. And if present financial difficulties can be overcome within a reasonable time, the District will still be able to complete that construction program by December 31, 1938.

Respectfully submitted,
THE SANITARY DISTRICT OF CHICAGO,
and the
STATE OF ILLINOIS,

By: WILLIAM ROTHMANN,
Attorney for The Sanitary District of Chicago.

FRANK JOHNSTON, JR.,
Senior Assistant Attorney for The Sanitary District of Chicago.

JOSEPH B. FLEMING.
Special Assistant Attorney for The Sanitary District of Chicago.

OSCAR E. CARLSTROM,
Attorney General of Illinois.

SOLICITORS FOR THE RESPONDENTS.

UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

THOMAS J. BOWLER, being first duly sworn, on oath says that he is the President of THE SANITARY DISTRICT OF CHICAGO; that he has read the foregoing return to the rule to show cause and knows the contents thereof, and that the same is true as he verily believes.

sgd.) Thomas J. Bowler

Subscribed and sworn to before me this 7th day of November, A. D. 1932.

gd.) James H. Hayford

Notary Public in and for
Cook County, Illinois.