44, 1933

In The Privy Council

No. 193

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
(DEFENDANT) *Appellant,*

— AND —

THE CONIAGAS REDUCTION COMPANY LIMITED,
(PLAINTIFF) *Respondent.*

RECORD OF PROCEEDINGS

BLAKE & REDDEN,
17 Victoria Street, London, S.W. 1. — *For the Appellant.*

LAWRENCE, JONES & COMPANY,
Lloyd's Building, Leadenhall Street,
London, E.C. 3. — *For the Respondent.*

TORONTO
THE HUNTER-ROSE COMPANY, LIMITED
1932

In The Privy Council

No. 193

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

BETWEEN:

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(DEFENDANT) *Appellant.*

— AND —

THE CONIAGAS REDUCTION COMPANY LIMITED,
(PLAINTIFF) *Respondent.*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

PART I.

PLEADINGS, EVIDENCE, JUDGMENTS, ETC.

PART II.

EXHIBITS

No. 1
Amended Statement of Claim

IN THE SUPREME COURT OF ONTARIO

WRIT ISSUED THE 30TH DAY OF JUNE, 1928.

In the Supreme Court of Ontario.

No. 1. Amended Statement of Claim. 3rd September, 1928.

BETWEEN:

THE CONIAGAS REDUCTION COMPANY LIMITED
Plaintiff,

— AND —

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO
Defendant.

AMENDED STATEMENT OF CLAIM

1. The plaintiff is a company duly incorporated under the laws of the Dominion of Canada by Letters Patent dated the 8th of April, 1908, and the defendant is a commission authorized by various statutes of the Province of Ontario to develop and sell electric power.

2. The plaintiff has obtained from the Attorney-General of Ontario a fiat authorizing it to prosecute this action and said fiat is endorsed upon the copy of the Writ of Summons herein filed in the office of the Local Registrar of the Supreme Court of Ontario at St. Catharines.

3. By an agreement bearing date the 8th day of November, 1907, between the Falls Power Company, Limited, thereinafter called the "Power Company" and The Clifton Sand, Gravel and Construction Company, Limited, thereinafter called the "purchaser", the Power Company agreed to sell, deliver and maintain, at the outside wall of the transformer house of the purchaser at Thorold, Ontario, for power, lighting and electro-chemical purposes only, electric energy in the form of three-phase alternating current at approximately twenty-five cycles per second periodicity and at approximately 12,000 volts, to the amount of 150 horse-power or more, said power to be delivered continuously twenty-four hours each day and every day in the year so far as reasonable diligence would enable the power company so to do, for a period of five years from the commencement of actual delivery, and the said agreement to continue in force for further periods of five years each, unless notice in writing should be given by the purchaser to the power company at least six months previous to the expiration of any five year period.

In the Supreme Court of Ontario.

No. 1. Amended Statement of Claim. 3rd September, 1928.

—continued.

4. By the said agreement the power company agreed to sell to the purchaser and the purchaser agreed to take from the power company any and all electric energy which it might require during the term of the said agreement for the operation of its plant and any and all extensions or additions thereto except as thereinafter provided.

5. It is further provided in the said agreement that the purchaser should give to the power company six months' notice in writing when electrical energy in excess of seven hundred and fifty horse-power was required and having obtained its consent might take the same subject to the terms and conditions of the said agreement.

6. The said agreement was made to be binding upon and to enure to the benefit of the successors, lessees and assigns of the respective parties thereto.

7. The purchaser exercised the option provided in the said agreement within one year of the date of the delivery of electrical energy pursuant thereto to change the form or method of payment to a flat rate per horse-power per year under the terms and conditions specified in contract Form No. 6, which the plaintiff craves leave to refer to at the trial of this action.

8. The plaintiff company purchased from the said purchaser all its rights to the electric energy to be delivered pursuant to the said agreement, and has ever since used the same at its plant established in the Township of Thorold, and the defendant has continued to supply the same to the plaintiff until the notice hereinafter mentioned was given by the defendant to the plaintiff.

9. All the assets, rights and benefits to the contracts made with the said The Falls Power Company Limited were acquired by and assigned to the Ontario Power Company Limited and the electrical energy agreed to be supplied by the power company to the purchaser was thereafter supplied by the said Ontario Power Company Limited to the plaintiff until all its property, rights and assets were conveyed to and acquired by the defendant commission.

10. The defendant commission became the owner of all the property, rights, franchises and equipment of the Ontario Power Company Limited and assumed all its obligations and has, for many years prior to the date of the notice to the plaintiff hereinafter referred to as given, continued to fulfil all the terms of the contract between The Falls Power Company Limited and the Clifton Sand, Gravel and Construction Company, Limited, hereinbefore referred to.

11. The plaintiff never notified the defendant nor any of its predecessors in title that it did not require to be continuously supplied with electrical energy according to the said contract, but on the contrary has always been

ready and willing and still is ready and willing to fulfil all its obligations under the said contract.

In the Supreme Court of Ontario.

No. 1. Amended Statement of Claim. 3rd September, 1928.

—*continued.*

12. On the 14th day of May, 1928, the defendant commission notified the plaintiff in writing as follows: "The Hydro-Electric Power Commission of Ontario hereby gives notice to the Coniagas Reduction Company of Thorold, Ontario, that the agreement for power supply between the Coniagas Reduction Company and the Ontario Power Company dated November 8, 1907, is to cease and determine on and after May 18, 1928."

13. The said notice referred to was accepted by the plaintiff as a notice given to terminate the agreement originally made between The Falls Power Company Limited and The Clifton Sand, Gravel and Construction Company, Limited, the rights and obligations of which agreement were, as hereinbefore stated, transferred to and assumed by the parties hereto.

13(a) Before the issue of the writ in this action it was agreed between the plaintiff and defendant that the defendant's right to terminate said contract should be submitted for decision to this Honourable Court.

NOTE Parts underlined show Amendments made pursuant to Order of First Divisional Court. 23rd November, 1928. P. 11

14. The plaintiff therefore prays that it may be declared by this Honourable Court

1. That the said notice was and is invalid and ineffectual to terminate the above contract.

2. That the said contract is a perpetual one to be terminated by notice given by the plaintiff its successors or assigns, to the defendant in manner and at the times mentioned therein, and is binding upon the parties hereto.

3. And the plaintiff claims damages for breach of the said contract.

NOTE Parts underlined in Clause (3) of prayer for relief show Amendment made pursuant to Order of Local Judge, S.C.O. 11th July, 1930.

15. And the plaintiff prays for such further and other relief as to this Court may seem meet.

16. The plaintiff proposes that this action shall be tried at St. Catharines.

DELIVERED the 3rd day of September, 1928, by Collier & Schiller, of the City of St. Catharines, in the County of Lincoln, solicitors for the plaintiff.

No. 2
Amended Statement of Defence

In the Supreme Court of Ontario.

No. 2. Amended Statement of Defence. 17th December, 1928.

1. The defendant admits the allegations in paragraphs 1 and 2 of the Amended Statement of Claim.

2. The defendant admits that on 8th November, 1907, the Falls Power Company, Limited, and the Clifton Sand, Gravel & Construction Company, Limited agreed in writing substantially as alleged in paragraphs 3 to 6 inclusive of the Amended Statement of Claim, but refers to the said agreement for the precise terms thereof.

3. The defendant admits paragraph 7 of the Amended Statement of Claim.

NOTE Parts underlined show Amendments made pursuant to Order of First Divisional Court. 23rd November, 1928. P. //

4. The defendant admits that it has become entitled to and bound by all the benefits and obligations of the said agreement.

5. The defendant denies paragraph 11 of the Amended Statement of Claim.

6. The defendant admits paragraph 12 of the Amended Statement of Claim, and refers to the notice therein mentioned for the further terms thereof.

7. The plaintiff has taken no electric energy under the said agreement since the month of September, 1926, and since that time, the disconnecting switches at what was formerly the point of delivery under the said agreement, and elsewhere, have remained open at the request of the plaintiff.

8. The plaintiff has abandoned its works, plant and business and has no longer any works, plant or business for which it is entitled to electric energy from the defendant.

9. The point of delivery of electric energy under the said agreement has ceased to exist.

10. The plaintiff has and before 14th May, 1928, had abandoned the said agreement.

11. The defendant submits that the said agreement was determinable by the defendant by reasonable notice, and that the notice referred to in paragraph 12 of the Amended Statement of Claim was reasonable under the circumstances.

12. The defendant submits that all right of the plaintiff, whether under the said agreement or otherwise, to receive electric energy from the defendant has come to an end.

13. The defendant submits that the plaintiff is not entitled to either of the declarations claimed.

14. The defendant submits that this action should be dismissed with costs.

DELIVERED the 17th day of December A.D. 1928, by I. B. LUCAS, 190 University Avenue, Solicitor for the Defendant.

In the Supreme Court of Ontario.

No. 2. Amended Statement of Defence. 17th December, 1928.

—continued.

No. 3
Joinder of Issue

The Plaintiff joins issue upon the allegations contained in the Statement of Defence of the Defendant.

DELIVERED this 26th day of September, 1928, by Collier & Schiller, of the City of St. Catharines, in the County of Lincoln, Solicitors for the Plaintiff herein.

No. 3. Joinder of Issue. 26th September, 1928.

No. 4
Reasons for Judgment of Wright, J.

S. C. O.

CONIAGAS REDUCTION CO. LTD.

v.

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

Copy of Judgment of Wright J., delivered 22nd day of October, 1928.

H. H. Collier, K.C., and J. G. Schiller, for plaintiff.

C. C. Robinson, K.C., and C. S. Evans for Defendant.

No. 4. Reasons for Judgment of Wright, J. 22nd October, 1928.

This action is brought by the plaintiff for a declaration that a certain contract made in November 1907, between The Falls Power Company Limited, the predecessors of the defendant Commission, and The Clifton Sand, Gravel & Construction Company Limited, the predecessors of the plaintiff company, for the supply of electric power to the last named company, is perpetual in its operation and that the notice given by the defendant Commission to the plaintiff on or about May 14th, 1928, purporting or attempting to cancel the said contract from and after May 18th, 1928, is invalid and ineffective for such purpose.

In the Supreme Court of Ontario.

No. 4. Reasons for Judgment of Wright, J. 22nd October, 1928.

—continued.

On November, 1907, an agreement was entered into between The Falls Power Company Limited and The Clifton Sand, Gravel & Construction Company Limited, for the supply of electric power by the former company to the latter. The material clauses of the contract are as follows:

"1. The Power Company hereby agrees to sell, deliver and continuously maintain ready for the use of the purchaser for power, lighting and electro-chemical purposes only and the purchaser hereby agrees to purchase and pay for 150 firm electric horsepower or such greater amounts as the purchaser may require for the operation of his works or any extension or additions thereto not exceeding intermittent demands of 225 horsepower except when taking a greater amount of firm power. Said electric power shall be delivered continuously twenty-four hours each day and every day in the year except as hereinafter provided for a period of five years from the commencement of actual delivery and this agreement shall continue in force for further periods of five years each unless notice in writing is given by the purchaser to the company at least six months previous to expiration of any five year period."

There are various other provisions in the said agreement but as I read them they do not assist in the determination of the issues between the parties to this action.

It is admitted on the record and by counsel that the parties to this action succeeded to the rights of the original parties to the agreement and also are bound by the covenants and obligations of the said original parties.

The evidence given at the trial and the admissions made by counsel establish that the plaintiff company took power under the contract up to October, 1926, when the plaintiff company requested the defendant to disconnect the supply of power for an indefinite time. Thereafter and until May, 1928, the plaintiff company paid to defendant for the minimum supply of 150 electric horsepower. The supply of power began on May 18th, 1908. On May 14th, 1928, the defendant notified the plaintiff company of the termination of the contract. It should be mentioned here that the plaintiff's works were carried on until 1925 when closed down and some of the plant was removed but a portion of same was retained. James J. Mackan, the former Secretary-Treasurer of the plaintiff company, testified that the plaintiff company always entertained the idea, after their plant was in part dismantled, of selling the plant and for that reason desired the contract to be continued.

For the plaintiff it is contended that the contract is for a perpetual supply of electric power, that is, so long as the plaintiff company should require the same to be supplied and that the only provision for termination of the contract is that given to the plaintiff company to terminate the same upon giving six months' notice prior to the expiry of any five-year period. This contention involves a denial of the right of defendant to terminate the contract or limit its operation to any particular period.

The plaintiff's counsel in support of his contention relies on the decision in Llanelly Railway & Dock Company v. London & North Western Railway Company, 7 Eng. & Ir. Appeals, 550, as authority for the proposition that the contract is perpetual. I think that decision is authority for the proposition that *prima facie* a contract on its face indefinite and unlimited as to time, is *prima facie* perpetual and that the burden of proving the contrary lies on the party disputing such construction. Lord Selborne in his judgment in that case, on page 567, intimates that the nature of the subject might be such as to disprove or discharge that onus.

That case was considered in Crediton Gas Company v. Crediton Urban Council, 1928, L.R. 1 Ch. D. Page 447, and was distinguished in its facts from the case there under review. In that case the basis of the decision appear to be that there was no obligation on the part of one of the parties to take gas while the other party was bound to supply. There was also a supplementary agreement which contained a provision definitely contemplating the termination of the main agreement. Lord Hanworth, Master of the Rolls, on page 459, states that from this circumstance it appears that there were clear indications that it was contemplated that the agreement should be subject to termination, and, as stated by him, the case under review was a wholly different case from Llanelly Railway & Dock Co. v. London & North Western Railway Co. Lord Justice Sargent, at page 461, states that as there was no obligation on the part of the defendants to take gas, an implication that the contract was not intended to be perpetual was amply supplied.

In view of the wide difference of the facts of the two cases cited, I think that the circumstances of the present case are more nearly parallel to the Llanelly case and that the principles of law enunciated therein should be applied to this case unless the very nature of the contract itself implies that it was never intended to be perpetual.

Mr. Robinson suggests that there might be improvements in the generation of electric energy so that the appliances in use at the date of the agreement would become obsolete and unfit for use and that it never was intended that the defendants should be compelled to retain any obsolete methods of producing electricity.

Mr. Robinson cited several cases in which the renewal of leases was under consideration. These cases were authority for the proposition that a covenant to renew in a lease is not to be continued in the renewal lease unless there is express provision to that effect. I do not think these authorities are at all applicable and I adopt in preference the principles enunciated in the Llanelly case.

Although it is difficult to conceive that at the time the contract was made the parties intended it should be perpetual as against the suppliers of the

In the Supreme Court of Ontario.

No. 4. Reasons for Judgment of Wright, J. 22nd October, 1928.

—continued.

electric current, yet I am unable to find any term or provision in the contract indicating an intention that those parties should have the right to determine it.

I am quite unable to say that the nature of the subject matter raises an implication to the effect that the contract was not intended to be perpetual.

Lord Selborne in his judgment in the Llanelly case, at page 567 of the report, states that there are only two ways of proving the allegation that a contract such as this is not perpetual, viz., (a) from the nature of the subject, and (b) from some rule of law applicable thereto.

I have already dealt with the former ground adversely to the contention of the defendant, and as to the latter counsel has not cited to me any rule of law requiring or favouring such construction, and I am not aware of any.

It will be noted that there is express provision for termination of the contract by the purchasers but none by the Power Company, and this lends considerable weight to the plaintiff company's contention.

The provision in the contract "for further periods of five years each unless notice in writing is given by the purchaser to the company at least six months previous to expiration of any five-year period" does not appear to me to limit the duration of the contract in any way. It appears to have been inserted for the purpose of compelling or requiring the plaintiff company to give notice six months before the end of any five-year period in order to terminate the contract and for that purpose alone.

My opinion, therefore, is that the contract in its terms is a perpetual one and not determinable by notice on the part of the defendant. In any event, I should hold that the notice given by the defendant was invalid as not being given within a reasonable time before the date specified in it for determination of the contract.

There will be judgment accordingly with costs of action to the plaintiff company.

No. 5
Formal Judgment of Wright J.

IN THE SUPREME COURT OF ONTARIO

In the Supreme Court of Ontario.
—
No. 5.
Formal Judgment of Wright, J. 22nd October, 1928.

THE HONOURABLE MR. JUSTICE WRIGHT } Monday the 22nd day of October, 1928.

BETWEEN:

THE CONIAGAS REDUCTION COMPANY LIMITED
Plaintiff.

—AND—

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
Defendant.

THIS ACTION having come on for trial on the 11th day of October, 1928, before this Court at the sittings holden at St. Catharines for the trial of actions without a jury, in presence of counsel for the plaintiff and the defendant, upon hearing read the pleadings and hearing the evidence adduced, and what was alleged by counsel aforesaid, this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment.

1. THIS COURT doth declare that the Contract in the Pleadings mentioned, dated November 8th, 1907, between the Clifton Sand, Gravel and Construction Company, Limited and the Falls Power Company, Limited, and by them assigned to the Plaintiff and the Defendant, respectively, is a perpetual Contract as against the Defendant, and doth order and adjudge the same accordingly.

2. AND THIS COURT doth further declare that a Notice dated May 14th, 1928, given by the Defendant to the Plaintiff was invalid and ineffectual to terminate the said Contract and doth order and adjudge the same accordingly.

3. AND THIS COURT doth further order and adjudge that the Defendant do pay to the Plaintiff its Costs of this Action forthwith after taxation thereof.

E. HARLEY,
SENIOR REGISTRAR, S.C.O.

No. 6
Notice of Appeal

In the Supreme Court of Ontario.

No. 6. Notice of Appeal. 5th November, 1928.

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

THE CONIAGAS REDUCTION COMPANY, LIMITED,
Plaintiff,

— AND —

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
Defendant.

NOTICE OF APPEAL

TAKE NOTICE that the defendant appeals to the Divisional Court from the judgment pronounced by the Honourable Mr. Justice Wright on the 22nd day of October, 1928, on the following grounds:

1. The learned Judge erred in holding that the contract which was the subject of the plaintiff's claim was perpetual or was not determined by notice on the part of the defendant.

2. The learned Judge erred in holding that the notice to determine the said contract by the defendant was invalid.

3. The said judgment is contrary to the law, the evidence and the weight of evidence.

Dated at Toronto the fifth day of November, 1928.

I. B. LUCAS,
190 University Avenue,
Solicitor for the Defendant.

No. 7
Formal Judgment of First Divisional Court

IN THE SUPREME COURT OF ONTARIO

In the Supreme Court of Ontario.
—
No. 7. Formal Judgment of First Divisional Court. 23rd November, 1928.

(Law stamps $2.40)

THE HONOURABLE THE CHIEF JUSTICE OF ONTARIO
THE HONOURABLE MR. JUSTICE MAGEE
THE HONOURABLE MR. JUSTICE HODGINS
THE HONOURABLE MR. JUSTICE MIDDLETON
THE HONOURABLE MR. JUSTICE GRANT

Friday, the 23rd day of November, 1928.

BETWEEN:

THE CONIAGAS REDUCTION COMPANY, LIMITED,
Plaintiff,

—AND—

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
Defendant.

UPON motion made unto this Court on the 22nd and 23rd days of November, 1928, by Counsel on behalf of the Defendant, in the presence of Counsel for the Plaintiff, by way of appeal from the judgment of the Honourable Mr. Justice Wright, delivered on the 22nd day of October, 1928, after the trial of this action, upon hearing read the said judgment, the evidence and exhibits at the trial, and the pleadings and other proceedings in this action, and upon hearing what was alleged by Counsel aforesaid, from what was stated and Counsel aforesaid consenting:

1. THIS COURT DOTH ORDER AND ADJUDGE that the said judgment be and the same is hereby set aside and vacated.

2. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that there shall be a new trial of this action.

3. AND THIS COURT DOTH FURTHER ORDER that the Plaintiff may amend its Statement of Claim within three weeks from the date of this judgment as it may be advised, and that the Defendant may amend its Statement of Defence as it may be advised within one week after the expiration of the said three weeks, and that thereafter the parties shall be entitled to production of documents and to examine for discovery in accordance with Rules in that behalf.

In the Supreme Court of Ontario.

No. 7. Formal Judgment of First Divisional Court. 23rd November, 1928.

—continued.

4. AND IT IS FURTHER ORDERED that the costs of the said trial before the Honourable Mr. Justice Wright and of this appeal shall be costs in the action.

E. HARLEY,
Senior Registrar, S.C.O.

5-12-28 I.J.L.

[SEAL]

The Supreme
Court of Ontario.
Entered C.O.B. 102 pages 452-3
December 5th, 1928.
B. J. C.

10

In the Supreme Court of Ontario.

No. 8.
Opening Proceedings at Trial.
26th May, 1931.

IN THE SUPREME COURT OF ONTARIO

CONIAGAS REDUCTION COMPANY

v.

HYDRO-ELECTRIC POWER COMMISSION

TRIAL

Before THE HONOURABLE MR. JUSTICE RANEY, at the City of St. Catharines, May 26th, 1931.

COUNSEL:

R. S. ROBERTSON, K.C.
and
J. G. SCHILLER, *for the Plaintiff.*

W. N. TILLEY, K.C.
and
HON. I. B. LUCAS, K.C.
and
F. C. S. EVANS, *for the Defendant.*

MR. ROBERTSON: The action is substantially for a declaration that a certain power contract made in 1907 between a Company called the FALLS POWER COMPANY, the vendors of the power, and the CLIFTON SAND, GRAVEL & CONSTRUCTION COMPANY, is still a binding and enforceable contract.

HIS LORDSHIP: Between two Companies not now before the Court.

MR. ROBERTSON: Quite so, the companies themselves are not before the court. I think there will be no question about succession, that the plaintiffs are the successors by assignment, of the Clifton Sand and Gravel Company.

The plaintiffs have a smelter near Thorold, or at Thorold. The Falls Power Company is a company that apparently had some connection with the Ontario Power Company at the time this contract was made, and I understand that the Hydro-Electric Power Commission has taken over the whole concern.

As I say, the contract was made in 1907, and was for the supply of power to be delivered at this smelter. The smelter was not then built, but the power was to be delivered at the place where the smelter now is.

The contract contained a provision that it should be a contract for five years, and should continue for further periods of five years, unless terminated at the end of any five-year period by the consumer, by six months' notice to the vendor of the power.

In the Supreme Court of Ontario.

No. 8. Opening Proceedings at trial. 26th May, 1931.

—continued.

The matter went on, power was supplied, and paid for, for a great many years. In 1926, the consumer, which had then become the Coniagas Reduction Company, asked that there be a temporary disconnection of power, as they were doing some work, making some alterations, and they desired to have the power disconnected temporarily, without prejudice to the contract. That request was acceded to and the disconnection was made. In fact, as I understand, the Company had a switch on the land outside their property. The Reduction Company, the consumer, then went on paying for power as before, being billed every month, and paying every month.

HIS LORDSHIP: As if the power were being delivered?

MR. ROBERTSON: Quite so. The contract provides when a certain peak is reached, then they carry on from that peak, paying for 150 firm horsepower, as a minimum, and continuing to be billed at the contract rate. That went on in that way until May, 1928, when the Power Commission sent us a letter notifying us that the contract would come to an end within four days after the date of the letter. Two days after, we received a letter saying they did not want to interfere with the supply of power to us, but we would have to enter into a new contract, that was being prepared, and would have to pay a higher price.

HIS LORDSHIP: Did you resume the consumption of power in the meantime?

MR. ROBERTSON: No, we then brought action for a declaration that the contract should not be determined, as we claimed the contract could not be determined by the vendor.

HIS LORDSHIP: They discontinued supplying power, and you discontinued paying?

MR. ROBERTSON: No, they served us with a notice. We went on paying, that is, we went on sending in our cheques. They kept part of the first cheque and said they were holding the balance to our credit on the power contract. We sent them a number of cheques which they returned to us, and the action was commenced.

HIS LORDSHIP: You never did resume?

MR. ROBERTSON: Action was commenced shortly afterwards.

HIS LORDSHIP: You never resumed taking power?

MR. ROBERTSON: No.

HIS LORDSHIP: You did not want it, for a time; did you notify them when you wanted it?

MR. ROBERTSON: No, the time has not yet come, it had not come, in any event, in 1928, when we wanted them to continue. We are asking for a declaration that this contract has not been terminated.

HIS LORDSHIP: You want the privilege of taking power?

MR. ROBERTSON: The privilege of getting power when we require it, under that contract. They want a contract to call for more money, that is what is indicated in their letter.

That is what the case is, in substance. There are many little matters I have not attempted to tell your Lordship about; that is an outline, in brief; we seek a declaration. The case came on for trial some time ago, in October,

1928, before his lordship Mr. Justice Wright, who gave judgment in favour of the plaintiff for the declaration. An appeal was taken by the defendants from that judgment, and the matter came on before the first Appellate Division, and I do not know precisely what was done; in the end, a new trial was directed, and the order sets forth that the parties were not satisfied that the full evidence was before the court to enable the matter to be determined; that the case was not fully argued.

HIS LORDSHIP: Is that a considered judgment by Mr. Justice Wright?

MR. ROBERTSON: Yes. The matter comes back for a new trial and we purpose giving more evidence than was given on the prior occasion; very little evidence was given before.

CECIL S. KENNEDY, sworn. Examined by MR. ROBERTSON.

Q. First of all, may I put in the contract, that was put in at the former trial?

HIS LORDSHIP: It is a contract between?

MR. ROBERTSON: It is a contract between the Falls Power Company, Limited, called the "Power Company," and the Clifton Sand, Gravel and Construction Company, Limited; dated 8th November, 1907.

EXHIBIT No. 1 { Filed by Plaintiff } Agreement dated November 8th, 1907. (As described above).

There is attached to that agreement as part of the Exhibit, a form of agreement, I do not think it is signed. It is the form of agreement which is referred to in the other agreement, and which may be taken as forming part of the Exhibit. It speaks for itself,—to anyone who reads the document.

I might put in the assignment dated 15th, December.

MR. TILLEY: An assignment from whom to whom?

MR. ROBERTSON: From Clifton to Coniagas.

MR. TILLEY: I have not seen this document.

MR. ROBERTSON: I will not put it in, for the moment.

Q. Mr. Kennedy, what office do you hold with the plaintiff company?

A. Secretary-Treasurer.

Q. When did your first connection with that company begin?

A. Well, I was employed as an auditor of the company from July 1st, 1920, I was actually employed by the company in 1924, on May 1st.

Q. You became the auditor, you were not the officially named auditor?

A. No, I worked on the company's books for the officially named auditor.

HIS LORDSHIP: When did you become secretary-treasurer?

A. May 1st, 1927.

MR. ROBERTSON: You are skipping a little. You became assistant secretary-treasurer? A. Yes, on May 1st, 1924.

Q. And you became secretary-treasurer? A. On May 1st, 1927.

Q. You still retain that position? A. I still hold that position.

In the Supreme Court of Ontario.

Plaintiff's Evidence. No. 9. Cecil S. Kennedy, Examination 26th May, 1931.

—continued.

HIS LORDSHIP: Secretary-Treasurer from? A. May 1st, 1927.

MR. ROBERTSON: Do you hold, and have you held, for the same periods, similar offices with the Coniagas Mining Company? A. Yes, sir.

Q. What is the correct name of the Company? A. The Coniagas Mines, Limited.

HIS LORDSHIP: I thought he was speaking of Coniagas?

MR. ROBERTSON: The Coniagas Mines Company, the company was the Coniagas Reduction Company, the first company.

A. Yes, the Coniagas Reduction Company, Limited.

Q. That is the plaintiff company. You might explain the connection between those companies.

HIS LORDSHIP: Are you an officer of both companies? A. Yes, the same offices, for the same periods.

MR. ROBERTSON: Perhaps you will briefly explain the relation between the two companies. A. The relation between the two companies is this: Coniagas Mines hold 2,495 shares of the total Capital stock, of 2,500 shares of the Coniagas Reduction Company Limited.

Q. That has been the relation throughout, I understand? A. From the beginning.

HIS LORDSHIP: From the beginning?

MR. ROBERTSON: He is speaking from the records. A. Yes.

HIS LORDSHIP: When was the beginning? A. The Coniagas Reduction Company Limited was incorporated on the 15th April, 1908. The full capital stock was not issued immediately, and they have held all the capital stock of Coniagas Mines Limited, with the exception of the qualifying shares.

Q. Is the Coniagas Mines Limited the earlier company? A. Yes.

MR. ROBERTSON: It might be convenient to put in the charter of the Reduction Company. This is the charter of the Coniagas Reduction Company Limited? A. Yes.

EXHIBIT No. 2 { Filed by Plaintiff } Charter: Coniagas Reduction Company Limited.

It is a company with a Dominion charter, and its powers are very extensive, as set out, including the right to mine as well as operate a process of treating ores.

Q. Are these two companies, Coniagas Mines Limited, and Coniagas Reduction Company Limited, still subsisting companies. A. They are.

Q. Where are the Head Offices? A. The Head Offices are in St. Catharines, Ontario, for both companies.

Q. They still have substantial assets? A. They have.

Q. Each of them? A. Yes, each of them.

Q. Where is the gravel pit of the Clifton Sand, Gravel and Construction Company? A. The gravel pit which was owned by the Clifton Sand, Gravel and Construction Company is located at St. Davids, Ont.

Q. How far is that from Thorold? A. About 5 or 6 miles.

Q. Where is the plant of the Coniagas Reduction Company?

A. Its plant is located at Thorold, Ont.

Q. And the plant, when you first knew it, did you see the plant in 1920?

A. I did.

Q. It was a plant for what purpose? A. For the reduction and smelting of ores and concentrates.

HIS LORDSHIP: Was it carrying on business then? A. Yes, it was active at that time.

Q. What kind of ores? A. Silver, cobalt, ores.

MR. ROBERTSON: I do not know whether my friend objects to this witness giving evidence, I will call another witness, in any event who can speak of it, but I think it may be well to explain, historically, to his Lordship the building of the plant.

MR. TILLEY: The witness does not know anything about it.

MR. ROBERTSON: I thought it might be convenient to let his Lordship know what the history was at the very commencement. This witness can only speak from the records, so I will call the man who knows all about it.

Q. First of all, have you the accounts? Will you tell us when power began to be delivered, according to the accounts?

MR. TILLEY: What accounts do you mean now, do you mean our accounts to them?

MR. ROBERTSON: Yes, your accounts to us, and our cheques in payment. First of all, the Clifton Company.

MR. TILLEY: Are you calling Mr. Mackan?

MR. ROBERTSON: No, I don't think so.

MR. TILLEY: I do not know what my friend is seeking to prove by this witness. On the examination-for-discovery we were told there was no officer who could give us a history of the matters, except Mr. Mackan, who gave evidence at the last trial. We examined Mr. Mackan for discovery, and a great many documents, and information, were to be obtained for us, and they never were obtained or produced to us. I do not understand my friend seeking to prove those things by a witness who, we were told before, knew nothing about this case.

MR. ROBERTSON: I do not think my friend is stating that quite accurately; there are certain matters this witness knows nothing about; all I ask is, that he produce certain accounts.

MR. TILLEY: He only finds certain papers with the company.

MR. ROBERTSON: Certainly.

MR. TILLEY: That does not prove anything.

MR. ROBERTSON: All right, if we are to have that sort of objection.

MR. TILLEY: If my friend chooses to put a man in the box who does not know, and leaves out the man who does know.

HIS LORDSHIP: I suppose most of the cheques could be handed in, they have not been destroyed.

MR. TILLEY: If he will produce the originals.

MR. ROBERTSON: It is the originals I purpose producing, and that is all I ask this witness to say about it.

MR. TILLEY: Let us have it then.

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—continued.

MR. ROBERTSON: Have you those accounts? A. Yes.

Q. And now, the first accounts for power—

HIS LORDSHIP: Under the contract of 8th November, 1907.

A. The first account for power, that is in the records, is dated June 1st, 1908, and covers service for the month of May, 1908. There is receipt from the Falls Power Company, acknowledging payment, dated June 15th, 1908.

HIS LORDSHIP: The first account for power under the contract?

MR. ROBERTSON: Yes. I will put in the account and the receipt as Exhibit No. 3.

EXHIBIT No. 3 { Filed by Plaintiff } Account dated June 1st, 1908 and receipt dated June 15th, 1908, for service for month of May, 1908.

I should call attention to this, it is an account directed to Clifton, Sand Gravel and Cement Co., and the receipt is on the form of Clifton Sand, Gravel & Construction Co. Limited, the purchasers under the contract.

Q. Now when was payment first made by the Reduction Company on any of these accounts? A. On August 11th, 1908 a cheque was made in favour of the Falls Power Co. Limited.

Q. Have you the amount of the cheque? A. Yes. The account is dated August 1st, 1908.

Q. It is an account from the Falls Power Co. Limited to the Clifton Sand, Gravel and Construction Co., and the cheque in payment is a cheque of August 11th, a cheque of the Coniagas Reduction Co. Limited? A. Yes.

EXHIBIT No. 4 { Filed by Plaintiff } Account dated August 1st, 1908, and cheque dated August 11th, 1908.

Q. When was an account first rendered under this contract to the Coniagas Reduction Company? A. January 1st, 1909.

Q. You produce the account and the cheque in payment? A. Yes.

Q. That is for power for the month of December, 1908, the account is dated January 1st, 1909 and the cheque in payment is a cheque of the Coniagas Reduction Co. Limited? A. Yes.

MR. TILLEY: To whom? A. To the Falls Power Company, Limited.

EXHIBIT No. 5 { Filed by Plaintiff } Account dated January 1st, 1909 and cheque dated January 13th, 1909.

MR. ROBERTSON: When were accounts under this contract first rendered by the defendant commission, the Hydro-Electric Power Commission of Ontario? A. In August, 1923.

HIS LORDSHIP: Have you the account? A. No, I haven't the account here.

MR. ROBERTSON: That was in your own time? A. Yes, that was in my own time.

HIS LORDSHIP: That was the account rendered by the Hydro to the Coniagas? A. To the Coniagas Reduction Company Limited.

MR. ROBERTSON: From that time on, so long as accounts were rendered for power under this contract, who rendered them? A. The Hydro-Electric Power Commission.

Q. And they were rendered to? A. The Coniagas Reduction Company Limited.

HIS LORDSHIP: That was carried on in that way until when?

MR. ROBERTSON: I will put in the last of the accounts, for another purpose.

Q. Now, in the period when you first became auditor, in 1920, for whom was the Reduction Company treating ore? A. For the various mining companies in Cobalt.

Q. That was the course of the business?

HIS LORDSHIP: That is, custom work? A. Yes, custom work.

MR. ROBERTSON: Was Coniagas Mines one of the companies? A. Yes.

Q. Can you tell me whether any quantity of ore was treated from others than Coniagas Mines Limited, substantial in amount? A. Yes, they were.

Q. I suppose Coniagas Mines was also substantial? A. Yes, it was substantial.

Q. Just briefly tell us the nature of the arrangement by which the Reduction Company entered into these contracts, under which contracts they had to treat the ore, how were they arranged, on what basis? A. The contract would be made for treating the ore, and the silver content was always paid for by the Reduction Company, who paid anywhere from 95 to 98 per cent. of the silver content, at the market value at that date, to be fixed.

Q. That is, the market value of silver? A. The market value of silver, and the date to be fixed was usually from 30 to 90 days after the receipt of the ore. In addition to that cobalt was paid for at various rates, based on the quantity of cobalt in the ore, as the percentage increased the amount paid for cobalt increased. Other minerals in the ore were not paid for.

Q. What other minerals were in the ore? A. Arsenic, nickel and copper.

Q. The Reduction Company did not pay for those? A. No.

HIS LORDSHIP: I thought the question was, what was the basis of payment?

MR. ROBERTSON: The basis on which you treated ore, how did you get paid for doing it?

HIS LORDSHIP: I understood him to say that the Coniagas Company paid the ore company or mining company on a basis of 95 to 98 per cent?

A. The silver content of the ore.

Q. Does that mean the purchase of the silver? A. Yes.

Q. That does not answer the question as to how you were paid.

MR. ROBERTSON: That is the way it has always worked out.

HIS LORDSHIP: Your payment was the difference between 95 per cent. of the silver content and 100 per cent.? A. Yes, sir.

MR. ROBERTSON: You might have made a little on the silver?

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—continued.

A. Very little.

Q. Your real money was made from what? A. By the sale of by-products of the silver ore; perhaps I should not say "by-products" the other minerals in the ore other than silver.

Q. That was the general line of your contract with the mining company? A. Yes.

HIS LORDSHIP: Your profit was mainly from the by-products? A. If you could call them by-products, they are not exactly by-products, they are part of the main product, the minerals other than silver.

Q. And cobalt? A. No, we made money on the cobalt.

Q. Did you pay them for the cobalt? A. Yes, we paid them for the cobalt, but the rate we paid them for cobalt had no relation to its market value as a finished product, it was nothing like the full percentage of the market value.

MR. ROBERTSON: For what purposes, in this reduction business, was electric energy used? A. It was used for power, light and for furnace work.

Q. What sort of furnace work? A. Metallurgical work and for heating furnaces.

Q. Was there any single individual directing the policy of these concerns? A. R. W. Leonard directed the policy of the concern.

Q. Mr. Leonard died? A. Yes, on December 13th, 1930.

Q. He was the controlling shareholder of the Coniagas Mining Company? A. Yes.

HIS LORDSHIP: I suppose he was president? A. Yes, he was president of both companies.

MR. ROBERTSON: Well then, in 1924 did anything material happen in connection with your business? A. Yes, the Coniagas Mines Company plant at Cobalt was burnt by fire, and the Coniagas Reduction plant was closed down, that is, they ceased to smelt any further ore at that time.

Q. At what time of 1924, do you remember? A. It was in the spring of 1924.

Q. Did the reduction company continue any operations at this plant? A. Yes, they continued to market finished products, and to pack them.

Q. You did not do any more smelting? A. No, we cleaned up the plant, that is to say, in operations of that kind there is always a certain amount of mineral that escapes.

Q. What you mean by that is, you get together all the rubbish and put it through a process to recover from it what there is of value in it. A. Yes.

HIS LORDSHIP: What do you call that process? A. We usually refer to it as the cleaning up process.

Q. You use electricity for lighting and the cleaning up process? A. Yes.

MR. ROBERTSON: During the period from 1924, for a couple of years you were using some electricity? A. Yes, we were.

Q. And it was supplied to you under the contract, by the Hydro-Electric Power Commission? A. Yes, sir.

HIS LORDSHIP: Did you take the amount required by contract? A. Yes.

Q. I suppose you mean the minimum? A. We were paying for the minimum amount required under the contract.

MR. TILLEY: I do not know that you were; you were paying something.

MR. ROBERTSON: Perhaps you have some accounts that were rendered prior to October, 1926? A. This is an account for September, 1926.

Q. That is an account for September, 1926, paid by cheque?

HIS LORDSHIP: How much is it?

MR. ROBERTSON: $206.25, for 150 horsepower. Your Lordship will find that from this time on the cheque runs at that amount.

HIS LORDSHIP: What is the price?

MR. ROBERTSON: $16.50 divided by 12. $16.50 is the annual charge, and it is divided by 12 for each month.

HIS LORDSHIP: For 150 horsepower.

MR. ROBERTSON: Will you explain to his Lordship how the 150 horsepower was arrived at? Were you using 150 horsepower at that time?

A. No, we were not, to the best of my knowledge.

MR. TILLEY: Does this witness know?

HIS LORDSHIP: It is of no consequence. Apparently he does not know.

MR. ROBERTSON: I do not know whether he does or not.

HIS LORDSHIP: He qualifies it by saying to the best of my knowledge.

WITNESS: I know that we were not operating at sufficient capacity to use 150 horsepower at that time. The reason I qualified it is, I do not know the exact amount that was used.

MR. ROBERTSON: It would be much less than that? A. Yes.

HIS LORDSHIP: Is it suggested that 150 horsepower was the minimum provided by the contract?

MR. ROBERTSON: Yes.

EXHIBIT No. 6	Filed by Plaintiff	Account dated October 6th, 1926, and cheque dated September 30th, 1926.

Q. And that account was paid at the end of September certain letters were written. These letters were Exhibits at the former trial, and I suppose they might stay attached as they are here.

HIS LORDSHIP: Yes.

MR. ROBERTSON: There are five letters altogether.

EXHIBIT No. 7	Filed by Plaintiff	Letter Sept. 16/26 pltf. to deft. Letter Sept. 23/26 in reply. Letter Sept. 30/26 pltf. to deft. Letter Oct. 4/26 in reply. Letter Oct. 8/26 deft. to pltf.

Q. These are letters, and copies of letters in some cases, that were exchanged at that time? A. Yes.

Q. I presume it is all right to use the copies. The first letter is Sept. 16/26, the second is Sept. 23/26, the next Sept. 30/26, the next Oct. 4/26, and the last one Oct. 8/26. I shall read these letters.

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—continued.

Q. Now do you know, and I want only to get your own knowledge about this, at what point the power was cut off? A. No, I don't.

Q. Do you know, of your own knowledge, whether the wires from the Hydro main line still continued over to your building? A. Yes, they did.

Q. The wires were not removed? A. No, the wires were not removed at that time.

HIS LORDSHIP: That is, the wires from the main line. A. The wires from the main line.

Q. What distance was that? A. I don't know the exact distance, because I don't know where they left the main line, but they came in from the south.

MR. ROBERTSON: I will get that from another witness who knows more accurately. What was done on your property in so far as the plant itself was concerned, following upon this disconnection of the power? A. There were certain buildings of the plant which were in a dilapidated state of repair, and which would have to be replaced before we could continue operations, and those buildings were taken down.

Q. What was the character of the buildings, what were they made of?

A. They were constructed of 2 x 4's and covered with sheet-iron, and roofed with paper-roofing.

Q. Had you other buildings? A. We have other buildings.

Q. Constructed of what? A. Constructed of brick, and extended metal lath covered with cement.

Q. Were any buildings of that class removed? A. No.

Q. Was anything done with any machinery? A. Yes, the machinery which was obsolete.

Q. Now tell us, first of all, what the machinery was used for, what class of machinery was it? A. Machinery used for the grinding of the ore, and some blast furnaces, of which there is a later design which is more economical to operate, and those were taken apart and sold for scrap.

Q. What about your electrical machinery? A. The electrical machinery was left intact.

HIS LORDSHIP: Certain new plant was installed, was it? A. No, no new plant was installed.

Q. The old plant was scrapped? A. Yes.

MR. ROBERTSON: Certain part of the plant, and grinding machinery, and some furnaces were scrapped.

HIS LORDSHIP: I understand.

MR. ROBERTSON: The witness says the electrical plant remained there intact. Is it there still? A. Yes, it is there still.

Q. Was there much electrical plant? A. About 800 horsepower.

Q. Were there transformers? A. Transformers, motors, and generators.

Q. Capable to using up to 800 horsepower? A. Yes.

Q. Has any money been spent on the electrical plant since October? 1926

A. Yes, certain damage was done by people breaking into our transformer house, motor house, and refinery, and we have repaired the damage done by those parties.

Q. Does it run into any substantial amount of money? A. It cost us about $600.

HIS LORDSHIP: I suppose it was thieves looking for parts? A. Yes.

MR. ROBERTSON: As to the place of delivery of the power referred to in the contract, that is, the outside wall of the transformer house, what do you say as to that, is that wall still there? A. It is still there.

Q. The transformer house is still there? A. Yes, the transformer house is still there.

Q. As to payment for power, what happened after 1926?

A. We were billed for,—the Hydro-Electric Power Commission continued to bill us for power.

Q. Have you one of the bills there, during this period? A. Yes.

Q. After the disconnection in 1926 or 1927? You hand me an account. Perhaps we can get one that is not quite so near the time of trouble. Have you one of 1926-27? A. Here is one of 1927.

Q. You hand me an account of August 5th, 1927, from the Hydro-Electric Power Commission to the Coniagas Reduction Company for 150 horsepower amounting to the sum of $206.25, and with that account is the cheque given in payment? A. Yes.

EXHIBIT No. 8 { Filed by Plaintiff } Account dated Aug. 5/27 for $206.25, and cheque dated July 31st, 1927.

Q. Perhaps, without going through a lot of them, during this period from October, 1926 until you got certain instructions in May of 1928, were the accounts rendered monthly just in this form? A. Yes, sir.

Q. And of the same amount? A. Yes.

Q. And all duly paid? A. And all duly paid.

Q. By cheque, in the usual way? A. Yes.

Q. This is a letter your company received from Mr. Pope the secretary of the Hydro-Electric Power Commission? A. Yes.

Q. It is a letter dated May 14th, 1928, and reads as follows:—(reads letter). *See page 127.*

EXHIBIT No. 9: Letter dated May 14th, 1928.

Q. Do you know anything of the actual date of the receipt of the letter?

A. I put that stamp on it, May 16/28.

Q. And that indicates? A. That indicates it was received on that date.

Q. As to the payment for power have you got any account?

A. At the end of the month.

Q. For the month of May or any part of it? A. We didn't receive any account immediately, but at the end of the month, we tendered our cheque for $206.25, in the usual way.

Q. Have you the cheque? A. Yes.

Q. Cheque dated May 31st, 1928, for the same sum, $206.25, for power

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—*continued.*

for the month of May, 1928. That cheque apparently was cashed?

A. Yes, that cheque was cashed.

EXHIBIT No. 10 { Filed by Plaintiff } Cheque dated May 31/28 for $206.25.

Q. Then did you get an account at that time, or near that time, for that month, or did you get any letter about it at that time? A. I don't remember the exact date, I think it was about two months later, we received the account.

Q. What did you do for the month of June? A. We again tendered a cheque for $206.25.

Q. Have you got that cheque? A. It is here somewhere, I haven't it right here.

Q. Can you get it? A. Yes.

Q. This is your cheque for the June account, for the same amount dated June 30/28, power for June, 1928, you say that cheque was?

A. That cheque was tendered and returned to us.

Q. We will come, later, to the letter returning it. This is the cheque referred to in a letter of a later date returning certain cheques? A. Yes.

Q. Which has "cancelled" written on it? A. That is just a matter of bookkeeping.

EXHIBIT No. 11 { Filed by Plaintiff } Cheque dated June 30th, 1928, for $206.25.

Q. That was put on after it came back, the word "cancelled"? A. Yes.

Q. Were other cheques issued? A. There were several cheques tendered.

HIS LORDSHIP: With the same fate? A. Yes.

MR. ROBERTSON: They are on record, but not the letter which sent them back, they were tendered as late as February, 1929? A. Yes.

Q. In the same way? A. In the same way.

Q. What is the date of the last cheque? A. The date of the last cheque is 28th February, 1929. They were tendered up until we received a letter stating it was not necessary to tender them any further, that the tender would not be disputed.

Q. Certain correspondence occurred beginning with July 6th, 1928; these letters passed? A. Yes.

Q. These letters again, in a number of instances, are only copies. The letters are dated July 6th, 1928, from the Power Commission to the Reduction Company. July, 24th, 1928, from the same to the same. July 28th, 1928, is the next letter, from the Reduction Company to the Commission. And letter of September 19th, 1928, from Mr. Lucas to the Reduction Company.

EXHIBIT No. 12 { Filed by Plaintiff } Correspondence above enumerated.

The letter of July 6th, reads as follows:

"July 6th, 1928.

The Coniagas Reduction Co., Ltd.,
St. Catharines, Ont.

Att'n. Mr. C. S. Kennedy, Sec'y.

Dear Sirs:—

I am instructed to advise you that the Commission will apply the proceeds of your cheque in the sum of $206.25 in settlement of its power bill rendered to you in the sum of $113.10, as per receipted account enclosed herewith. The balance of the cheque, $93.15 is placed to the credit of your company against future power accounts.

Yours truly,
Secretary."

HIS LORDSHIP: I suppose the first part of the letter refers to a fraction they had consumed?

MR. ROBERTSON: I put in the account referred to in that letter, dated June 7th, 1928, for power used during the month of May, 1928, from May 1st to May 17th, inclusive, at the rate of $16.50 per annum, amounting to $113.10. That is receipted on July 7th, 1928.

EXHIBIT No. 13 { Filed by Plaintiff } Account dated June, 1928. $113.10.

HIS LORDSHIP: Was there a former account? A. No.

MR. ROBERTSON: I did not refer to the bill for the part of the month.

The next letter is dated July 24th, 1928, again from the Commission to the Reduction Company, and it reads as follows:

"July 24, 1928.

The Coniagas Reduction Company,
St. Catharines, Ontario.

Att'n. Mr. C. S. Kennedy, Sec'y.

Dear Sirs:

The Commission at its meeting on July 11, 1928, approved of supplying power to your company for a period of five years, commencing on the 18th day of May, 1928, at a rate of $25.00 per horsepower per annum; the maximum amount of power to be supplied, approximately 250 horsepower, and the voltage 12,000 volts.

It will be necessary for your company to supply a bond satisfactory to the Commission for an amount of $1,500.00.

Instructions are being issued to the Accounting Department of the Commission to bill our company with any power supplied since May 18, 1928, at the rate of $25.00 per horsepower per year, and, if satisfactory

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—*continued.*

to your officials, an agreement will be prepared on the basis set out herein and forwarded for signature.

We shall be pleased to hear from you in connection with this matter.

Yours truly,
Secretary."

HIS LORDSHIP: Is there anything said in that letter about minimum?

MR. ROBERTSON: No, there is about maximum, "The maximum amount of power to be supplied, approximately 250 horsepower." The next letter is July 28, 1928, as follows:

"July 28, 1928.

Hydro-Electric Power Commission of Ontario,
Toronto, Ontario.
Attention W. W. Pope

Dear Sir:

Re your letter of the 24th received, you must be aware that we have issued a writ claiming that you are not entitled to discontinue the contract which we claim is in force. We, therefore, dispute your right to make the charge you suggest.

Very truly yours,
THE CONIAGAS REDUCTION COMPANY, LIMITED"

Action was commenced on June 30th, 1928.

The next letter is a letter written by Mr. Lucas to the Reduction Company, as follows:—(reads). *See page 133.*

Q. Then do you, as Secretary of the company, attend Directors' meetings? A. I do.

Q. Has there been any determination at any meeting of directors of the Coniagas Reduction Company to permanently give up their operations at Coniagas? A. There has not been any such decision.

Plaintiff's Evidence. No. 9. Cecil S. Kennedy, Cross-Examination 26th May, 1931.

CROSS-EXAMINED by MR. TILLEY.

Q. Mr. Kennedy, you live in St. Catharines, do you? A. Not at the present time.

Q. Where do you live? A. Toronto.

Q. How long have you been living there? A. About two weeks.

Q. What change does that indicate? A. It indicates I have moved over to Toronto to continue to carry on the work in connection with Coniagas Mines.

Q. Has the office been moved there? A. No.

Q. Did you know that Mr. Mackan was examined for discovery?

A. I did.

Q. Who is Mr. Mackan? A. He was Secretary-Treasurer of Coniagas

Mines, Limited, and the Coniagas Reduction Company, Limited, from their inception until May 1st, 1927.

Q. When you became Secretary? A. Yes.

Q. I think he was tendered as the man who knew about the earlier matters connected with the company, do you remember that? A. I don't remember whether he was tendered as that or not.

Q. Were you at the examination? A. I was not.

Q. Did you know he was to be examined in place of you? A. I knew he was being examined.

Q. Do you know that in the course of the examination he was asked for a great deal of information that he was to get? A. Yes.

Q. Information that he promised to supply, you knew that? A. Yes.

Q. Did you get it out for him? A. I got out certain information which was available.

Q. He promised to give information which was not available, at that time. Where is he now? A. I don't know.

Q. When did you last see him? A. Oh, perhaps a month ago.

Q. Did you get out the balance sheets of the Coniagas Reduction Company for him? A. I did.

Q. Have you got them here? A. I have some of them here.

Q. Will you let me see them (produced). What years are those?

A. 1922 to 1930 inclusive.

Q. Have you the Profit and Loss statement there? A. They are in the reports.

Q. Have you a statement showing how much of the business of the company was carried on with Coniagas Mines, and how much was carried on with outside customers? A. I have not.

Q. Is that information available? A. It might be gotten out with a great deal of work.

Q. Was that part of the information you understood Mr. Mackan was to get? A. He was asked for that information.

Q. Do you put that in the category of information not available?

A. As I told Mr. Robertson, it would take perhaps three months to get out the information, and he said he did not want anybody to spend that length of time getting information out.

Q. Can you tell me approximately the way it was divided as between the Coniagas Mines and other customers? A. I could not.

Q. Half and half, would that be about fair? A. I would not care to say because I do not know definitely.

Q. Cannot you say if it is a fair estimate? A. No, I cannot.

Q. You say that nothing has been done by way of a definite decision to stop work; have you anything in your minutes at all about stopping work, closing the plant? A. Yes, there is a minute regarding that.

Q. When was that? A. In August, 1927.

Q. Will you let us see it? A. Yes.

Q. May I just see it? A. That is the item right there. At a meeting of the directors held at the office in St. Catharines on August 5th, 1927.

There were present Mr. Bishop, Mr. Collier, and Mr. Peek.

Q. They were three directors of the company? A. Yes, sir.

Q. There were how many directors in all? A. Five.

Q. The other two being? A. Colonel Leonard and Mr. Longwell.

Q. That is the item? A. That is the item.

Q. It reads in this way—who was the Vice-President?

A. Colonel Bishop.

Q. The Vice-President asked to be given authority to close the company's plant at Thorold, and to sell for scrap all the machinery, except motors and transformers.

It was moved by Mr. Collier, seconded by Mr. Peek, that the Vice-President be authorized to close the plant and scrap all machinery except motors and transformers.—*Carried.*

Is that the only item? A. Yes, that is the only item.

Q. Look at the one just before it and tell me whether that touches on the same thing? A. That has nothing whatever to do with it.

Q. That is the only entry at that meeting, or any other meeting?

A. There is reference, at a later meeting, that certain work was carried out.

Q. Let us have it all, will you?

At a meeting of the directors held on 12th September, 1927, the Vice-President reported that the machinery, with the exception of motors and transformers, at the company's plant, had been sold for scrap; that the plant would be locked up as from October 1st. And that T. J. Garner had been notified that the firm would not have employment for him after that date.

Moved by Mr. Peek, seconded by Mr. Longwell, that a bonus of $1,500.00 be paid to Mr. Garner as a token of appreciation of his long and faithful services.

What was Mr. Garner's position? A. Accountant.

Q. Have we now got the last entry? A. Yes.

Q. Well then you say, in these later meetings there is nothing at all?

A. No, nothing further regarding the closing down of the plant.

Q. Now have you anything there in the minute book relating to the attempt to work out a new process that had occurred prior to this company closing down, and that had been a failure? A. I have certain minutes regarding a new process which was tried out.

Q. Let us have it, will you?

MR. ROBERTSON: The witness is not acquiescing in the suggestion that it was a failure.

MR. TILLEY: I do not ask him to acquiesce in that, at least, I will put it to him directly, if I want to put it to him. My friend says that you are not acquiescing in my suggestion that the attempt was a failure.

A. No, I am not.

Q. If I ask you plainly, you will admit it was a failure?

A. No, I would not.

Q. Do you suggest that matters went very far in that direction? I think Mr. Mackan did suggest it?

A. I don't know what he did, I certainly would not make any statement to that effect.

Q. Why? A. Because I don't believe it was a failure.

Q. Why? A. Well, the process might have been made to work.

Q. It had not been made to work, and you closed down? A. Certain things had been made to work, yes.

Q. Some things had been made to work, but not working satisfactorily as a process? A. I would not say it had not been working satisfactorily.

Q. Do you know whether it was or not? A. I am not sufficiently a technical man to know that.

Q. I think there was a big loss in connection with it, was there not?

A. I don't know about that.

Q. Don't you know whether there was? You are Secretary-Treasurer?

A. There was no loss to the Coniagas Reduction Company in regard to it.

Q. Because some new company was incorporated, was it not? A. Yes.

Q. And the new company was called what? A. The Coniagas Alkali and Reduction Company, Limited.

Q. And the Reduction Company was a part shareholder in it? A. Yes.

Q. And who else was a partner? A. The Niagara Alkali Company and The Electro Gas Bleaching Company.

Q. You have entries in your books relating to those matters. A. Yes.

Q. You will get that information for me? A. Yes, if it can be gotten out.

Q. That company was started up about what time? A. In 1922.

Q. Did you have to put in a new plant for that process? A. We didn't put in any new plant.

Q. This company did? A. This company, I understand, put in a new plant.

Q. The company put in a new plant. While it may not have been disastrous to the Reduction Company, it was disastrous to the company that put it in, it was a big loss? A. I have not been in charge of their books at all, and I am not in a position to say whether it was or not.

Q. Was a lease of the property given to that new company? A. Yes.

Q. From what year did this new company take over the operations of the plant? A. From some time in the spring, or middle of the summer of 1922 until the spring of 1923.

Q. Then what happened? A. Then the materials on hand were turned over to the Coniagas Reduction Company, and worked up and marketed under their process.

Q. Under the new process? A. No, under the old process.

Q. Let us get that straightened out, now. The Coniagas Reduction Company had a process which they had operated, and which we will describe as the old process? A. Yes.

Q. And it continued to operate under that process until 1922, when they made a new arrangement with the company that was incorporated, and in which they took an interest, with others who were promoting the new process?

A. Yes.

In the Supreme Court of Ontario.

Plaintiff's Evidence.

No. 9.

Cecil S. Kennedy, Cross-Examination 26th May, 1931.

—continued.

Q. And the arrangement then made was that the newly incorporated company should take over this property, by a lease, and operate the new process? A. Yes.

Q. Have you got that document? A. I haven't it here, no.

Q. Can you get it? These are things we asked Mr. Mackan about?

A. I think I can get it, I am not certain.

Q. Mr. Mackan was a witness at the last trial? A. I believe so.

Q. Now, speaking from memory, you will have to check it later, how long do you say that lease continued after it was made?

A. I don't remember.

Q. It started in 1922 and came to an end in 1923? A. Yes.

Q. Due to what? A. Well, I don't know, I haven't seen the minutes of the Coniagas Alkali and Reduction Company.

Q. You have the minutes of the Coniagas Reduction Company?

A. Yes.

Q. You are the Secretary-Treasurer of that company? A. For some reason, which I don't know, they were not willing to carry on.

Q. The Coniagas Alkali Company, or the Coniagas Reduction Company?

A. The Coniagas Alkali Company.

Q. Were not willing to carry on? A. No.

Q. My friend Mr. Robertson hands me an agreement, which I will put in as Exhibit No. 14.

HIS LORDSHIP: What is the date of it?

MR. TILLEY: It is an agreement dated 7th April, 1924. I notice it was originally dated in February, 1924. It is between Coniagas Alkali and Reduction Company, Limited, of the one part, and The Coniagas Reduction Company, Limited, of the other part.

EXHIBIT No. 14	Filed by Defendant	Agreement dated April 7, 1924, between Coniagas Alkali and Reduction Co. and Coniagas Reduction Co.

Q. Have you the agreement referred to here?

MR. ROBERTSON: No, I haven't seen it.

MR. TILLEY: Mr. Kennedy, you were, of course, Secretary, or Assistant Secretary at that date? A. What date is that?

Q. About April or May? A. No, I was not in April.

Q. You became Secretary the first of May? A. Yes.

Q. When you came to the position of Assistant Secretary, in 1924, I ask you whether the plant was not then in the process of being cleaned up and closed down, in 1924? A. It was in the process of being cleaned up.

Q. Now then,—

HIS LORDSHIP: You came in at that time? A. May 1st, 1924.

Q. As what? A. Assistant Secretary.

MR. TILLEY: Now, I think Mr. Mackan suggested that commenced in February, 1924? A. I think that would be about the date.

Q. I notice that this document has had the date changed from February to April; it probably was not completed as soon as was expected, that is, the execution of the agreement. Do you find anything in your minutes about this document, Exhibit No. 14? A. I believe there is something relating to it.

Q. If you cannot find it just now, I will go on and let you get it with the other things you are going to get for me? A. It is here.

Q. Under what date, Mr. Kennedy? A. The 7th day of April, 1924.

Q. Will you tell me who were present, and will you read what they did?

A. There were present: Col. R. W. Leonard, A. Longwell, A. L. Bishop, H. H. Collier, R. L. Peek.

"The President reported that the Coniagas Alkali & Reduction Company, Limited, which had been operating the smelter at Thorold under lease, had not been successful in the treatment of silver-cobalt ores under its patents, and that an agreement had been entered into by which the Coniagas Reduction Company would take over the management of the plant for the Alkali Company in order to complete the treatment of the ores on hand and market the products thereof; that this operation had now been completed and the smelter closed down on account of insufficient ore supply not permitting of profitable operation of the plant. He further stated that an agreement had been entered into with the Deloro Smelting & Refining Company, Limited, dated February 5th, 1924, by the Coniagas Mines, Ltd., and the Coniagas Reduction Company, Limited, by which the Deloro Company would undertake the treatment of the ores of the Coniagas Mines, Limited, and the marketing of the finished products on satisfactory terms.

Moved by Mr. Longwell, seconded by Mr. Peek, that the action of the directors in respect to the operation and closing down of the smelter and in entering into the said agreement with the Deloro Smelting & Refining Co. Ltd., be approved.—*Carried.*"

Q. Now, Mr. Kennedy, just let me ask you one or two questions on that. Have you come across anything in the company's records that would indicate that the Ontario Power Company or the Hydro or whatever company was supplying power at the time, had any knowledge or advice that the power was being used by this Alkali Company in carrying on operations, from 1922 to 1924? A. Yes.

Q. What? A. Cheques in payment of power accounts, which were marked "The Coniagas Reduction Co. Limited, operating Coniagas Alkali."

Q. Let me see those cheques? A. I haven't got them here.

Q. Can you get them? A. Yes, they can be got.

MR. ROBERTSON: I do not know whether he has them here or not.

MR. TILLEY: Where are they? A. In our office.

Q. Here (St. Catharines)? A. Yes.

Q. We will get them, and they will save some discussion. Was Mr. Mackan the Secretary while you were the Assistant Secretary? A. Yes.

Q. And as we see it now, the closing down was because the ore supply was not sufficient? A. From that minute it would seem that is the case.

In the Supreme Court of Ontario.

Plaintiff's Evidence.

No. 9.

Cecil S. Kennedy, Cross-Examination 26th May, 1931.

—continued.

Q. It was the concentrating mill, was it not, which burnt down?
A. Yes.
Q. Of the Coniagas? A. Yes.
Q. You told us that was burnt down in 1926? A. No, 30th May, 1924.
HIS LORDSHIP: That was the mill at? A. Cobalt.
MR. TILLEY: Now will it be right to take this as being the fact; that you have nothing in the minutes, and nothing has happened that you know of, after the company made the alterations in 1924, when the plant closed down for lack of ore, and everything was sold, at a later date, except the electrical machinery?
A. Well, things have been done since.
Q. What? A. In an endeavour to get a new supply of ore, operations have been carried on continuously.
Q. When did you commence that? A. We commenced that years and years ago.
Q. You are a young man, do not talk that way?
A. My knowledge does not extend back to say just definitely when it did start, but I know it has been carried on for a great many years.
HIS LORDSHIP: What has been carried on? A. Prospecting and searching for a new mine.
MR. TILLEY: That is, by Coniagas Mines? A. Yes.
Q. You are going back two steps now; first, to find property that the Coniagas Mines could work, and, secondly, the question of whether the ores would be smelted here or at Deloro; isn't that so? A. It would depend on the quantity of ore.
Q. The Coniagas Mines is a mining company? I am not asking you what that company has been doing? A. Yes.
Q. You say that it has been prospecting? A. Yes.
Q. The Deloro smelter is a large smelter? A. I don't know what size the Deloro smelter is.
Q. From February, 1924 to May, 1924, the Coniagas Mines had so little ore, or so poor ore, that it did it at Deloro; would that be a fair way to put it? A. No, I don't think it would be fair to say it was too little or that it was poor ore.
Q. Why go to Deloro? A. The ore was good, and as much in quantity as was ever produced by Coniagas Mines.
Q. Why go to Deloro? A. Simply for the reason there was a contract to send it there.
Q. Have you the contract made with the Deloro Company?
A. I haven't it here.
Q. Was it a long-term contract? A. The contract covered a period of possibly three years, I am not sure of that.
Q. In 1924 a definite bargain was made whereby all the Coniagas ore was to be smelted at Deloro? A. Yes. No, I am wrong, it was not all the Coniagas ore, it was just certain Coniagas ore.
Q. What happened to the rest? A. We had a contract with the Smelting and Refining Company (American), for part of our ore.

Q. How long had that contract to run? A. There is no definite term of the contract.

Q. I want you to be helpful, you know so much more about this than I could possibly know. I want to put this to you plainly; is it not a fact that the ore that theretofore had been sent to the smelter at Thorold was, after February, sent to Deloro? A. Part of it only.

Q. The rest was sent to? A. The American Smelting and Refining Company.

Q. In Sarnia? A. Yes.

Q. Running how long? A. I don't remember, it was not a definite period of the contract, it was simply more in the nature of a schedule whereby they paid certain terms for whatever ores were sent to them.

Q. We can take it that was a definite policy from February 1924 on?

A. No, I don't think it indicates any policy whatever.

Q. It was adopted in 1924, in the month of February? A. The contract was adopted, it was not adopted as a policy though.

Q. Immediately after that contract was made,—I assume it to be after,—because the Alkali Company had not been successful, you took over the property, realized what you could, cleaned up any ore, and sold all the machinery of the plant except the electrical machinery; closed down the plant and discharged the employees. That is the situation, isn't it?

A. I would like to re-state that.

Q. Yes. A. In 1923 we took over the ores and concentrates and residues which were on hand, and had been purchased by the Coniagas Alkali and Reduction Company; we worked on those and brought them to the stage of finished products, and sold them. The lease was not actually surrendered until 1924.

Q. There was a change made in 1923 and 1924, under the direction of Colonel Leonard, who really controlled the whole thing? A. Yes.

Q. The approval of the directors would be a formality?

A. Not necessarily.

Q. How much stock had Colonel Leonard in Coniagas Mines, compared with the rest? A. He had a controlling interest.

Q. And Coniagas Mines substantially owned the Reduction Company?

A. Yes.

Q. I will put it to you again; apparently, at the time of the change in method that was adopted, instead of sending the ores to be smelted or treated, it was decided to close down that plant, and have the work done at a customs mill, the Deloro smelter? A. The plant was closed down as far as any new ore was concerned, and ore was sent to Deloro.

HIS LORDSHIP: We will adjourn now until 2 o'clock.

(Court adjourned at 12.50 p.m., Tuesday, May 26th, 1931, until 2 p.m.)

In the Supreme Court of Ontario.

Plaintiff's Evidence. No. 9. Cecil S. Kennedy, Examination —Discussion as to Evidence. 26th May, 1931.

AFTERNOON SESSION

MR. ROBERTSON: Mr. Kennedy is still hunting for the information.

HIS LORDSHIP: Tell me in the meantime, I have been trying to make out from the evidence just what the issues in this case really are. Do not do it unless you wish to disclose your case, Mr. Tilley.

MR. TILLEY: No, no. The contract was changed into what is called a flat contract, and our submission is that it is a contract for the supply of power. It is not a contract whereby we agree that we will attach our wires, and on payment of a certain amount per month by the other contracting party, that party could have the right to get power from us when he wants it, at any time, from the date of the contract until the end of time.

HIS LORDSHIP: The contract has not been read, is it a contract that is renewable, indefinitely, for a period of five years?

MR. TILLEY: We will have a word to say about that. It runs, according to the terms, until cancelled, and the express right of cancellation is given to the purchaser, not to the supplier. There will be a bit of argument upon that, as to whether it has the real intent and meaning my friend contends.

HIS LORDSHIP: It would be quite a serious matter if the Commission were tied up by a contract that did not result in the use of power at all, and they had to maintain the equipment, and would not enjoy the benefit of the increasing use of power, and that sort of thing.

MR. TILLEY: We submit it is a contract for power to be used in a plant, and when they, in effect, abandoned their plant, and abandoned their undertaking, they cannot say to us, we will leave the wall of the transformer building stand, so there is an outside wall to which you must carry your power. Then say, we will pay you so much a month, and use the power ten or twenty years from now, whenever we like.

We say there must be continued operation of the business, and by that I mean the business is to be operated commercially, I do not mean in and out. On the other hand, it is quite reasonable to expect there will be alterations and improvements of the machinery, and reconstruction, but those are temporary lapses.

I am going to ask your lordship to find there was an abandonment of the business for which the power was purchased.

HIS LORDSHIP: You say that by taking the minimum price, the minimum monthly rental, they cannot—

MR. TILLEY: They cannot keep it going.

HIS LORDSHIP: Cannot keep the contract alive.

MR. TILLEY: That is our submission.

HIS LORDSHIP: The contract does fix the minimum at 150 horsepower.

MR. TILLEY: It fixes the minimum power to be taken. Your Lordship has seen contracts, that are not at all uncommon, whereby there is a sort of standby charge. That is not this contract, it is not put in that form. The intention is they will be using power at all times, and they shall use a minimum of so much, and pay for that minimum whether they use the whole of it or not.

That does not give these people the right to say, we have a contract for all time, and you have to supply electrical power for this plant, or any plant that is acquired, at this price.

CROSS-EXAMINATION of CECIL S. KENNEDY Continued by Mr. Tilley

Q. Have you got the cheques you were going to refer to, so far as you have them? A. I have brought one as a sample.

Q. Mr. Kennedy, here is a bill on the form of the Coniagas Company, I suppose this is a cheque? A. That is a cheque.

Q. I suppose it is a modern form of cheque. I see the item is stated, and it is on paper of the Coniagas Reduction Company, and has this stamp on it, "Operating Coniagas Alkali;" that is just with reference to what you said this morning, but I thought you said the reverse of that?

A. No, that is what I said this morning.

Q. You said, "Coniagas Alkali and Reduction Company operating Coniagas Reduction Company," I think? A. No, I didn't say that.

Q. You have nothing to show other than this, if this shows it, that the Coniagas Reduction Company had merely granted a lease of its plant, and that the business was to be carried on by the Coniagas Alkali Company for its own profit, as lessee? A. I would not say there is nothing to show, I have not searched the records. I did happen to know cheques were issued in that way, and that is why I mentioned it.

Q. This is simply the form in which cheques were issued?

A. At that time the Coniagas Reduction Company was operating the smelter which had been purchased by Coniagas Alkali and Reduction Co.

Q. In August, 1923 it was in that state, was it, had the Coniagas Reduction Company taken over operations?

A. For the most part of 1923, I might say it was for the whole year, for the bulk of the year, it was in that state.

Q. Starting what month? A. I don't remember the exact month, but it would be somewhere around February or March I believe.

Q. Of 1923? A. Yes, sir.

Q. When did the Coniagas Alkali and Reduction Company take its lease? A. In 1922, either the spring or early summer.

Q. Have you got the lease? A. No, I haven't been able to locate that.

Q. We will say, possibly May or June, 1922? A. I think about that time.

Q. About May or June, 1922, and from that time until what time in 1923, shall be say February? A. January or February, I think.

Q. A period of several months, the Alkali Company was in possession under this lease? A. Yes.

Q. How was the rent paid then? A. The rent was paid in cash.

Q. By cheque? A. Yes.

Q. By whose cheque? A. By the Coniagas Alkali and Reduction Company's.

Q. To whom? A. To the Coniagas Reduction Company.

In the Supreme Court of Ontario.

Plaintiff's Evidence. No. 9. Cecil S. Kennedy, Cross-Examination 26th May, 1931.

—*continued.*

Q. Who paid for the power? A. I can't say offhand who paid for the power.

Q. You don't know. You will have to refer back to the records of the Coniagas Reduction Company? A. If they paid it; if paid by the Coniagas Alkali and Reduction Company I wouldn't have any record, I haven't seen their books.

Q. You don't know? A. No.

Q. That cheque is dated August 31st, 1923, and you continued operations until the ore that was about the place was cleaned up? A. Yes.

Q. The Coniagas Reduction Company treated this as "Operating Coniagas Alkali"? A. Yes, sir.

Q. Until the agreement was made in which the Coniagas Alkali surrendered its lease? A. I don't know whether those two have any connection or not.

HIS LORDSHIP: I thought you said that the Coniagas Reduction Company was operating for about two years before it succeeded in cleaning up the ore that was left by the Alkali Company?

A. They were operating for about two years, after they had actually ceased to treat new ore. I cannot say when they started to treat all the ore, but they were operating for about two years cleaning up odds and ends that were left around the plant.

MR. TILLEY: Ending at what period of time? A. Ending in 1926.

Q. At the time the power was disconnected? A. Yes.

Q. Down to the time they disconnected, they were using power in some degree? A. Yes.

Q. Would this be an accurate statement of it; in 1922, possibly in May or June, the Coniagas Alkali and Reduction Company took possession as lessee? A. Yes, that is correct.

Q. This new process was attempted and continued until January or February, 1923? A. Yes, I wouldn't say they attempted, they actually operated.

Q. I will put it this way, attempted to have successful operation?

A. I would say they actually operated.

Q. But not successfully? A. I don't think I would say that at all because in some respects they were successful.

Q. Commercially, it was not successful? A. I have not seen their books, so I can't say definitely what extent that would go to.

Q. In January or February, the Coniagas Reduction Company stepped in and operated as you have described, for the Coniagas Alkali Company, from January or February, 1923 until 1924. A. Yes.

Q. And in 1924, in the month of February, they decided to close up the plant? A. They decided to cease treating fresh ore.

Q. And from that time on until 1926 when the disconnection took place of the power line and the transformer, they were cleaning up; and the disconnecting of the power indicates that they had finished their operations?

A. I don't know that there is any connection really between the finishing of those cleaning up operations, and the disconnection of the power. At

some time in 1926 they finished cleaning up operations, and at a later period they disconnected the power.

Q. You cannot say whether those synchronize? A. I don't know that they synchronize at all.

Q. One more question on that; when the Coniagas Reduction Company took over in January or February, 1923, did they at once revert to their old system? A. Yes.

Q. And continued under their old process until 1926, when they closed down? A. Yes.

Q. Now, in 1926, they asked that the power should be disconnected outside of the transformer station, indicating in their request that there was some reconstruction work to be done; you remember that letter?

A. I remember the letter.

Q. Was there, in fact, any construction work being done, or was it merely tearing down? A. There was no reconstruction work done at that time.

Q. No, there was no reconstruction work done at that time, so we may take it that following upon the letter, there was no reconstruction as the letter indicated there would be? A. The reconstruction work was contemplated for a future date.

Q. When? A. When they would be in a position to reopen the plant.

Q. Still in the future? A. Still in the future.

Q. Even to-day, whatever there is of that kind is still in the future?

A. Yes.

Q. There was no definite intention of reconstructing anything at that time? A. I wouldn't like to answer that; that is a matter for our Board.

Q. We haven't the Board in the witness box; you indicated your view that there was reconstruction sometime in the future; I mean, at that time?

A. I only indicated it has not taken place yet.

Q. None has taken place yet. A. I am not indicating that it was the policy of the Board it should be at such a distant date in the future.

Q. Mr. Kennedy, we have the Minute Book of 1924, showing a definite policy, and that authorizes scrapping of materials; you would not suggest that reconstruction was planned at the time they were scrapping all the material except the machinery connected with the electric power, would you?

A. I don't know that there is any connection between those two at all.

MR. ROBERTSON: They are a year apart.

MR. TILLEY: The Minute Book may have them noted a year apart.

WITNESS: There was no object in keeping obsolete machinery.

MR. TILLEY: Still, most manufacturing plants require some machinery, don't they, new or old? A. They require machinery, yes.

Q. They require more than just machinery connected to the power?

A. If they are operating, they do.

Q. Now you say that the electric transformers, and the apparatus, something of that kind, was kept; will you tell us what there was that was kept?

A. The transformers were kept.

In the Supreme Court of Ontario.

Plaintiff's Evidence.

No. 9.

Cecil S. Kennedy, Cross-Examination 26th May, 1931.

—*continued.*

Q. How many? A. I believe there are four large ones, and three or four small ones.

Q. Do you know where? All in one building? A. In the transformer house.

Q. In the one building? A. Most of them are there, there are several others in other parts of the plant. All the motors were kept.

Q. How many? A. I wouldn't like to say, offhand, just the exact number of motors, probably thirty or forty, and horsepower in excess of 800.

Q. I am not interested in the horsepower. What else was there?

A. Generators, and various switching equipment.

Q. Shall we describe it this way; a plant necessary to develop power was retained, but there has been no plant there since the Minute Book shows it was closed down; with which to use the power? A. Yes, the Gottrell treaters.

Q. What are they? A. They have to do with the process.

Q. There is no manufacturing plant there, is there? A. Yes, there is a manufacturing plant there.

Q. What? A. We have got all our roasting furnaces intact, and dock room.

Q. I suppose the furnaces are part of the building? A. They compose the greatest part of the structure, it is true, but I wouldn't call them part of the building; they are plant.

Q. The buildings have been, to a large extent, actually demolished, haven't they? A. The buildings which were not safe, have been demolished, and that is the reason they were demolished.

Q. Through lack of safety? A. Yes. Yes, we did not care to be faced with an action for public liability, or anything of that kind. And in a process of this kind, there are always a certain amount of acid fumes, and things that eat into the structure. So you would have to take all that into account.

Q. If they had been going on with the process, wouldn't they have torn them down then? A. We were always replacing parts of the plant.

Q. That would not be tearing the buildings down, would it?

A. We might have had to, they were in a bad state of repair.

Q. Do you know— A. No, I don't know.

Q. (continued) what proportion of the buildings were taken down, in the area? A. I would judge about 50 per cent.

Q. What is the size of this plant, how many acres does it cover?

A. Eleven.

Q. There were buildings pretty well over it all, originally?

A. Yes, they were spread about on the eleven acres.

Q. The whole eleven acres was reasonably necessary for the accommodation of the buildings? A. Yes.

Q. You say the transformers were in the transformer house. I suppose those buildings have been just boarded up? A. Yes.

Q. Windows, too? A. Yes.

Q. That is because things were being stolen? A. Yes.

Q. What did you lose? A. We had a number of tools of various kinds stored in the buildings, and those were stolen, to a large extent.

Q. Did you take the tools out afterwards, that were left? A. No, we boarded up the buildings, and had protection in the way of watching, so that—

Q. Did you have a watchman there? A. We have a young man who keeps his eye on the buildings.

Q. What do you pay for a man keeping his eye on the buildings?

A. It is a rather roundabout story; the fact of the matter is that the farm on which this young man resides, is rented to his father by us, and consequently, for a nominal amount, he goes over the plant every night to see if any depredations have taken place; and as soon as anything is noticed we immediately get in touch with the police.

Q. He is going round, to guard against stealing and, to report it quickly to you when that happens? A. Yes.

Q. You carry insurance, do you? A. Yes.

Q. How much insurance have you now on the whole plant?

A. $24,000.

Q. What was the plant worth, originally? A. The highest figure the plant ever reached on our books was $369,400.

Q. Was it covered for that amount? A. I can't say now.

Q. You say that the wire was left, I think you said it was continuous up to the transformer house, but I suppose that disappeared or commenced to disappear? A. I understand it did.

Q. By thieves? A. Yes.

Q. Stolen. That is to say, the defendant company's wires? A. Yes.

Q. That is, they were cut at the transformer house, and the wire was there just at the peril of any person who chose to steal and run away with it?

A. My knowledge of the fact that those wires disappeared is because Mr. Evans called Mr. Collier on the 'phone and reported they had been stolen, and asked if the Hydro could take down the balance of the wires, without prejudice to our position under the contract.

Q. He said yes? A. We gave permission.

Q. They took down what had not been stolen, and took it away?

A. I don't know whether they did or not.

Q. How long ago is that? A. I think in 1929.

Q. So, from 1923, or 1924, the whole situation could be described as one where there was a decision to discontinue the business for the time being, at any rate, wind it up, and clean up everything about the place, take down all the buildings that then, or reasonably soon, might get into a dangerous condition, and leave the rest to await developments? A. The position was one—

Q. Wouldn't that be a fair way to put it? A. No, you have used the words, "wind up," and we never had any intention of winding up the business.

Q. I mean, stop operations? A. Close down for the time being was what was intended to be done.

Q. And that time being perfectly indefinite, a vague length of time?

A. It depended upon developments.

In the Supreme Court of Ontario.

Plaintiff's Evidence. No. 9. Cecil S. Kennedy, Cross-Examination 26th May, 1931.

Q. And it is just as vague to-day as it ever was? A. No.
Q. Do you know, yourself? A. I know it is not as vague now as it was.
Q. Probably that is a condition of mind that applies when the trial is on?
A. No, it isn't.
Q. You were going to tell what else you could find in the Minute Book?
A. Yes.
Q. Have you got that? A. I haven't had an opportunity of looking up the Minutes yet.
Q. Will you do it right away? A. Yes.

—*continued.* EXHIBIT No. 15 { Filed by Defendant } Account from deft. dated Aug. 11, 1923. And cheque dated Aug. 31, 1923 for $174.64.

Plaintiff's Evidence. No. 10. Arthur L. Bishop, Examination 26th May, 1931.

ARTHUR L. BISHOP, sworn. Examined by MR. ROBERTSON:

Q. Col. Bishop, I understand you were, and are, a director of the Coniagas Reduction Company, Limited? A. Yes, sir.
Q. Were you a director from the start?
A. No, I became a director first, in the year 1919, in January.
Q. Were you a shareholder from the beginning? A. Not until January, 1919.
Q. Coniagas Mines, Limited, when did your connection with that company begin? A. In an official capacity?
Q. No, I want your knowledge of matters as far back as you can go?
A. I spent all my summers, during the years 1908 to 1914, either at the Coniagas Mines, or the Coniagas Reduction Company, in varying capacities, from office boy, to Night Superintendent. I spent my holidays from school and college in that way.
Q. Do you know anything, of your own knowledge, of the situation as it existed at the time of the construction of the smelter at Thorold? Do you know who built the smelter? A. Yes, I know who built the smelter.
Q. Who built the smelter? A. It was build by the Clifton Sand, Gravel & Construction Company.
Q. Do you know the signatures to that document? A. The signatures to that document were the president and secretary, originally, both of the Clifton Sand, Gravel & Construction Company, and the Coniagas Reduction Company.
Q. The same officers for each company?
A. Yes, the same officers for each company.
Q. Mr. Leonard was the president of both companies, and who was the secretary? A. J. J. Mackan.
Q. I will put in as Exhibit No. 16, Agreement dated December 15th, 1908, Between The Clifton Sand, Gravel and Construction Company, Limited, and The Coniagas Reduction Company, Limited. It is, in effect, an assign-

ment of the power contract. That document, I show you, is signed by same officials of the Coniagas Reduction Company? A. Yes.

Q. The President, Mr. Leonard; and the Secretary, Mr. Mackan. And?

A. The Falls Power Company.

Q. Do you know those men—Ross and Nichols? A. No, I know nothing about them.

EXHIBIT No. 16 { Filed by Plaintiff } Agreement dated Dec. 15/08. between Clifton Sand, Gravel and Con. Co. and Coniagas Reduction Co.

EXHIBIT No. 17 { Filed by Plaintiff } Agreement dated Nov. 14/09 between Coniagas Reduction Co. and Falls Power Co.

That Agreement is dated November 14th, 1909, between The Coniagas Reduction Company, Limited, and The Falls Power Company, Limited, to grant a right-of-way for the Falls Power Company across the lands of the Reduction Co., for the purpose, apparently, of carrying its wires; for some other purpose, that is, they wanted to go some place else; it is not an agreement for the supply of power between the two companies.

MR. TILLEY: I do not know what is the point of my friend using this agreement, I cannot see what it has to do with my clients.

MR. ROBERTSON: The whole point of it is, it shows that the Falls Power Company had notice, or knowledge, and assented, or acquiesced in the assignment I have just referred to. It has in it a clause referring to the Coniagas Company as being the company having that contract at this time. This is a contract made a year after the assignment to the Reduction Company, and there is a clause in this contract that shows very plainly that the Falls Power Company knew about that assignment.

HIS LORDSHIP: The contract that was assigned by the document of the 15th December, is it the power contract?

MR. ROBERTSON: It is not worth discussing, as to what significance it has; I had the document and thought it would complete the record, so I put it in. If my friend objects, I will not put it in.

MR. TILLEY: Subject to objection.

MR. ROBERTSON: The clause I refer to reads: It is merely saying they desire to build a pole line across the property of the Reduction Company.

HIS LORDSHIP: This shows knowledge by the Falls Power Company.

MR. TILLEY: Who is it assigned by?

MR. ROBERTSON: The Clifton Sand, Gravel & Construction Company to the Reduction Company.

There is this reference to the contract:

"The Power Company agrees forthwith at the request of the Reduction Company to connect the said transmission line with the Company's

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Plaintiff's Evidence. No. 10. Arthur L. Bishop, Examination 26th May, 1931.

—continued.

power plant at its works in the said Township so that it may have an alternative line for the receipt of the electric current which the Power Company supplies it under the contract made between it and The Clifton Sand, Gravel and Construction Company, Limited, bearing date the 8th day of November, 1907, the Reduction Company affording all facilities and right of way for such connecting line, and choosing the location thereof.

The Power Company hereby extends the time for the Reduction Company, as assignee of the said The Clifton Sand, Gravel and Construction Company, Limited, to exercise the option mentioned on page two in the above contract to change the method of payment for power to a flat rate to a period ending at three months from the date hereof."

Q. Coming on to more modern times, Col. Bishop, you became a director in 1919? A. Yes, sir.

Q. You were a director from that time on? A. Yes.

Q. You are familiar with the company we call the Alkali Company?

A. Yes.

Q. It came in at a later date? A. Yes.

Q. Mr. Kennedy says he thinks it was in April, 1922; does that agree with your recollection? A. Yes, that agrees.

Q. The Charter of that company, The Coniagas Alkali and Reduction Company is dated April 24th, 1922? A. Yes.

Q. I am not putting it in, unless my friend desires, I merely refer to it for the date.

Now, some question has been raised by my friend in cross-examination of Mr. Kennedy, as to the payment for power during the period of the Alkali Company, the lessee in occupation of the property of the Reduction Company; do you know anything about that? A. The books of the Coniagas Alkali & Reduction Company—

Q. Just tell us what you know about it.

HIS LORDSHIP: Not what you know from the books, but your personal knowledge.

A. I should explain, my Lord, that the books were kept at Niagara Falls, New York, and payment was made from Niagara Falls, N.Y. An account left in the mail of the Dominion of Canada by officials of the Alkali Company, who were officials of the Niagara Alkali Company, and The Electro Bleaching Gas Company, the principals in this undertaking, would go to Niagara Falls, N.Y., and the accounts were paid from Niagara Falls, N.Y., as I remember, since the books were kept there.

MR. TILLEY: That is argument, apparently.

MR. ROBERTSON: Do you know, from your connection with the Coniagas Reduction Company, which of the two companies paid for the power?

A. The Alkali and Reduction Co. paid for the power.

HIS LORDSHIP: Direct? A. Directly, sir.

Q. Whilst they were operating? A. Yes.

MR. ROBERTSON: Then will you explain, briefly, why the Alkali &

Reduction Company gave over their operation, what happened?

A. In order to do that, and give an intelligent answer, I must ask you, my lord, to bear with me for a moment. The Electro Bleaching Gas Company, the Niagara Alkali Company of Niagara Falls, N.Y., were manufacturers of a liquid chlorid, which perfected the process of the reduction of silver-cobalt ores, in an isolated plant which they had established at their works in Niagara Falls, N.Y. They proposed to the Coniagas Reduction Company, which we will call the Reduction Company, of Canada, a project for the establishment of our chlorin manufacturing plant at Thorold, at the plant of the Reduction Company; the chlorin to be used in the paper industry, in Canada. This would enable the newly formed company to get the liquid chlorin cheaper, to use in the process they proposed to establish in connection with this venture, by which the two companies, the Niagara Alkali, and the Electro Bleaching Gas, undertook to spend one and a half million dollars.

The Coniagas Alkali and Reduction Company arose out of an amalgamation, if you might call it that, which turned in its lease, to the Reduction Company, of the property; and the Reduction Company turned in its assets, and undertook to supply ores and residues from the Cobalt district, for at least two years; that was undertaken by contract.

MR. TILLEY: I should like to have the witness produce the documents that he is giving the contents of.

MR. ROBERTSON: I do not think he is giving the contents, he is telling the effect of the document. A man might say he has a lease for two years, and not give the contents of the lease. However, leave out reference to the documents, unless we have the documents.

MR. TILLEY: I do not think that is quite the way to do it.

MR. ROBERTSON: My friend thinks it is not proper for you to tell the contents of a document that we have not got to produce, now.

A. The process was discontinued.

HIS LORDSHIP: First of all, was it put into operation? A. Yes, it was put into operation.

Q. For some months? A. They operated for a period of eight months, that was by the Alkali Reduction Company; the American principals failed to come through with the financial commitment which they had agreed to do, owing to hard times in the year, the difficulty of raising money for new ventures. So, by common consent, we agreed to revert to status quo, and the Coniagas Reduction Company took back this plant. I think there is documentary evidence for that, Mr. Tilley.

MR. ROBERTSON: We heard something as to that from Mr. Kennedy.

A. The status quo was resumed.

HIS LORDSHIP: That just meant that the Alkali Company operated the plant for eight months? A. Yes.

Q. On the consent, at all events, of the Coniagas Reduction Company.

MR. ROBERTSON: It was turned back because of the failure of someone to put up some money. Was it a patented process. A. Yes, sir.

Q. What do you say as to whether it was a failure or success?

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—continued.

A. The process was not a failure; it was a process that was perfected in their laboratories of the test plant.

Q. It was patented? A. Yes, it was a patented process.

Q. When you took back the plant, what took place with respect to the patents? A. The patents reverted to them.

Q. That was in 1923? A. Yes.

Q. Then what was done? A. The Coniagas Reduction Company, operating as the Coniagas Alkali and Reduction Company carried on to a conclusion, the ores and concentrates which had been contracted for, with silver purchasers in Cobalt, as their part of the bargain, with our American compatriots, by our own process, the fire process, which we knew.

Q. We come to 1924, and we have it in the evidence of Mr. Kennedy that in 1924 certain matters were determined upon as to future operation; will you explain to his lordship why you reached the decision you did in 1924?

A. We came to the decision to discontinue, temporary, operations there, by reason of the loss by fire of our concentrating mill, which constituted a proportion of our raw material. The Cobalt business, if I might speak generally of it, had declined; there were not the purchasers there to supply us with custom ores, and the chemical end of our plant itself had become, during the years of operations, impregnated with the acid of the solutions, so that it was a menace to the workmen employed there. We could not stop, at least we could not repair that without stopping the whole plant. The process was, the ore went through the chemical end, first, so that it was necessary to stop everything, in order to make good those buildings which had become an absolute menace.

Q. What buildings are you now referring to? A. I am referring to the cobalt and nickel buildings.

Q. Are those the buildings Mr. Kennedy has told us were taken down?

A. Yes.

Q. You heard his description of their construction, 2 x 4 scantling, and galvanized iron? A. Yes, that is a fair description. Light, temporary construction, such as is used in any metallurgical works in these latitudes.

Q. You reached that conclusion in 1924, and then you continued what Mr. Kennedy called the cleaning up process, until 1926? A. Yes.

Q. Then let me come to the matter that was taken up in September, of 1926, when a request was made, according to the letters, by your company to the Hydro Commission, with respect to cutting off the current; did you know about that matter? A. Yes, I did know.

Q. What was the purpose? A. Adhering to the Board's decision to temporarily discontinue the operations, and repair these buildings, it was necessary, of course, to disconnect a tremendous number of pipes, pipes 20 and 30 feet long, which you can understand you would find in any chemical process. There were high tension lines, power lines generally over that plant, they were strung fairly liberal throughout the building; and were put at places where I, as an officer of the company, did not care to have men working around doing temporary alterations, or dismantling, because as you can understand, a man could get a length of pipe on his shoulder and, without thinking,

easily come in contact with high tension lines. The request was formulated purely as a safe-guard to our men in that task.

Q. Without reading the letters, had you anything to do with the actual disconnecting of the service, with the final directions, were you in contact with any of the Hydro men? A. Following that letter to the Hydro authorities to disconnect, our men were on the job, and there was not much action, so I telephoned to the Hydro authorities and requested them to press the matter.

MR. TILLEY: Who did you telephone to? A. Your operating department.

Q. Who? A. In Toronto, as I remember, it was to Mr. W. W. Jeffries.

MR. ROBERTSON: You got in touch with them? A. I got in touch with them at University Avenue, and he promised they would do something. So I said to him, since we didn't have our electrical man, who had left us to go across the river, if they didn't do it, would they mind if I got the electrical department of the Ontario Power Company, whom they knew could do it for us, and they were fully conversant with our plant. There the matter ended as far as I was concerned. The power was turned off; who did it, I don't know.

Q. Do you know where the power was turned off? A. No, I have no idea.

Q. There is a letter in, of October 8th, 1926, (part of Exhibit No. 7) from Mr. King, to your company:

> "Complying with your request to our Toronto office and telephone instruction from Major Bishop to the writer you opened the switches on the Coniagas lines where they tap the main J&K lines. This makes the lines dead entering the Coniagas property."

Where is that place? A. I have no idea, except I have heard tell.

MR. TILLEY: I object.

MR. ROBERTSON: You have no idea where their main line is?

A. I know where their main line is. You asked where the point of contact was.

Q. You don't know where the main J & K lines are? A. I could show you on the map.

Q. Where is that with reference to your property; is it a point on your property? A. No, it is a point on the right-of-way carrying their main lines, about 500 feet, I would say, from our transformer house, on our south boundary.

Q. That is, the J & K point is about 500 feet from your transformer house? A. Yes.

Q. There are switches there? A. I believe so.

Q. The letter says that you opened the switches—your company did not do that? A. No.

Q. "You opened the switches on the Coniagas lines where they tap the main J & K lines."

In any event, the power was cut off, that is not disputed? A. No.

Q. You say that point was 500 feet farther away from there?

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—continued.

A. Yes, sir.

Q. And is on the Hydro right-of-way? A. Yes.

Q. That line to your transformer house, did it remain intact at that time? Was the line taken down at that time or not? A. I can't tell you that, except I know there was depredation.

Q. I am not talking about depredations; I say you were carrying on certain operations, for which you desired safety? A. Yes.

Q. That the disconnection was made? A. Yes.

Q. At this very place? A. Yes.

Q. I want to know whether, at this particular time, anything was done with reference to the rest of the line leading into your place, in October, 1926?

A. No, nothing was done.

Q. So far as the line is concerned that ran to the wall, the transformer-house, and continued farther, nothing was done with that at that time?

A. No, nothing.

Q. You wanted to say something about depredations.

A. Yes, depredations took place, which came up from time to time.

HIS LORDSHIP: You say there was only 500 feet of wire? A. Yes.

MR. ROBERTSON: Then what happened, and why? There was depredation, and what happened as a result of that? A. The depredations that took place within our own property, to our own property, were replaced in part; the depredation that took place otherwise, was of no interest to us.

Q. Do you know what happened to the line, in the end? A. It was taken down.

Q. Do you know when? A. I believe there is an exchange of letters. It was taken down by the Hydro themselves, they asked permission to salvage the remainder.

Q. About what time? A. In the year 1928 or 1929.

Q. Had you anything personally to do with the telephone message to Mr. Evans, or with sending the answer to any telephone message dealing with this question of taking down the rest of the line? A. No.

Q. There is no use asking you about this letter.

With reference to the Reduction Company's plant, in 1927, according to the Minute read to us by Mr. Kennedy, there was a direction of the Board that certain plant should be sold as scrap; do you remember that? A. Yes.

Q. What parts of the plant were sold? A. The machinery which had been used by the Alkali Company, which was very quickly depreciating by reason of the arsenic acid they used; the blast furnaces which were going obsolete, and the blowers in connection with it, they were obsolete. The chemical tanks, in the chemical end, were beginning to show a few signs of wear and tear, and it was thought better, in view of the operations contemplated, that new equipment could serve us to better purpose, than repairing the old equipment temporarily, by shutting down for a period.

Q. Had there been any decision reached at any time by your company, or by its Board, that you would not go on again? A. No.

Q. There has not been? A. No.

Q. Has the company substantial assets? A. Yes.

Q. Have you, as a Board, considered, at any time, since 1926, reopening operations? A. We contemplated—

MR. TILLEY: When was this contemplated?

MR. ROBERTSON: My friend is anxious to have the date.

HIS LORDSHIP: Whether it is based on the present tense?

A. It is the present tense, sir.

MR. TILLEY: We are not concerned with what he contemplates.

MR. ROBERTSON: I do not know why it is not as good now as a year ago, if genuine.

HIS LORDSHIP: One year, or more, ago.

WITNESS: It has always been the intention of the Board to continue operations when a property could be acquired by the company, by purchase or acquisition, whereby a supply of ore, peculiar to the buildings and machinery there, could be obtained.

MR. ROBERTSON: That means getting ore with what in it?

A. Ore with silver, cobalt-arsenid.

HIS LORDSHIP: Suitable ore? A. Yes, suitable ore.

MR. ROBERTSON: Yes. A. We have mining parties in the field, from Ungava to Alaska, for the last fifteen years, in an endeavour to get such a product.

Q. Have substantial sums been expended? A. We have expended very substantial sums.

Q. Does that continue? A. Yes, that still continues, by Coniagas Mines, Limited. That is the parent company.

Q. They have been carrying on that sort of operation? A. Yes, and we have now, I may state, a property.

HIS LORDSHIP: You have it in mind to mine the ore and treat it?

A. Yes, my lord.

CROSS-EXAMINED by MR. TILLEY.

Q. You seem to be rather a definite sort of man, Col. Bishop, you say, we have such a property? A. It doesn't require a very bold man to say that.

Q. You are not a bold man, but it would require a very bold man to say that. A. I don't know, Mr. Tilley, that there are more hazards in mining then there are in anything else.

Q. Are you a mining man yourself? A. I have had practical experience in mining.

Q. Prospecting? A. Yes.

Q. Are you qualified as a competent prospector? A. I cannot rank as a graduate of any recognized School of Mines.

Q. Subject to that qualification, the answer is in the affirmative, I gather? A. Yes.

HIS LORDSHIP: You are an amateur prospector? A. Yes.

MR. TILLEY: Where is this property? A. Do I have to answer that, y lord?

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Plaintiff's Evidence. No. 10. Arthur L. Bishop, Cross-Examination 26th May, 1931. —*continued.*

Q. Yes, I am cross-examining you on your statement.

HIS LORDSHIP: Give Mr. Tilley some idea. A. The Blind River district.

MR. TILLEY: What is the size of the property? A. It embraces sixteen claims.

Q. Owned by whom? A. Parties in the district.

Q. Owned by what persons? A. The owners.

Q. Well, who are they? You have undertaken to say the kind of property it is? A. Dr. Cook, a chap by the name of Gauthier, and a widow by the name of Mrs. Wood.

Q. Have you agreed to buy it? A. We have agreed on the terms of an option which is being drawn.

Q. When did you get the terms? A. We have the terms, we started negotiations about a year ago, and we got the term two weeks ago.

Q. From whom? A. From Dr. Cook and his associates.

Q. Have you it in writing? A. Yes.

Q. Have you got it here? A. No, I haven't.

Q. Where is it? A. I can get it, it is at my home.

Q. In St. Catharines? A. Yes, in St. Catharines.

Q. Have you decided to buy? A. We have decided. We have decided to take an option which embraces both examination and purchasing.

Q. If you are satisfied; but you will examine it first. A. We have.

Q. I am not asking what you have done, I say you will examine it first? A. We have examined it.

Q. Before you decided to buy? A. No.

Q. Why didn't you make a contract to buy? A. Because they didn't care to.

Q. They preferred to give an option? A. They preferred to give an option.

Q. Does the owner of the property prefer to give you an option under which you may examine and buy, or not, as you please, rather than sell it to you; is that what you ask the court to accept? A. That is the case.

Q. What is the price? A. $50,000 for a half interest.

Q. Have you examined the property? A. We have, it is on a sliding scale, we pay $6,000 for the first,—we spend $6,000 the first year.

Q. In doing what? A. Work. We then spend the next year $15,000, and $15,000 thereafter for two more years.

Q. That will be four years? A. Three years at $15,000 is $45,000, plus $6,000, makes $51,000.

Q. Within a period of four years? A. Yes, within a period of four years.

Q. And then what? A. We have the right then to acquire the whole of it for an additional $50,000 cash. That is, as I remember, the terms of the option.

Q. If you decided to buy, and you are not bound to buy? A. No.

Q. You say the owner prefers to make that deal with you rather than make a definite agreement now that you are to buy and pay $50,000 at the

end of a certain time; is that what you ask the court to accept? A. I may have misled you there for the moment.

Q. If you speak positively and quickly, you are apt to mislead people.

A. Those negotiations were carried on by the general manager.

Q. Who? A. Mr. Reid.

Q. Did you carry it on at all? A. No, the proposition came into my hands last week.

Q. Is that the first you had seen of it? A. Yes.

Q. The first you knew of the transaction? A. No, he has been endeavouring to get terms favourable to us as I understand, for a period of from six to eight months.

Q. I am going to ask you again, do you suggest that the owner would prefer to give an option rather than make a bargain with you now?

A. No, I admit—

Q. You withdraw that? A. I would like to withdraw it, they would naturally prefer to get cash.

Q. Do you want me to argue these things with you, to have you give the facts? Did you acquire any property in the period of years you have been looking for properties? A. No.

Q. How long have you been looking? A. We have had parties in the field for a period embracing fifteen years.

Q. Searching? A. Yes.

Q. At the expense of the Coniagas Mining Company? A. Yes.

Q. Has the person giving this option yet signed it? A. No.

Q. Has it yet been drawn up in definite form?

A. No, we have the terms of the verbal option.

Q. You have the terms of a verbal option as you understand he is willing to sign it, in the way of an option? A. Yes.

HIS LORDSHIP: That is, the Blind River people? A. Yes, sir.

MR. TILLEY: From the documents produced, I assume that the Clifton Sand and Gravel Company were the same people, so far as those controlling the company are concerned, as the Coniagas Reduction Company back in 1908?

A. The officers were the same.

Q. And the shareholders were substantially the same? A. Yes, sir.

MR. ROBERTSON: The same in The Coniagas Mining Company?

MR. TILLEY: The same in The Coniagas Mining Company. A. Yes.

Q. So The Coniagas Mining Company being one concern and the Clifton Sand and Gravel Company being another concern, it was decided some time before 1908, and before this power contract, to erect a smelter in this district; is that right? A. I don't know, Mr. Tilley.

Q. When was it decided to build the smelter at Thorold?

A. The Minutes will show that, I think it was in 1908, I was not connected with the company at that time.

Q. The power contract obtained for the purpose of this smelter company, was it not? A. I don't know.

Q. You have seen Mr. Mackan's evidence? A. Yes, I have seen Mr. Mackan's evidence.

In the Supreme Court of Ontario.

Plaintiff's Evidence. No. 10. Arthur L. Bishop, Cross-Examination 26th May, 1931.

—continued.

Q. I suppose he would know? A. He should, he was an officer of both companies.

Q. That is what he said? A. Yes.

Q. He is the gentleman who knew about it, for the examination-on-discovery, but we have not the pleasure of his attendance here to-day, do you know why that is? A. I have no idea.

Q. No idea why Mr. Mackan, who was in these negotiations, is not here, although he was produced to us as the man who knew about them, and who was examined, although not now in your employ.

MR. ROBERTSON: My friend should ask the witness.

MR. TILLEY: I am asking the witness if he knows? A. I have no idea.

Q. Anyway, you accept his statement on that? A. If he made the statement, I imagine it is true, he was an officer of both companies at that time.

Q. He made that statement, didn't he? A. Yes.

Q. And the Coniagas Reduction Company was being formed to build a common smelter, to carry on smelting operations, separate from the Mining Company or the Sand and Gravel Company? A. Yes, sir.

Q. That was the plan? A. Yes.

Q. And the plan was to have the power contract transferred to whatever company did that? A. Yes.

Q. Then we have the agreement of the 15th December, 1908, transferring to the Coniagas Reduction Company, when it was formed, the contract of the 8th November, 1907? A. Yes.

Q. You were asked about events in 1926, I think you said the high-power or certain wires, ran through the plant, carrying power so strong there was an element of danger to the men working in the plant? A. To anyone carrying a long metal pipe on his shoulder.

Q. That is, in working around the place? A. Yes.

Q. I did not quite understand what connection there was between that and tearing down the building; there would not be any danger to the men there, would there? A. I would consider so.

Q. Do you know? A. I would not undertake to wreck any buildings where metal pipes are being taken apart without cutting off all high-power connections in its vicinity.

Q. Could not you cut that off yourself? Could you not cut off the power, when you wanted the new plant? A. Yes, we could.

Q. So that there would be no power running through the plant at all?

A. Through our transformer, we could, yes.

Q. Why not cut it off there? A. Because we contemplated the whole operation such a one as we desired the vendors to have the responsibility of it.

Q. Why? A. Well, I don't know, one has rather a fear of those things.

Q. You were going to tear down and close up, to a large extent, or to such an extent you wanted the Hydro off, you wanted them to shut off the Hydro? A. Yes.

Q. That is so, is it not? A. That is true.

Q. You wanted the Hydro to absolutely disconnect the power because you had no further use for it at that time? A. Temporarily.

Q. You use the word "temporarily." We can go on discussing it, but you will always use the word "temporarily" if you think of it. You had no intention of constructing anything at that time? A. We had the intention of replacing the chemical end which had deteriorated very greatly on account of the acid solution, which had thoroughly impregnated all parts of it. You can understand.

Q. I did not ask you that. I asked you whether you were going to replace them at that time? A. No.

Q. I want to try to distinguish between your intention at that time, and the work you were going to do at that time; you were not going to do, in point of fact, any work at that time by way of reconstruction? A. No.

Q. What work you were going to do was demolition? A. Yes.

Q. You did not intend to construct anything until some indefinite later date when you might want to start work again? A. Yes.

HIS LORDSHIP: When you might find a body of ore? A. Yes.

MR. TILLEY: Not only when you might find a body of ore, but such a body of ore as you would want to treat at that plant? A. Yes.

Q. Because the Coniagas Company decided to have its ore treated at the Deloro smelter? A. Yes.

Q. Did you see the letter that was written asking that the disconnection be made? A. I don't know if I saw it, I can't remember whether I saw it or not.

Q. Now the letter of September 16th, 1926, reads this way:

> "We have under consideration the reconstruction of our works at Thorold, and for that purpose desire to have your transmission wires disconnected from our transformers."

Do you think that was a frank statement? A. Yes, we contemplated replacing.

Q. Would you infer from this letter that the object of the writer was to have a disconnection made so the reconstruction could then take place?

A. I would say yes, to that.

Q. Was that what was planned on, reconstruction, when the disconnection was made? A. The first step would be to demolish.

Q. I am not asking about the steps, I think you told us you did not intend to reconstruct anything until such later date, as you wanted to use the plant? A. Quite so.

Q. Do you think that was a frank statement to make to the Hydro?

A. I would think so.

Q. Let us see what construction the Hydro put upon it:

> "This will acknowledge receipt of your letter of Sept. 16th in which you request that certain pole lines of the Commission be moved to permit of construction work at your plant."

Do you think the Hydro had a proper idea of what you planned and wanted,

In the Supreme Court of Ontario.

Plaintiff's Evidence. No. 10. Arthur L. Bishop, Cross-Examination 26th May, 1931.

—continued.

when that letter was written? A. They could only take it from the previous letter.

Q. You say that is not a fair deduction for them to draw from the previous letter? A. Quite right.

Q. They were quite deceived in drawing that conclusion? A. Yes.

Q. That conclusion would be wrong, because you did not want this done to permit construction work, but wanted it done as part of the demolition necessary to be done, and until such time as you wanted to use it again; that is so, isn't it? A. It could be so interpreted.

Q. You knew perfectly well that if you applied to the Hydro to cut this off because you wanted to close down, or demolish a large part of the plant, and ultimately scrap that machinery, the Hydro would say to you that it couldn't be done, didn't you? A. No, we have a contract with them.

Q. You had a contract you thought was valuable just as a contract, didn't you? A. It is of value, certainly.

Q. Did you start in to try to sell the contract at the same time. A. No.

Q. No attempt to sell? A. There was one attempt to sell the plant, made to cotton growers, an option was given, they were to make their calcium arsenid.

Q. I am not asking for details, but the simple fact, whether you attempted to sell the contract? A. Not the contract, the assets of the Coniagas Reduction Company were to be sold; it was not an attempt to sell the contract.

Q. Did you attempt to sell the assets? A. Yes, sir.

Q. Since you closed down, or before you closed down?

A. I can't remember.

Q. What happened to those negotiations? A. They fell through.

Q. How many times did you try to sell? A. That is the only time that I remember we tried to sell.

Q. The only time you remember you tried to sell? A. Yes, sir.

Q. There have been approaches from time to time, and discussions?

A. Yes, discussions, from time to time, to enter into negotiations for sale.

Q. Well, now, at that time of the last trial Mr. Mackan was being examined—

MR. ROBERTSON: I do not know that my friend is quite regular in introducing Mr. Mackan's evidence.

MR. TILLEY: This is his evidence given at the last trial and I want to ask the witness if it is true. You were present at the last trial? A. No, sir.

Q. Is this true;

> "Q. What happened then? A. The works were closed down and we began negotiations then to sell this plant to some people, two or three concerns."

Would that be true? A. I say no, except in the one instance I mentioned. We made no endeavour to sell the plant or the concern.

Q. Mr. Collier asked this question:

"Q. Are there any negotiations now pending with a view to restoring the business? A. Yes, there were negotiations under way to sell."

A. Would you mind telling me what date that is?

Q. The date of this is 11th October, 1928.

MR. ROBERTSON: He says there were negotiations to sell, he does not say there are.

WITNESS: I don't know anything about those negotiations he speaks of.

MR. TILLEY: When did the negotiations to sell start, before or after the closing down? A. After the closing down.

Q. How soon after? A. I can't tell you that, without consulting the Minutes of the company. There are specific statements there empowering the officers of the company to make arrangements. I cannot tell you that. It was April 14th, 1926.

Q. So on April 14th, 1926, authority was given to make a sale? A. Yes.

Q. Now, Colonel Bishop, did this look very much as if the intention was to close down, wind up, and sell, if possible and get rid of the whole thing and stop carrying on the business? It did, didn't it? That is, on reasonable terms? A. Disposition of the assets.

Q. Including land and buildings, and I suppose you would sell the contract along with it? A. That would naturally go.

Q. Were you offering to sell the contract along with it?

A. The contract is essential, it would be.

Q. I am not asking you whether it is or not, just asking if it was part of the assets you were trying to sell at that time? A. Yes.

Q. I suppose you represented that to be a thing of considerable value?

A. It has a value.

Q. It may, or may not.

HIS LORDSHIP: As I understand, what you want now is the privilege of paying up the monthly payment of the past how many years?

A. Four years, my lord.

MR. ROBERTSON: We paid them until 1928, and they waived further payment.

MR. TILLEY: Waived further tender, they just said they might consider it as having been tendered.

Q. Now, Colonel Bishop, you say that you decided to discontinue, and you added "temporarily" and partly because of the fire? A. Yes.

Q. Well, now, Mr. Kennedy told us this morning that the resolution about closing up was on April 7th, 1924; and the fire was not until May 30th, 1924, nearly two months later? A. The supply of ore in the Cobalt camp—

Q. I am talking now about the fire? A. Well, I wouldn't say.

Q. The fire had nothing to do with your closing down, did it?

A. It would look not from that minute.

Q. You spoke very definitely this morning; I am asking you whether you have any recollection that you are going to put against the Minutes?

A. It was known.

Q. That there would be a fire? A. If I might open the book for you.

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—*continued.*

Q. You didn't know there would be a fire? A. No.

Q. The fire was not planned, a temporary fire. At any rate, we will leave the fire out; the fact is that the Cobalt situation was getting into such a condition you could not go on with the smelter? That was the fact?

A. Decreasing ore.

Q. When I say, "Cobalt situation," I mean the situation at Cobalt?

A. Yes.

Q. That was the cause of you stopping? A. Yes.

Q. And that cause has remained until this day, unless you find some other ore? A. Yes.

Q. And what you have told us about that happened only last week, is that right? A. Yes.

Q. The decision with regard to Coniagas Mines itself, you did not erect any other mill for concentrating, did you? A. Cobalt ores, no, we continued to mine and to clean out the mine and ship to Deloro.

Q. When you say "clean out the mine," you mean clean up?

A. Clean up, yes. There was a great deal of ore in stopes, that had been mined.

Q. The Coniagas Mine was cleaned up, when? A. It was finally cleaned up last year. We have leased it to different people, particularly to a man who knew the works better than anybody else, and he continued shipping up to his death, last year.

Q. It had dwindled until it became unsatisfactory? A. Yes.

HIS LORDSHIP: It is definitely through now? A. Yes.

Q. It is an exhausted mine? A. Yes, my lord, it is all flooded.

Plaintiff's Evidence. No. 11. Cecil S. Kennedy, (Recalled) Cross-Examination 26th May, 1931.

CECIL S. KENNEDY, re-called. Cross-examination continued by MR. TILLEY.

Q. Mr. Kennedy have you got the Minutes in such order that you can tell us what entries there are in the Minutes? Can you give them in order of date? A. Yes.

Q. Are you going backward or forward? A. I am going to the front from the 22nd of December, 1921. These are the Minutes of Shareholders' Meeting of the Coniagas Reduction Company, Limited:

> "The president referred to negotiations being carried on with the representatives of the Niagara Alkali Company, and The Electro Bleaching Gas Company, regarding the proposed agreement for carrying on the manufacture of Cobalt and Chlorine products at the Thorold plant, and it was moved by Mr. Longwell, seconded by Mr. Bishop that the president be authorized to continue such negotiation and take such action in the matter as he may deem advisable."

These are the Minutes of the Directors of the Coniagas Reduction Company Limited, April 18th, 1922:

"The president referred to the agreement between the Niagara Alkali Company, the Electro Bleaching Gas Company, and the Coniagas Reduction Company Limited, and called on Mr. Collier to explain the agreement. Mr. Collier stated that the name of "The Coniagas Reduction and Alkali Company Limited" for the proposed new company to be organized under said agreement had been submitted to the Secretary of State for approval, and that objection had been taken by the Department on account of the similiarity to The Coniagas Reduction Company, Limited. The Department had suggested the name "The Coniagas Alkali and Reduction Company Limited." On motion of Mr. Bishop, seconded by Mr. Longwell, Mr. Collier was authorized to agree, on behalf of the Company to the latter name.—CARRIED.

A draft of lease from the Company to The Coniagas Alkali and Reduction Company, Limited was submitted and approved, and on motion of Mr. Longwell, seconded by Mr. Bishop, the proper officers of the Company were authorized to execute the same on behalf of the Company, and attach the Company's seal thereto.—CARRIED.

The following By-law, was, on motion of Mr. Longwell, seconded by Mr. Bishop, approved and duly passed.

BY-LAW No. 10

A By-law to authorize the directors to purchase shares in The Coniagas Alkali and Reduction Company, Limited.

WHEREAS it is deemed advisable to purchase 1,000 shares of the Preferred Stock in the above Company, and also to acquire 12,000 Common shares of no par value therein.

BE IT THEREFORE ENACTED by the Directors of The Coniagas Reduction Company, Limited, and it is hereby ENACTED:

"1. It shall be lawful for the Company to purchase 1,000 shares of the Preferred Stock of The Coniagas Alkali and Reduction Company, Limited, and to pay for the same in materials to be supplied to the said company; and, also to acquire 12,000 shares of the said company's Common Stock of no par value, in connection with the leasing of about 24 acres of the Company's property and plant to that company, and granting to it certain other privileges and trade connections and goodwill, and the proper officers of the company are authorized to subscribe for and acquire the said shares.

2. The Directors are authorized to purchase or acquire such other shares of the said Company, from time to time, as they may deem advisable.

Adopted and passed this 18th day of April, 1922."

A meeting of the Directors held on March 27th, 1923:

"The President read an agreement entered into between the Coniagas Reduction Company, Limited, The Coniagas Alkali & Reduction Co.

In the Supreme Court of Ontario.

Plaintiff's Evidence. No. 11. Cecil S. Kennedy, (Recalled) Cross-Examination 26th May, 1931.

—continued.

Limited, Niagara Alkali Company, and the Electro Bleaching Gas Company, and explained that at an informal meeting of Directors held on the 14th day of February, 1923, the general terms of the agreement had been discussed, whereby the Reduction Company should work up certain materials on hand and dispose of the products in a manner to be agreed on by the respective companies. The agreement was accordingly prepared and executed by the proper officers of the respective companies.

The said agreement, bearing date February 20th, 1923, is now submitted for ratification.

Moved by Mr. Peek, seconded by Mr. Longwell, that the action of the President and Secretary in entering into the said agreement is hereby approved, and the terms and provisions of the said agreement are hereby ratified and confirmed."

The next is a meeting of Directors of the Coniagas Reduction Company, of March 13th, 1924:

"The Secretary read a letter from Mr. Low of the Niagara Alkali Company, in regard to the return of patents to that company covering the chlorine process for the treatment of cobalt ores.

Moved by Mr. Peek, seconded by Mr. A. L. Bishop, that the company take the necessary action, having in view the return of such patents and the cancellation of the lease held by the Coniagas Alkali & Reduction Company, Limited, of the company's property at Thorold.—CARRIED.

Moved by Mr. Longwell, seconded by Mr. Peek, that the agreement, dated February 5th, 1924, between the Coniagas Reduction Company, Limited, the Deloro Smelting & Refining Company, Limited, and the Coniagas Mines Limited, covering the treatment of ores of the Coniagas Mines, Limited, and the marketing of the product thereof, be approved. —CARRIED."

The next is a meeting of Shareholders, on the 7th April, 1924. I think that was copied in this morning.

The next is a Directors' meeting of April 14th, 1926:

"The Vice-President explained that he had made a verbal agreement with B. J. McCormack, of Welland, to pay him 5% commission on the sale of the Thorold property and that Mr. McCormack had just advised him that he had prospective buyers in sight who were willing to pay $120,000.00 for the property, including the electrical equipment thereon, comprised of the motors in store, transformers and sub-station equipment.

Moved by Mr. H. H. Collier, seconded by Mr. R. L. Peek, that the Vice-President and Secretary be authorized to enter into an agreement with Mr. McCormack providing for the sale of the Coniagas Reduction Company's property at Thorold on such terms as they might see fit and they be authorized to pay Mr. McCormack a commission of 5% of the gross price.—CARRIED."

Q. Have you given me all the Minutes that relate to this matter?
A. To the matter of the Coniagas Alkali & Reduction Company, yes.
Q. Or to the power line, the power contract? A. Yes, I have given you all that relate; I am not sure I have, there may be something in the early minutes regarding the transfer of the power contract from the Clifton Sand and Gravel Company to the Coniagas Reduction Company. I do not think there is anything more here.
Q. I am content to let it go at that, subject to, if the witness finds anything he will let us know.

. . . . . .

MR. ROBERTSON: With respect to that matter of Mr. McCormack, in April, 1926, there is a letter in the Minute Book, of April 14th, 1926, from the company to Mr. McCormack? A. Yes.

MR. TILLEY: Something that was not read? A. A copy of letter attached to the Minute:

"St. Catharines, April 14th, 1926.

Colonel B. J. McCormack,
Welland, Ontario.
Dear Sir:—

We hereby authorize you to make a sale of the property of The Coniagas Reduction Company, Limited, situated in the Township of Thorold, in the County of Welland, bordering on the Welland Ship Canal, including the lands and buildings thereon and the following equipment only:

Motors in store, Transformers and Sub-station equipment, together with the benefit of the Power Contract under which the Company has been using electric current supplied by the Hydro-Electric Commission of Ontario, upon the following terms:

The price is to be $120,000.00 payable $25,000 in cash on execution of contract of sale, balance in thirty days without interest. Your clients will be allowed to leave 50% of the purchase money on mortgage on the property for three years, interest at 6% payable half yearly.

If you effect a sale of this property on the above terms and upon agreement of sale being executed, we agree to pay you a commission of 5% on the purchase price.

This offer to remain open for 10 days from this date.

Yours truly,
The Coniagas Reduction Company, Limited."

MR. ROBERTSON: Was that offer renewed? A. No, it was not renewed.
Q. Ten days from April 14th? A. Yes.
Q. You referred in your cross-examination, or examination-in-chief, to some letter from the Hydro Commission, that waived tender of further payment, or cheques? A. Yes.
Q. Is this the letter? A. Yes.

In the Supreme Court of Ontario.

Plaintiff's Evidence.

No. 11.

Cecil S. Kennedy, (Recalled) Re Examination 26th May, 1931.

—continued.

Q. Letter of March 18th, 1929, from Mr. Lucas to the plaintiff company:

"March 18th, 1929.

The Coniagas Reduction Co., Ltd.,
St. Catharines, Ontario.

Re Coniagas vs. Hydro.

Dear Sirs:—

I have your cheque dated February the 28th, 1929, amounting to $206.25 which has been handed to me for attention. I am returning it herewith there being no contract to which it can be applied.

It would appear to me to be unnecessary to continue sending these cheques each month to the Commission. I would be prepared to admit that for the future you will not be in default in not continuing to send cheques and that your failure to do so will not prejudice the rights of the parties in any way. This will save a lot of correspondence and trouble.

Yours truly,

I. B. LUCAS."

EXHIBIT No. 18 { Filed by Plaintiff } Letter dated March 18/29, from deft. to pltf.

Q. You had sent them a monthly cheque until this time?

A. Up until that time, yes.

Q. My learned friend asked you something about insurance on the property? A. Yes.

Q. $24,000 I think you say you carry now. Did the company ever carry high insurance? A. On thinking that over afterwards, I know they didn't.

Q. Do you know how much they have had? A. I believe at a time when the plant was appraised at a value in excess of $500,000, insurance was carried at $190,000.

Q. Is there any other provision the company has about insurance?

A. Of what sort?

Q. Have they any other provision in place of insurance, or in any way affecting the matter of insurance? A. No.

Q. Any reserve? A. Oh, yes, the company has a depreciation reserve.

Q. I suppose every company has that. Is there anything else you know of? A. Yes, they have got cash in reserve sufficient to replace.

Q. Is there anything that particularly relates to insurance? A. No.

HIS LORDSHIP: I understood you to say that the highest insurance was $500,000? A. That was the highest peak value of the property, that was not insurance. It was the highest peak value the property ever reached. But at the same time, it was appraised at a value in excess of $500,000, by the Canadian Appraisal Company.

MR. ROBERTSON: You never had any insurance over that amount?

A. No.

Q. I asked Col. Bishop about this letter, and he didn't know about it.

I will ask you about it; do you know anything about this letter?

A. Yes, I wrote this letter. It was to the Hydro-Electric Power Commission.

Q. I suppose I might put it in.

MR. TILLEY: There was one account put in this morning, number three, I think it was said to be the first account rendered, and for the month of May, 1908. It is only $43.88. I do not want to go to any trouble about it, but I think we agreed at the last trial that the date the power was commenced to be given was the 18th May.

MR. ROBERTSON: I think that is right.

WITNESS: Yes. I understand that account is from the 18th May, to the 31st. I have no way of proving it definitely.

MR. TILLEY: If anything turns upon it; power was commenced to be delivered, or supplied, on the 18th May, 1908.

EXHIBIT No. 19 { Filed by Plaintiff } Letter dated May 27th, 1929, from pltf. to deft.

MR. TILLEY: Would you be good enough to make a copy of the Minutes you have referred to, showing the date of the meeting, those present, and the action taken, just as you read it? A. Yes.

Q. Let us have it complete, so if the reporter has not got it quite right, we will have it accurate from you in the copy? A. Yes.

MR. TILLEY: If your lordship pleases, I should like to make that an exhibit, to have it accurate. You referred to those Minutes this morning, in the evidence? A. Yes.

Q. Make it complete in order of date, shewing the date of the meeting, those present, and what we are concerned with.

EXHIBIT No. 20 { Filed by Defendant } Copies of Minutes.

HENRY G. ACRES, sworn. Examined by MR. ROBERTSON:

Q. Mr. Acres, you are an electrical engineer? A. Consulting hydro-electric engineer.

Q. You have had a great deal of experience in this country, throughout Canada? A. Considerable, yes.

Q. In water power matters? A. Yes.

Q. You are familiar with the situation as to prices, and terms upon which power is ordinarily dealt with in Ontario? A. Fairly general, yes.

Q. You have read the contract in question? A. Yes.

Q. I want to ask you whether, having in mind the present price of power, the terms of this contract as to price, and the other terms, are such as to make a favourable contract to the purchaser?

MR. TILLEY: My lord, I submit we are not concerned with that.

In the Supreme Court of Ontario.

Plaintiff's Evidence. No. 12. Henry G. Acres, Examination 26th May, 1931.

—continued.

HIS LORDSHIP: I should have thought it was fairly evident from the—

MR. TILLEY: Attitude of both parties.

HIS LORDSHIP: And what has gone before.

MR. ROBERTSON: I thought it was material, as shewing the reason why, the declaration we ask for should be made.

HIS LORDSHIP: I suppose one point is, if you do not succeed in locating ore, your contention is that you are free to assign the power contract, as an accessory of your Thorold—

MR. TILLEY: Real estate.

HIS LORDSHIP: Real estate.

MR. ROBERTSON: We might sell our company, we do not sell the assets.

HIS LORDSHIP: If you sell the shares, you do sell the company.

MR. ROBERTSON: Quite so.

MR. TILLEY: That would not change the plaintiff.

MR. ROBERTSON: Somebody else might have use for the power that we, at the moment, have not got.

HIS LORDSHIP: I think I will permit Mr. Acres to say, if he chooses to do so, as to how favourable he thinks this contract is.

MR. ROBERTSON: I did not ask him how favourable, I did not think it was in question for the moment.

Q. Is it a favourable contract?

A. I think the question is already answered.

Q. Your answer is what? A. My answer is, oh, yes, inasmuch as it is a pre-war contract; no question about it being a favourable contract.

MR. ROBERTSON: That is the plaintiff's case, my lord.

MR. TILLEY: I have no evidence I desire to add.

(Argument of counsel.)

During Mr. Robertson's argument Exhibit No. 21 was put in, a letter reading as follows:

"St. Catharines, December 28th, 1909.

Messrs. Falls Power Company, Limited,
Welland, Ontario.
Gentlemen,—

Confirming our agreement on the telephone with Mr. McClary of this a.m. re power supplied to us at Thorold, we will begin to take power on a flat rate basis on January 1st, 1910.

Yours very truly,

Coniagas Reduction Company, Limited."

Certified correct.

A. E. CABELDU.

(Judgment reserved.)

No. 13
Reasons for Judgment of Raney J.

In the Supreme Court of Ontario.

No. 13. Reasons for Judgment of Raney, J., 22nd July, 1931.

S.C.O.

THE CONIAGAS REDUCTION COMPANY LIMITED

v.

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO.

Reasons for Judgment of Raney J. delivered 22nd July 1931.

R. S. Robertson, K.C. and J. G. Schiller for the plaintiff.

W. N. Tilley, K.C. and I. B. Lucas, K.C. and F. C. S. Evans for the defendant.

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(*Action tried at St. Catharines*)

This action is for a declaration that a contract made in November, 1907, between The Falls Power Company, Limited, the predecessors of the defendant commission, and The Clifton Sand, Gravel & Construction Company, Limited, the predecessors of the plaintiff company for the supply of electric power to the company, is a perpetual contract, and that the notice given by the Power Commission to the company on May 14th, 1928, purporting to cancel the contract from and after May 18th, 1928, was invalid and ineffective for that 20 purpose.

The action was tried before Mr. Justice Wright in 1928, and in the judgment which was delivered by him in October of that year, he was of the opinion that the contract was a perpetual one, not terminable by notice on the part of the Power Commission, and he held that in any event the notice given by the Power Commission was invalid, as not having been given within a reasonable time before the date specified in it for the termination of the contract. There was judgment accordingly, and from that judgment the Power Commission appealed. The Appellate Division of this Court allowed the appeal. No written reasons were handed down, but before me counsel 30 agreed that the Appellate court had been of the view that all the evidence material to the issue had not been brought out at the trial. The case was therefore sent back for a new trial, with leave to the parties to amend their pleadings. Upon the trial before me no evidence was adduced which, in my view, changed the material facts as found by Mr. Justice Wright.

The contract was for the delivery of electrical energy at the purchaser's plant at Thorold for a period of five years, and it provided that the agreement should "continue in force for further periods of five years each, unless notice in writing is given by the purchaser to the company at least six months previous to the expiration of any five-year period." It was a term of the 40 contract that it should be binding upon, and inure to the benefit of the successors, lessees and assigns of the respective parties thereto.

In the Supreme Court of Ontario.

No. 13. Reasons for Judgment of Raney, J., 22nd July, 1931.

—continued.

The plaintiff company closed down its works and dismantled a large part of its plant in 1926, and in October of that year the Power Commission, on the request of the company, discontinued the supply of power for an indefinite period; thereafter, and until May, 1928, though no power was supplied during that time, the plaintiff company paid the Power Commission on the minimum basis of 150 electrical horsepower at $16.50 per horsepower per annum. On that date the Power Commission notified the company of the termination of the contract and refused to accept further payments.

The company wishes to pay up the arrears since May, 1928, and to go on paying the Power Commission at the rate of $2475 a year as long as the delivery of power is in abeyance; and the Power Commission refuses to receive the money.

Though, in my view, it has no relevancy to the matters in controversy here, I am satisfied on the evidence before me that the operations of the plaintiff company, as carried on for some years prior to 1926, came to an end in that year, because of the exhaustion of the ore supply from Cobalt; that there is not a reasonable expectation in prospect of a renewal of these operations, and that the plaintiff company desires now to maintain the contract, because of its highly favourable character, and of the added value it will give to its real property at Thorold if it is able to negotiate for the sale of the property and the power contract to the same purchaser. Though I have not seen the evidence on the former trial, I assume that it was to enable the Power Commission to adduce evidence of this character that the case was sent back for a new trial.

Mr. Justice Wright thought the case was governed by Llanelly Railway & Dock Company v. London & North Western Railway Company (1875) 7 Eng. & Ir. Appeals, 550, in which Lord Selborne expressed the view that a contract on its face indefinite and unlimited as to time is *prima facie* perpetual, and that the burden of proving the contrary lies on the party disputing such construction. Lord Selborne thought there were two ways by which the party arguing against perpetuity could discharge that burden—one of the ways being by showing that that construction was inconsistent with the nature of the subject; and the other being by bringing the case within some rule of law applicable to the circumstances.

Although Mr. Justice Wright thought it was difficult to conceive that the parties intended that the contract should be perpetual as against the Power Commission, he could not find in the case, as made before him, either of the conditions mentioned by Lord Selborne. On the contrary he found in the circumstance that there was an express provision for termination of the contract by the Coniagas Company, but none by the Power Commission, evidence of the intention of the parties that the contract should be perpetually binding on the defendant.

I entirely concur in the view of Mr. Justice Wright of the difficulty of the conception that the Power Commission could have intended that it should be bound to supply power at the price named in the contract as long as water flows in the Niagara River, and as long after that as the world shall last, should the world last longer. Indeed, that conception appears to me to be impossible, and I think it could not have been the intention of either party to the contract that it should be binding on one of the parties through all time.

Unless the courts are to justify the cynicism that law, as administered by the Courts, is ignorant of what every intelligent person knows to be true, they will take notice of familiar facts that are fundamental in the other sciences. In economics, for instance, the standard monetary unit in this country is the dollar. The value of the dollar depends upon the value of gold. An abundance of gold sends the value of gold down. As a consequence of discoveries of great gold fields in different parts of the world, including Canada, during the past eighty years, and for other economic reasons the value of gold expressed in terms of say, labour, is now only a fraction of what it was in 1850. Who can say what the value of a gold dollar will be in 100 years,—not to speak of 1,000 years from now.

I was told at the trial that the price of the electrical energy called for by the contract in question has increased 50% since the contract was made,—it is $25.00 per H.P. now as against $16.50 then,—an increase perhaps roughly in the ratio of the decrease during that short time in the value of the gold dollar.

For this and for other reasons which I need not now detail my inclination would be to hold that the construction of the contract for which the plaintiff contends was within the first of the two rules laid down by Lord Selborne, that is to say, that it is inconsistent with the subject matter of the contract.

But the judgment of Mr. Justice Wright was not reversed by the Appellate Division on the ground that he was wrong on the facts in evidence before him. As I understand it, that question was not reached, and my view being, as I have said, that the material facts now in evidence are substantially what they were before Mr. Justice Wright, I ought not, I think, to record a different judgment from that pronounced by him. I do not, therefore, pursue the matter further, and there will be judgment for the plaintiff company as before.

I leave it to the Court of Appeal to deal with the question of costs.

In the Supreme Court of Ontario.

No. 14. Formal Judgment of Raney, J., 22nd July, 1931.

No. 14
Formal Judgment of Raney J.

IN THE SUPREME COURT OF ONTARIO

S.C.O.

THE HONOURABLE MR. JUSTICE RANEY | Wednesday, the twenty-second day of July, A.D. 1931.

BETWEEN:

THE CONIAGAS REDUCTION COMPANY LIMITED
Plaintiff.

—AND—

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
Defendant.

This action having come on for trial on the 26th day of May, A.D. 1931, before this Court at the sittings holden at the City of St. Catharines in the County of Lincoln, for trial of actions without a jury, in the presence of counsel for the plaintiff and for the defendant, upon hearing read the pleadings, and upon hearing the evidence adduced and what was alleged by counsel aforesaid, this Court was pleased to direct that this action should stand over for judgment, and the same coming on this day for judgment.

1. THIS COURT DOTH DECLARE that the notice dated the 14th day of May, A.D. 1928 directed by the defendant to the plaintiff was invalid and ineffectual to terminate the contract dated the 8th day of November, A.D. 1907 and made between The Clifton Sand, Gravel & Construction Company Limited and The Falls Power Company Limited and by them respectively assigned to the plaintiff and the defendant and which contract is referred to in the pleadings filed, AND THIS COURT DOTH ORDER AND ADJUDGE ACCORDINGLY.

2. AND THIS COURT DOTH FURTHER DECLARE that the said Contract is a valid contract binding upon the plaintiff and the defendant respectively upon and subject to the terms thereof and is a perpetual contract subject to be terminated by notice given by the plaintiff to the defendant in accordance with the terms of the said contract, AND THIS COURT DOTH ORDER AND ADJUDGE ACCORDINGLY.

3. AND THIS COURT doth not see fit to make any order as to costs.

Judgment signed this 30th day of November, A.D. 1931.

EDWIN J. LOVELACE,
Local Registrar, S.C.O.

No. 15
Notice of Appeal

In the Supreme Court of Ontario.

No. 15.
Notice of Appeal.
26th August, 1931.

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

THE CONIAGAS REDUCTION COMPANY, LIMITED,
Plaintiff,

—AND—

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
Defendant.

NOTICE OF APPEAL

TAKE NOTICE that the defendant appeals to the Court of Appeal from the judgment pronounced by the Honourable Mr. Justice Raney on the 22nd day of July, 1931 on the following grounds:

1. The learned Judge erred in holding that the contract in question was perpetual.

2. The learned Judge should have held that in the circumstances disclosed in evidence the contract was no longer binding on the defendants.

3. Alternatively the learned Judge should have held that the contract was terminable on reasonable notice and the judgment should so declare.

4. If notice to terminate was necessary the learned Judge should have held that in the circumstances the notice given was valid and effective.

5. The learned Judge erred in adopting the judgment of Mr. Justice Wright.

6. The said judgment is contrary to law, the evidence and the weight of evidence.

DATED at Toronto the 26th day of August, 1931.

I. B. LUCAS,
190 University Avenue, Toronto,
Solicitor for the Defendant.

In the Supreme Court of Ontario.

No. 16. Reasons for Judgment of Court of Appeal for Ontario. 20th April, 1932.

No. 16
Reasons for Judgment of Court of Appeal for Ontario

App. Div.

CONIAGAS REDUCTION CO.

v.

HYDRO-ELECTRIC POWER COMMISSION

Copy of Reasons for Judgment of Court of Appeal (Mulock, C.J.O., Magee, Riddell, Masten, and Orde, JJ.A.), delivered 20th April, 1932.

W. N. Tilley, K.C., and Lucas, K.C. for the appeal.
Robertson, K.C., and J. Schiller, contra.

RIDDELL, J.A.:—An appeal by the defendant from the judgment at the trial of Mr. Justice Raney.

From the position, most sensible, be it said, taken by the parties, we are relieved from considering whether there is any difference between the rights of these parties under the contract from those of the original parties thereto; and also from considering whether this is a proper case for the exercise of the statutory power of making a declaratory judgment. Both parties ask that both be considered as though they were the original parties to the contract; and both desire a declaration of their rights as if they had been such.

Reading the contract as a business document and on business principles, it seems to me clear that:

1. The contract is for a series of periods of five years each, automatically renewing itself for a new period of five years at the termination of any such period, unless the plaintiff gave notice in writing to the defendant at least six months previous to the expiration of the then current period. We need not pass upon the question discussed on the hearing as to the form of such notice, as, admittedly, no notice of any kind was given in fact.

2. The plaintiff is bound to take "electric energy which it may require . . . . . for the operation of its plant." (We need not consider whether the "requiring" is to be objective, and based upon the physical needs of the plant or subjective and based upon the desire of the plaintiff—neither exists at present.)

3. It is recognized and agreed that the contract to deliver cannot be carried out "except when the Purchaser takes the same," and a provision is made for the contingency occurring that the plaintiff does not take the same, showing clearly that the non-acceptance of the energy was not to be a breach of the contract by the plaintiff.

4. In case the plaintiff does not take the energy, it is to pay "the above specified number of firm electric horsepower," that is "one hundred and fifty

firm horsepower" which has been previously mentioned as the amount to be paid for.

That this is the import of the contract as understood by both parties is shown by the conduct of each—the plaintiff not taking electric energy, paid for one hundred and fifty horsepower, the "firm" amount specified; while the defendant for years accepted the payments without dispute. The defendant in its letter of May 14, 1928, states the contract as existing and to exist for some days, notwithstanding the non-acceptance of energy for a long time.

I am wholly unable to see how the defendant, there being no provision to that effect in the contract, can claim to cancel the contract, as it claims to do; and would dismiss the appeal with costs.

I have not thought it necessary to quote cases for the interpretation of this contract; but I have read those cited and others, and can find nothing to call for any other interpretation.

MULOCK, C.J.O.
MASTEN, J.A.
ORDE, J.A. } I agree.

MAGEE, J.A., (*dissenting*):—This appeal by the defendant turns upon the construction of a written agreement made in November, 1907 between the Clifton Sand, Gravel & Construction Co. Ltd., and the Falls Power Co. Ltd., for the supply by the latter and purchase by the former of electrical power at specified premises of the former. Both plaintiff and defendant here take the ground that they have succeeded to the rights and liabilities of the contracting parties and that those depend upon that agreement.

But although they concede this, it is not immaterial to remember who the contracting parties were.

By the agreement the Falls Power Company agreed to supply power at specified rates and the Clifton Company agreed to take a minimum quantity each month and pay for it whether used or not. A variation of the rates and mode of payment at the option of the purchaser was provided for and subsequently came into effect but is immaterial on this appeal. The agreement was to be in force for five years from the supply of power which began on 18th May, 1908, and was then to continue for further periods of five years each unless the purchaser should six months before the expiration of any five-year period give notice that it did not require a renewal.

The power was supplied and paid for throughout the first five year period and a second and a third and a fourth but on 14th May, 1928, the defendant gave notice that after 18th May, 1928, it would not supply any more power under the agreement and it must be considered at an end.

In the Supreme Court of Ontario.

No. 16. Reasons for Judgment of Court of Appeal for Ontario. 20th April, 1932.

—*continued.*

The fact is that although the plaintiff company had been taking and paying for the minimum agreed upon the works had been wholly or partially idle during the latter part of the fourth five years' period and in consequence not taking the supply which both parties evidently expected would be required and paid for, so that during that time the contract was unprofitable for both parties.

The plaintiff brought this action for a declaration that the contract was still in force and for damages and claims that the contract as against the defendants is a perpetual one.

We are relieved from speculating as to the intention of the original parties because we are limited by their writing but it is to me inconceivable that if the Clifton Company had suggested putting in the words "renewable forever" or "perpetually renewable" or even for "one hundred years" or "fifty years" that the Falls Power Company would in 1907 have tied its hands in that way when the other party was only bound for five years. We are relieved from considering any intention of the parties and have however to look only at what they did expressly agree to and that was an original five year period and additional such "periods." By carrying it out for two additional periods not to mention three the Falls Company complied literally with their contract and were not in my opinion bound to enter upon any further period which had not been stipulated for nor agreed to. It is only the writing that we have to construe and that writing has been lived up to. Even if both the parties took a different view of its effect that would not bind the court in construing it: N. E. Ry. Co. v. Ld. Hastings, 1900 A.C. 260. In the Bishop of Bath's case (1606) 6 Co 33, 35 it was said "if a man leases his land for years it is a good lease for two years because it shall be taken good for such a number with which the plural number will be satisfied and that is with two years" and following that Osler, J.A. in Matthewson v. Beatty, 15 O.L.R. 557 (affirmed in 40 S.C.R. 557) would have construed a clause for removal of timber "in . . . years" as meaning two years. The case of Llanelly R. v. London & N.W. Ry. Co., L.R. 7 E & I App. 550 does not in my opinion conflict with this view while Crediton Gas Co. v. Crediton Urban Dist. Col. 1928, 1 Ch. 447 does not assist the claim for perpetuity. But then the question might arise if after the first fifteen years the parties go on supplying and paying for power on the same terms are they bound to continue for a full further period of five years or can they discontinue at any time or must they give reasonable notice? It would not be an unfair thing in my view to hold that they had in view a period of five years and that the new implied contract would continue till the end of that period. But we are relieved from considering that question because the defendants completed the fourth five year term and were not in my opinion bound to give any notice that a fifth period would not be entered upon. They did not enter on it and therefore the question how long in it they must continue does not arise. Even if reasonable notice were required events have shown that instead of being entitled to even nominal damages the refusal to enter upon a new period was actually a pecuniary benefit to the

plaintiffs as it saved them from paying for the unused minimum of power. There is another possible view that although the number of renewal periods was not specified that meant a reasonable number of them. That is not the plaintiff's contention, in fact contrary to it, but even if it could be maintained three additional periods was under the circumstances shown a reasonable number and they have no ground of complaint. The declaration they ask should not be granted in my opinion and the appeal should be allowed and the action dismissed with costs against the plaintiffs.

In the Supreme Court of Ontario.

No. 16.
Reasons for Judgment of Court of Appeal for Ontario.
20th April, 1932.

—continued.

No. 17
Formal Judgment of Court of Appeal for Ontario

No. 17.
Formal Judgment of Court of Appeal for Ontario.
20th April, 1932.

IN THE SUPREME COURT OF ONTARIO

THE RIGHT HONOURABLE THE CHIEF JUSTICE OF ONTARIO,
THE HONOURABLE MR. JUSTICE MAGEE,
THE HONOURABLE MR. JUSTICE RIDDELL,
THE HONOURABLE MR. JUSTICE MASTEN,
THE HONOURABLE MR. JUSTICE ORDE.

Wednesday, the 20th day of April, 1932.

BETWEEN:

THE CONIAGAS REDUCTION COMPANY LIMITED
Plaintiff.

—AND—

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
Defendant.

[SEAL]
U.W.C.
22-4-32

UPON motion made unto this Court by Counsel on behalf of the Defendant on the 4th day of April, 1932, by way of appeal from the Judgment pronounced herein by The Honourable Mr. Justice Raney, dated the 22nd day of July, 1931, in the presence of Counsel for the Plaintiff, upon hearing read the said judgment, the pleadings herein and the evidence adduced at the trial, and upon hearing what was alleged by Counsel aforesaid and judgment being reserved until this day:

1. THIS COURT DOTH ORDER that this appeal be and the same is hereby dismissed.

2. AND THIS COURT DOTH FURTHER ORDER that the Defendant do pay to the plaintiff its costs of this appeal forthwith after taxation thereof.

Entered O.B. 124, page 569
April 22nd, 1932
"H.F."

"E. HARLEY",
Senior Registrar,
S.C.O.

In the Supreme Court of Ontario.

No. 18. Notice of Motion for an Order varying as to costs the judgment of the Court of Appeal for Ontario, dated 20th April, 1932; 29th April, 1932.

No. 18

Notice of Motion for an Order varying as to costs the judgment of the Court of Appeal for Ontario, dated 20th April, 1932.

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

THE CONIAGAS REDUCTION COMPANY LIMITED,
Plaintiff,

— AND —

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
Defendant.

TAKE NOTICE that by special leave obtained from the Honourable Mr. Justice Riddell a motion will be made on behalf of the Plaintiff before the Court of Appeal at Osgoode Hall, Toronto, on Monday, the 2nd day of May, 1932, at the hour of 11 o'clock in the forenoon or so soon thereafter as the motion can be heard for an order varying the order of the Court of Appeal made herein on the 20th day of April, 1932, from the form thereof as settled and entered so that the same will provide for payment to the Plaintiff by the Defendant of all costs which were in the cause.

AND TAKE NOTICE that in support of such motion will be read the affidavit of James Grant Schiller and the exhibits therein referred to and such further and other material as Counsel may advise.

DATED at Toronto this 29th day of April, 1932.

COLLIER, SCHILLER & BENCH,
Solicitors for the Plaintiff by their Agents,

FASKEN, ROBERTSON, AITCHISON, PICKUP & CALVIN,
36 Toronto Street, Toronto.

To:

The above-named Defendant.

No. 19
Affidavit of James Grant Schiller.

In the Supreme Court of Ontario.

No. 19. Affidavit of James Gant Schiller. 28th April, 1932.

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

THE CONIAGAS REDUCTION COMPANY LIMITED, *Plaintiff,*

— AND —

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, *Defendant.*

I, JAMES GRANT SCHILLER, of the City of St. Catharines in the Province of Ontario, make oath and say as follows:—

1. I am a member of the firm of Collier, Schiller & Bench, the Solicitors for the Plaintiff in this action. The said firm are successors to the firm of Collier & Schiller who appear on the record as Solicitors for the Plaintiff at the commencement of this action.

2. This action was originally tried before the Honourable Mr. Justice Wright and an appeal was taken from his Judgment, Judgment being pronounced on the appeal on the 23rd day of November, 1928. Now produced to me and marked Exhibit "A" to this my affidavit is a true copy of the formal Judgment on such appeal. The action was then again tried by the Honourable Mr. Justice Raney and judgment was given by him on the 22nd day of July, 1931. Now produced to me and marked Exhibit "B" to this my affidavit is a true copy of Mr. Justice Raney's Judgment.

NOTE Exhibit "A" appears in Record, p. 11

NOTE Exhibit "B" appears in Record, p. 64

3. In his Reasons for Judgment, Mr. Justice Raney had stated that he was leaving it to the Court of Appeal to deal with the question of costs, as shown by the copy of his Reasons for Judgment now produced to me and marked Exhibit "C" to this my affidavit.

NOTE Exhibit "C" appears in Record, p. 61

4. The appeal from the Judgment of the Honourable Mr. Justice Raney was argued before the Court of Appeal on the 4th day of April, 1932, judgment being reserved.

5. Judgment on the said appeal was delivered on the 20th day of April, 1932, and I was advised thereof by letter from my Toronto Agents dated the 20th day of April, 1932. I intended that on the settlement of the order of the Court of Appeal such order would deal with the costs of the action throughout and that, if necessary, application be made to the Court for that purpose on the settlement of the order, and I accordingly wrote my Toronto Agents on the 22nd day of April, 1932, enclosing to them a draft of the order of the Court of Appeal as prepared by me. Now produced to me and marked Exhibit

In the Supreme Court of Ontario.

No. 19.
Affidavit of James Grant Schiller.
28th April, 1932.

—*continued.*

"D" to this my affidavit is a copy of my letter to my Toronto Agents and now produced to me and marked Exhibit "E" to this my affidavit is my draft of the order enclosed with that letter.

6. I was then advised by a letter from my Toronto Agents dated the 25th day of April, 1932, that upon the judgment being pronounced, they had issued the formal judgment in the simple form of dismissing the appeal with costs and now produced to me and marked Exhibit "F" is a true copy of the order dated the 20th day of April, 1932, as so issued.

NOTE Exhibit "D" appears in Record, p. 72

NOTE Exhibit "E" appears in Record, p. 73

NOTE Exhibit "F" appears in Record, p. 69

7. In issuing the said order as aforesaid my Toronto Agents had no instructions from me to issue the order of the Court of Appeal prior to my instructions of the 22nd day of April, 1932, above referred to and if I had thought that they would have proceeded to issue the order without referring the matter to me, I would have definitely instructed them not to do so, and have given them my instructions as to the matter of costs.

SWORN before me at the City of Toronto in the County of York, this 28th day of April, 1932.
"HARRY I. NEWMAN",
A Commissioner, etc.

"JAMES G. SCHILLER."

No. 20.
Exhibit "D" to affidavit of James Grant Schiller; Letter, Plaintiff's Solicitors to Toronto Agents.
22nd April, 1932.

No. 20

Exhibit "D" to affidavit of James Grant Schiller; Letter, Plaintiff's Solicitors to Toronto Agents

This is Exhibit "D" referred to in the affidavit of J. G. Schiller sworn before me this 28th day of April, 1932.
"HARRY I. NEWMAN,"
A Commissioner, etc.

April 22, 1932.

MESSRS. FASKEN, ROBERTSON, AITCHISON, PICKUP & CALVIN,
Barristers, Solicitors, &c.
Excelsior Life Building,
TORONTO 2, Ontario.

Attention Mr. Robertson.

CONIAGAS VS. HYDRO

Dear Sirs

We beg to acknowledge receipt of your letter of the 20th instant and telegram of the same date announcing the result of the appeal by the defendant.

In the Supreme Court of Ontario.

No. 20. Exhibit "D" to affidavit of James Grant Schiller; Letter, Plaintiff's Solicitors to Toronto Agents. 22nd April, 1932.

The writer was in Toronto yesterday on personal business and dropped in at Osgoode Hall and obtained a copy of the reasons for judgment.

We enclose herewith draft order on appeal and three copies. Will you please arrange to have this approved by Mr. Lucas if you are satisfied with the form.

We would like to have you consider the form especially in regard to the matter of costs. The judgment of the Honourable Mr. Justice Wright was in favour of the plaintiff with costs. The Appellate Division when ordering a new trial directed that the costs of the said trial before the Honourable Mr. Justice Wright and the appeal should be costs in the action.

The judgment of the Honourable Mr. Justice Raney was to the effect that the Court did not see fit to make any order as to costs.

This appeal having been dismissed with costs, it may be that is sufficient to include the costs of all the proceedings. We would like to have that made clear, and if you think the second paragraph should stay in or some similar clause added, as you should see fit, perhaps you would be able to persuade Mr. Lucas or Mr. Evans of the Legal Department.

If you succeed in having the order approved, will you please arrange to have it issued, entered and served.

—continued.

Yours very truly,
COLLIER, SCHILLER & BENCH
Per:

JGS:C

No. 21. Exhibit "E" to affidavit of James Grant Schiller; Draft Order of Court of Appeal. 20th April, 1932.

No. 21
Exhibit "E" to affidavit of James Grant Schiller; Draft Order of Court of Appeal

This is Exhibit "E" referred to in the affidavit of J.G. Schiller, sworn before me this 28th day of April, 1932.
"HARRY I. NEWMAN",
A Commissioner, etc.

IN THE SUPREME COURT OF ONTARIO

THE RIGHT HONOURABLE THE CHIEF JUSTICE OF ONTARIO,
THE HONOURABLE MR. JUSTICE MAGEE,
THE HONOURABLE MR. JUSTICE RIDDELL,
THE HONOURABLE MR. JUSTICE MASTEN,
THE HONOURABLE MR. JUSTICE ORDE.
} Wednesday, the twentieth day of April, 1932.

BETWEEN:
THE CONIAGAS REDUCTION COMPANY LIMITED,
Plaintiff,

— AND —

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
Defendant.

In the Supreme Court of Ontario.

No. 21. Exhibit "E" to affidavit of James Grant Schiller; Draft Order of Court of Appeal. 20th April, 1932.

—*continued.*

UPON motion made unto this Court on the 4th day of April, 1932, by counsel on behalf of the defendant in the presence of counsel for the plaintiff by way of appeal from the judgment of the Honourable Mr. Justice Raney delivered on the 22nd day of July, 1931, after the trial of this action and upon hearing read the said judgment, the evidence and exhibits at the trial and the pleadings and other proceedings in this action and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the matter of the said appeal should stand over for judgment and the same having come on this day for judgment,

1. THIS COURT DOTH ORDER AND ADJUDGE that the said appeal should be and the same is hereby dismissed with costs to be paid by the defendant (appellant) to the plaintiff (respondent) forthwith after taxation.

2. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of the plaintiff (respondent) in connection with the trial of this action before the Honourable Mr. Justice Wright and subsequent costs of the plaintiff (respondent) throughout be paid by the defendant (appellant) forthwith after taxation thereof.

No. 22. Reasons for Judgment of the Court of Appeal for Ontario, on Motion to vary as to costs. 16th May, 1932.

No. 22

Reasons for Judgment of the Court of Appeal for Ontario on Motion to vary as to costs.

Present:

LATCHFORD, C.J.A.,
MAGEE, RIDDELL, ORDE
AND FISHER, JJ.A.

CONIAGAS &c. v. HYDRO-ELECTRIC &c. — ROBERTSON, K.C., for the plaintiff, moving: EVANS, contra.

RIDDELL, J.A.:—In this case, judgment was given by the Court of Appeal dismissing the appeal of the defendant with costs, April 20th inst.; Toronto agents for the plaintiff's solicitors took out the judgment forthwith; one of the plaintiff's solicitors applied to me (as he said, because I had written the judgment of the Court) to have the judgment so taken out, amended; I, of course, had no jurisdiction in the premises, but I gave him leave, *quantum valeat*, to make a motion in that sense before the Court; that motion has now been made, and falls for decision.

The motion is expressly made under the provisions of R. 522, which reads: "Where a judgment or order requires amendment in any particular on which the Court did not adjudicate, the same may be amended on motion".

As will be evident when the facts are stated, the difficulty has arisen from what is to me an inexplicable disregard of familiar and well-established rules observed in our Courts in the disposition of the rights of litigants.

The following are the facts of importance; the action was brought for a declaration of the rights of the plaintiff under a certain contract in writing; it was tried before Mr. Justice Wright, and judgment was given in favour of the plaintiff by that learned Judge, October 22nd, 1928; an appeal was taken and the Appellate Division, November 23rd, 1928, allowed the appeal, directed a new trial, with the direction:

"4. AND IT IS FURTHER ORDERED that the costs of the said trial before the Honourable Mr. Justice Wright and of this appeal shall be costs in the action."

The new trial was had before Mr. Justice Raney at St. Catharines in May, 1931; it resulted in favour of the plaintiff's claim on the contract. The learned Judge in his reasons for judgment, after saying "there will be judgment for the plaintiff company as before" has added: "I leave it to the Court of Appeal to deal with the question of costs". The endorsement on the Record reads, "Judgment for plaintiffs; no order as to costs". The plaintiff took out the judgment; and instead of following the direction of the Trial Judge as to costs given in his Reasons, the judgment as taken out reads:

"3. AND THIS COURT doth not see fit to make any order as to costs."

No appeal from this judgment or any part of it was taken by the plaintiff, it apparently being satisfied with the judgment as entered. The defendant appealed on various grounds, making no mention of costs; and the plaintiff did not avail itself of the provisions of R. 497; in the argument before the Court of Appeal, no mention was made of costs by either party; and the Reasons for Judgment simply say that "we would dismiss the appeal with costs."

On the decision of the Court of Appeal being known, the solicitors for the plaintiff in St. Catharines were the same day, April 20th, notified of the result by their Toronto agents, and, April 23rd, wrote their Toronto agents with a draft of the judgment they proposed to take out; they received a letter from the Toronto agents, written April 25th, that judgment had been taken out by them simply dismissing the appeal with costs of the appeal payable forthwith after taxation thereof—the draft sent from the solicitors to their agents contemplated the payment by the defendant of "the costs of the plaintiff (respondent) in connection with the trial of this action before the Honourable Mr. Justice Wright and subsequent costs of the plaintiff (respondent) throughout be paid by the defendant (appellant) forthwith after taxation thereof."

It was on being informed of the judgment actually having been taken out by their Toronto agents in the form already mentioned, that the solicitor applied to me as has been stated.

The Notice of Motion served and filed asked "for an order varying the order of the Court of Appeal, made herein on the 20th day of April, 1932, from the form thereof as settled and entered so that the same will provide for payment to the plaintiff by the defendant of all costs which were in the cause."

In the Supreme Court of Ontario.

No. 22. Reasons for Judgment of the Court of Appeal for Ontario, on Motion to vary as to costs. 16th May, 1932.

—*continued.*

The rule specifically relied upon as justifying the amendment asked for is R. 522. While "the Court did not adjudicate" upon the costs now sought to be ordered to be paid to the plaintiff, the Rule can refer only to "particulars" upon which the Court could have adjudicated on the appeal; and that I think could not have been done on the appeal.

The costs which are sought to be recovered are (1) General costs of the action; (2) Costs of the former trial; (3) Costs of former appeal; (4) Costs of last trial and (5) Costs of last appeal. Of these, 2 and 3 are disposed of by the judgment, still in full force and effect, of November 23rd, 1928, and 5 by that of April 20th, 1932; so that, the only costs now to be provided for are 1 and 4. These were the only costs over which Mr. Justice Raney had any jurisdiction at the recent trial.

While that learned Judge has written that he "leaves" it to the Court of Appeal to deal with the question of costs, he endorses upon the Record, "no order as to costs", the settled terminology of a direction that no costs go to either party. To suppose that he meant by the language of his Reasons, cited, that he would not and did not decide on the question of costs of the trial before him and the general costs of the action would be to suppose that he would not and did not perform the duty cast upon him by his office of judicially deciding on these costs. The question of such costs is one of judicial discretion; and the judicial discretion is the judicial discretion of the trial judge; it is both the right and the duty of the trial Judge to exercise that discretion and to refer it to any other would be to abdicate the right and abandon the duty. I prefer to think that notwithstanding the language of the "Reasons", the learned trial Judge gave true expression to a decision, when he endorsed the Record as he did; and that, as we have seen, was a direction connoting that no costs were to be paid by either party to the other. The judgment which the plaintiff caused to be entered carried out this direction strictly.

If the plaintiff was dissatisfied with this disposition of the costs, it should have appealed; but not only did it not appeal, but it did not take advantage of the defendant's appeal, to bring the matter before the Court; it was not properly before the Court, and the Court could not properly deal with it under the circumstances. Consequently, it was not a "particular on which the Court did not adjudicate" within the meaning of R. 522.

It is always to be remembered that it is the judgment as entered which is the subject of appeal, and is the only thing the Court of Appeal can regularly look at, but even did we look at the disposition of the costs now under discussion suggested in the Reasons for Judgment, and think that by a temporary error the learned trial Judge intended to abrogate his duty to decide as to these costs, by referring them to the Court of Appeal, the most that could be made of such a disposition by him would be permission for either party to take the matter to the Court of Appeal, if it wished—this, we have seen, was not done.

So far, I have been speaking of the case from the point of view of the regular and settled practice of the Court; and I am quite clear that the motion cannot succeed as a matter of right, but that, if relief can be granted, it must be by the "discretion of the Court".

The Judicature Act, R.S.O. 1927, cap. 88, sec. 26, gives the Court very large powers; after by sub-sec. (1) giving the Court power to "give any judgment which ought to have been pronounced", it provides by sub-sec. (3) that "The powers conferred by sub-sections 1 and 2 may be exercised notwithstanding that the appeal is as to part only of the judgment, order or decision, and may be exercised in favour of all or any of the parties, although they may not have appealed."

Even assuming that this legislation gives us the power in the premises to grant the order asked for, it does not make it obligatory upon us; and I do not think that in the circumstances of the case we should exercise that power. This would be to encourage the utter disregard for the regular and well-known practice of the Court.

I would dismiss the Motion with costs.

I may say that I have consulted the learned Justices who did not sit on this Motion, but who heard the appeal; and they agree that this is the proper disposition to make of the Motion. The plaintiff of course is to have the costs of the first trial and first appeal having succeeded in the action.

NOTE
Parts underlined added after Reasons handed down.

(EMC) LATCHFORD, C.J.
(HRL) ORDE, J.A.
FISHER, J.A.
} I agree.

No. 23
Memorandum of Orde, J.A.

CONIAGAS v. HYDRO-ELECTRIC

MEMORANDUM FROM MR. JUSTICE ORDE

The respondents moved to have the Court pronounce upon the question of costs of the first and second trials.

These costs were in the discretion of the trial Judge. By his endorsement on the Record and the formal judgment, it was expressly declared that he made no order as to these costs.

The Hydro-Electric appealed from the judgment. Upon that appeal the respondents might have given the usual notice under Rule 497. They did not do so, and, presumably, were quite satisfied with the judgment which they had entered themselves.

Upon the argument of the appeal, they did not raise the question. Had they done so, the Court might have allowed it to be discussed notwithstanding the failure to give notice.

Now, after judgment has been given on the appeal, they wish to raise the question. It is true that the trial Judge at the conclusion of his reasons for judgment said that he left it to the Court of Appeal to deal with the question.

In the Supreme Court of Ontario.

No. 23. Memorandum of Orde, J.A. 16th May, 1932.

—*continued.*

It is suggested that this ineffective disposition of the matter is good ground for our dealing with it now. I do not agree with this. It ought to have impressed the respondents with the necessity for raising the question in the proper way.

Whether we have power to deal with it now or not, I am opposed to any such disposition of the matter as that proposed by my brother Riddell. I do not think the plaintiffs at this late date should be permitted in this irregular fashion to launch before a Court differently constituted what is, to all intents and purposes, an appeal from a judgment with which they were fully satisfied when they entered it.

No. 24. Formal Order of the Court of Appeal dismissing Motion to vary as to costs. 16th May, 1932.

No. 24
Formal Order of the Court of Appeal dismissing Motion to vary as to costs.

[L.S.]
[$2.20]

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE THE CHIEF JUSTICE IN APPEAL, THE HONOURABLE MR. JUSTICE MAGEE, THE HONOURABLE MR. JUSTICE RIDDELL, THE HONOURABLE MR. JUSTICE ORDE, THE HONOURABLE MR. JUSTICE FISHER.	Monday, the 16th day of May, 1932.

BETWEEN:

THE CONIAGAS REDUCTION COMPANY LIMITED,
Plaintiff,

— AND —

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
Defendant.

[SEAL S.C.O.]
[E.S.]
[20/5/32]

UPON MOTION made unto this Court on the 2nd day of May, 1932, by Counsel on behalf of the Plaintiff in the presence of Counsel for the Defendant, for an Order varying the Order of this Court made herein on the 20th day of April, 1932, from the form thereof as settled and entered, so that the same should provide for payment by the Defendant to the Plaintiff of all costs which were in the cause, upon hearing read the Affidavit of James Grant Schiller and exhibits thereto, filed, and upon hearing what was alleged by Counsel aforesaid, this Court being pleased to direct that this Motion should stand over for judgment and the same having come on this day for judgment,

1. THIS COURT DOTH ORDER that the said Motion be and the same is hereby dismissed.

2. AND THIS COURT DOTH FURTHER ORDER that the Plaintiff do pay to the Defendant the costs of and incidental to the said Motion forthwith after taxation thereof.

"E. HARLEY,"
Senior Registrar, S.C.O.

Entered O.B. 126, pages 156 & 7.
May 20, 1932.
V.C.

In the Supreme Court of Ontario.

No. 24.
Formal Order of the Court of Appeal dismissing Motion to vary as to costs.
16th May, 1932.

—continued.

No. 25
Order of Magee, J.A.

No. 25.
Order of Magee, J.A.
28th June, 1932.

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE MAGEE | Tuesday the 28th day of June, 1932.

BETWEEN:

THE CONIAGAS REDUCTION COMPANY LIMITED
Plaintiff.

—AND—

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
Defendant.

Upon the application by Counsel on behalf of the Defendant in the presence of Counsel for the Plaintiff, for an Order allowing the bond of The London & Lancashire Guarantee & Accident Company of Canada, dated the 17th day of June, 1932, filed herein, as good and sufficient security that the Defendant will effectually prosecute an appeal to His Majesty in His Privy Council from the judgment of the Court of Appeal for Ontario pronounced on the 20th day of April, 1932, and for an Order admitting the said appeal, and it appearing that the case is one in which the Defendant has, under the provisions of the Privy Council Appeals Act, (R.S.O. 1927, cap. 86), a right to appeal to His Majesty in His Privy Council, and upon hearing read the said bond and the affidavit of Frank Charles Studdert Evans, filed, and upon hearing what was alleged by Counsel aforesaid:

1. IT IS ORDERED that the appeal of the Defendant from the said judgment to His Majesty in His Privy Council be and the same is hereby admitted.

In the Supreme Court of Ontario.

No. 25. Order of Magee, J.A. 28th June, 1932.

—*continued.*

2. AND IT IS FURTHER ORDERED that the said bond be and the same is hereby allowed as good and sufficient security that the Defendant will effectually prosecute the said appeal to His Majesty in His Privy Council, and will pay such costs and damages as may be awarded in case the said judgment shall be confirmed or in part confirmed.

3. AND IT IS FURTHER ORDERED that the costs of this Motion be costs in the said appeal.

(Sgd.) CLARENCE BELL,
Asst. Registrar, S.C.O.

Entered O.B. 126 page 502
July 9, 1932
H.F.

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PART II. — EXHIBITS

Exhibits.

Part Ex. 1.

Part Exhibit 1.
(Plaintiff's Exhibit.)

Power Agreement between The Falls Power Company and Clifton Sand, Gravel and Construction Company. 8th November, 1907.

Power Agreement between The Falls Power Company and Clifton Sand, Gravel and Construction Company.

THIS AGREEMENT made this 8th day of November, 1907, by and between the FALLS POWER COMPANY, LIMITED, party of the first part, hereinafter called the "Power Company" and the CLIFTON SAND, GRAVEL AND CONSTRUCTION COMPANY, LIMITED, party of the second part, hereinafter called the "Purchaser."

20

WITNESSETH:—That in consideration of the mutual covenants and agreements herein contained, the expected performance thereof, the electric energy to be delivered, the sums of money to be paid and other valuable considerations, the parties hereto have mutually agreed and do each agree with the other as follows:

FIRST. The Power Company hereby agrees to sell, deliver and maintain, at the outside wall of the Transformer House of the Purchaser at Thorold, Ontario, for power, lighting and electro-chemical purposes only, electric energy in the form of three-phase alternating current at approximately twenty-five cycles per second periodicity and at approximately 12,000 volts, to the amount of one hundred, fifty horsepower or more

Said power to be delivered continuously twenty-four hours each day and every day in the year so far as reasonable diligence will enable the Power Company so to do, for a period of five years from the commencement of actual delivery, and this Agreement shall continue in force for further periods of five years each, unless notice in writing is given by the Purchaser to the Company at least six months previous to the expiration of any five year period.

8 May 1907
16 Sept 1912
Limitations

SECOND. The Purchaser agrees to pay the Power Company on the 15th day of each calendar month during the life of this Agreement, at its office in St. Catharines, Ontario, for the electric energy furnished as aforesaid during the preceding calendar month at the rate of six hundred seventy-five one thousandths (675/1000) of one cent per kilowatt-hour, but the amount to be paid each month as aforesaid shall not be less than One Hundred, Twenty-five Dollars ($125.00), and for the purposes of measurement of electric energy and payment therefor, all electric energy shall be measured by standard meters, provided, installed and kept in repair by the Power Company, in terms of electrical units as standardized by the English Board of Trade, 746 watts being equivalent to one electrical horsepower, and the Purchaser shall furnish sufficient space in its building for the proper installation of the aforesaid meters.

The Purchaser may at its option, at any time within one year from the commencement of actual delivery of electric energy, change the form or method of payment to a flat rate per horsepower year under the terms and conditions specified in Contract Form No. 6, which is hereto attached and made a part of this Agreement.

In the event that this option is exercised, the Purchaser agrees to pay the Power Company for each electric horsepower delivered thereafter, the sum of:—

$16.50 per annum when the firm power is less than	250 H.P.
$15.50 per annum when " " " "	250 H.P. to 499 H.P.
$14.50 " " " " " " "	500 H.P. to 749 H.P.
$14.00 " " " " " " "	750 H.P. to 999 H.P.
$13.50 " " " " " " "	1000 H.P. or more.

It being understood and agreed that the minimum firm power shall at no time be considered less than one hundred fifty horsepower.

THIRD. The meters may be sealed by both parties hereto when installed and after each adjustment or test, and the Power Company shall at all times have the right to inspect and test such meters and if found defective to repair or replace them at its option.

FOURTH. The Power Company hereby agrees to sell to the Purchaser and the Purchaser hereby agrees to purchase and take from the Power Company any and all electric energy which it may require during the term of this Agreement for the operation of its plant and any and all extensions or additions thereto except as hereinafter provided.

The Purchaser shall give the Power Company six months' notice in writing when electrical energy in excess of seven hundred fifty horsepower is

required and having obtained its consent, may take the same subject to the terms and conditions of this Agreement.

The Power Company reserves the right to limit the amount of electrical energy to be furnished under this Agreement to any amount in excess of seven hundred fifty horsepower in case, at the time when the Purchaser makes a demand for more than seven hundred fifty horsepower the Power Company shall not then have available electric energy unsold sufficient to furnish the Purchaser all it requires and in that event, the Purchaser shall have the right to generate or purchase from other parties such electric energy as it may require in excess of the amount that can be furnished by the Power Company.

FIFTH. In case the Power Company shall not at all times furnish said electric energy so as aforesaid, then the Power Company will rebate to the Purchaser such a sum as equals the charge that would be made by it against the Purchaser for electric energy for and during the period of time only wherein electric energy has not been furnished, and such rebate is hereby fixed as the liquidated damages for and on account of such failure to furnish said electric energy and shall, by the Purchaser, be received as in full and final discharge of the Power Company for injuries and loss by reason thereof.

SIXTH. The Purchaser agrees not to sell or dispose of to others any of the electric energy which it shall purchase from the Power Company under the terms of this Agreement, without first obtaining the Power Company's written consent thereto.

SEVENTH. The Purchaser agrees that the electrical and mechanical characteristics of all apparatus connected to or with the circuits of the Power Company, and the installation thereof, will at all times be satisfactory to and subject to the approval of the Electrical Engineer of the Power Company.

EIGHTH. The Power Company shall at all times during the existence of this Agreement have the right of ingress to and egress from the premises of the Purchaser for any and all purposes connected with the delivery of electric energy under this Agreement and the exercise of any and all rights secured to it by this Agreement.

NINTH. The Purchaser shall save the Power Company harmless from any and all loss or damage sustained and any and all liability to any person whomsoever incurred by the Power Company by reason of any negligence on the part of the Purchaser, its officers, agents or employees in constructing, maintaining and operating its works or any machinery, appliances or apparatus used in connection therewith.

TENTH. If default shall be made at any time by the Purchaser in paying for the electric energy delivered to it by the Power Company under and pursuant to the terms of this Agreement, and if such default shall continue for a

period of sixty days after demand, then the Power Company shall have the right at its option to terminate this Agreement; or, without terminating or in any wise voiding this Agreement, to discontinue the delivery of electric energy until all money due to it under the terms hereof from the Purchaser shall have been paid; and this option may be exercised by the Power Company whenever and as often as any such default shall occur and continue for said period of sixty days after demand, and delay or omission on the part of the Power Company to exercise such option at any time shall not be deemed to be a waiver of its rights to exercise such option whenever such default on the part of the Purchaser shall occur.

ELEVENTH. This Agreement shall be binding upon, and shall enure to the benefit of the successors, lessees and assigns of the respective parties hereto.

IN WITNESS WHEREOF, on the day and year first above written, the parties hereto have hereunto set their hands and seals.

THE FALLS POWER COMPANY, LIMITED,
(Sgd.) B. J. McCORMICK,
Vice-President.

[SEAL]

WITNESS:
(Sgd.) W. L. ADAMS
Asst. Secretary.

THE CLIFTON SAND, GRAVEL & CONSTRUCTION CO. LTD.
(Sgd.) R. W. LEONARD,
President.

(Sgd.) J. J. MACKAN,
Secretary.

[SEAL]

Part Exhibit No. 1.
(Plaintiff's Exhibit.)

Part Ex. 1.

Undated and unsigned agreement attached to Power Agreement between The Falls Power Company and Clifton Sand, Gravel and Construction Company.

Undated and unsigned agreement attached to Power Agreement between The Falls Power Company and Clifton Sand, Gravel and Construction Company

THIS AGREEMENT, made this.....day of.....190 , by and between The Falls Power Company, Limited, party of the first part, hereinafter called the "Power Company," and The Clifton Sand, Gravel & Construction Company, Limited, party of the second part, hereinafter called the "Purchaser," WITNESSETH:

That in consideration of the mutual covenants and agreements herein contained, the expected performance thereof, the electric power to be delivered, the sums of money to be paid, and other valuable considerations, the parties hereto have mutually agreed and do each agree with the other as follows:

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 1.

Undated and unsigned agreement attached to Power Agreement between The Falls Power Company and Clifton Sand, Gravel and Construction Company.

—*continued.*

FIRST. The Power Company hereby agrees to sell, deliver and continuously maintain ready for the use of the Purchaser for power, lighting and electro-chemical purposes only, and the Purchaser hereby agrees to purchase and pay for one hundred fifty firm electric horsepower, or such greater amount as the Purchaser may require for the operation of his works or any extensions or additions thereto, not exceeding intermittent demands of two hundred twenty-five horsepower except when taking a greater amount of firm power. Said electric power shall be delivered continuously twenty-four hours each day and every day in the year, except as hereinafter provided, for a period of five years from the commencement of actual delivery and this agreement shall continue in force for further periods of five years each unless notice in writing is given by the Purchaser to the Company at least six months previous to expiration of any five year period.

In case the intermittent demands for power are greater at times than the one hundred fifty firm horsepower hereinbefore agreed to be taken and paid for, then the amount to be charged and paid for shall be the average of the highest, daily, one-minute peaks occurring during the month for which charge is made. Demands greater than these peaks but lasting for less than one minute will not be considered nor shall the one-minute peaks ever be considered as less than the one hundred fifty firm horsepower hereinbefore agreed to be taken and paid for.

The Power Company, if it so elect, may use, in lieu of the highest, daily, one-minute peaks referred to above, the highest number of horsepower hours consumed in any one minute during any day, multiplied by sixty, as the highest one-minute rate of consumption or the maximum demand for that day. This amount shall never be considered as less than the one hundred fifty firm horsepower hereinbefore agreed to be taken and paid for.

It is further understood and agreed that the amount of firm power to be purchased and paid for may increase until the amount of firm power is seven hundred fifty horsepower. This amount shall thereafter be purchased and paid for during the remainder of the term of this contract, except that it may be increased under the same terms and conditions as apply to the one hundred fifty firm horsepower, and at the price specified in Article Second.

It is further understood and agreed that when the firm power is one hundred fifty horsepower the intermittent demands shall not exceed this amount by more than fifty per cent; and that when the firm power is seven hundred fifty horsepower or more, the intermittent demands shall not exceed this amount by more than ten per cent., or at any time by more than seventy-five horsepower. For amounts of firm power between one hundred fifty and seven hundred fifty horsepower the percentage of intermittent demands permissible shall vary proportionately between the fifty per cent. and ten per cent. above specified.

Intermittent demands shall in all cases be measured as provided for above, by means of the highest, daily, one-minute peaks in excess of the firm power contracted for.

SECOND. The Purchaser hereby agrees to pay to the Power Company for each electric horsepower delivered under the terms of this contract the sum of

$16.50 per annum when the firm power is 249 Horsepower, or less
$15.50 per annum when the firm power is 250 Horsepower to 499 H.P.
$14.50 per annum when the firm power is 500 Horsepower " 749 "
$14.00 per annum when the firm power is 750 Horsepower " 999 "
$13.50 per annum when the firm power is 1000 Horsepower or more.

All bills shall be rendered and paid monthly, and each month, for purpose of charge, shall be considered as one-twelfth of a year.

Payments shall be made in gold coin of or equal to the present Canadian standard of weight and fineness, at the office of the Power Company in St. Catharines, Ont., on or before the 15th day of each and every month following that on which the electric power shall have been delivered.

THIRD. The Power Company shall deliver the electric power at the outside wall of the Transformer House of the Purchaser at Thorold, Ontario. Said electric power shall be measured at the high tension terminals of the step-down transformers of the Purchaser in the transformer station of the Purchaser. Said electric power shall be measured by meters in terms of electrical units, as standardized by the British Board of Trade. The meters, for the measurement of the electric power, shall be provided, installed and kept in repair by the Power Company; the Purchaser, if called upon by the Power Company to do so, shall furnish sufficient and proper space in his transformer station for the installation of the meters.

The meters shall be sealed by both parties hereto when installed and after each adjustment or test.

The Power Company shall at all times have the right to inspect such meters and if found to be defective to repair or replace them at its option, provided that notice in writing shall be given the Purchaser five days before any seals are broken, so that the Purchaser may have his representatives present at the re-adjustment or test and the re-sealing of the meters.

The Purchaser shall also have the right to inspect and test such meters at any time upon giving five days' notice in writing of his desire so to do to the Power Company.

The meters may be installed upon the high tension side or on the low tension side of the transformers or some on one side and some on the other

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 1.

Undated and unsigned agreement attached to Power Agreement between The Falls Power Company and Clifton Sand, Gravel and Construction Company.

—continued.

as the Power Company may elect. When installed on the low tension side their readings shall be subject to a correction and shall be corrected to give a reading such as would be obtained by instruments installed upon the high tension side of the transformers. Such correction shall be based upon tests made upon the step-down transformers by the Power Company or on other tests upon them acceptable to the Power Company as to efficiency, regulation or any other constants of the transformers necessary for said correction. Such tests, when made by the Power Company, are to be in the presence of the representative or representatives of the Purchaser, if so desired by the Purchaser.

FOURTH. It is hereby agreed by and between the parties hereto that, electric power cannot be delivered by the Power Company, except when the Purchaser takes the same, and that whenever the word "deliver" is used in this agreement with reference to electric power, it means readiness and ability on the part of the Power Company to deliver power continuously to the Purchaser; and the maintenance by the Power Company of approximately the agreed voltage at approximately 25 cyles per second at the point of measurement, shall, for the purpose of this agreement, constitute delivery of the power provided for, and the above specified number of firm electric horsepower shall be the amount of electric power which the Purchaser hereby agrees to pay for whether he takes the same or not.

FIFTH. The electric power delivered hereunder shall be three-phase, alternating at approximately 25 cycles per second periodicity, and at approximately 12,000 volts at the point of measurement and shall be delivered at a reasonably close maintenance of constant potential and shall not be subject to fluctuations of potential or of frequency of sufficient extent to prevent the reasonably successful and efficient operation of the commercial electrical apparatus of the Purchaser, provided that such apparatus is of approved design and pattern and that the Purchaser's system, generally, is laid out in accordance with good practice.

SIXTH. The step-down transformers and controlling apparatus shall be furnished, kept and maintained in good order and repair by the Purchaser, and the Purchaser shall select and use transformers and apparatus suitable to receive the electric power produced by the apparatus of the Power Company, and the Purchaser's transmitting, transforming, translating and, wherever possible, all other apparatus and devices upon his circuits shall be the standard design and construction in commercial use and shall be operated and maintained with special reference to securing high efficiency and good operation, not only of his own, but also of the apparatus of the Power Company when receiving power from the Power Company; and the Purchaser shall install upon and equip his circuits with such approved protective devices as are in commercial use and operate his circuits in such a manner as will to the then greatest extent protect the apparatus and circuits of the Power Company from damage and interruption by lightning, short circuiting or otherwise.

The Purchaser shall at all times take and use the three-phase power in such manner that the current will be taken equally from the three phases whenever possible, but whenever it is not possible to take the current equally from the three phases and the difference between any two phases is greater than ten per cent. of the lesser, then the power to be charged and paid for shall be computed on the assumption that the current, and therefore the power, taken from each of the three phases is equal to the greatest amount actually taken from any one phase.

The purchaser shall at all times take and use the three-phase power in such manner that the power factor will be as near one hundred per cent. as possible, but whenever it is not possible to take the current at one hundred per cent. power factor and the power factor is less than ninety per cent., then the maximum demand for power shall be considered as ninety per cent. of the maximum kilo-volt-amperes taken for a period of one minute each day, except as hereinbefore provided that the maximum demand shall in no case be considered as less than the firm horsepower hereinbefore agreed to be taken and paid for.

SEVENTH. In case either party hereto shall be delayed in the construction of its works or in the installation of any part thereof by strike, riot, fire, invasion, explosion, act of God or the public enemies, or any other cause reasonably beyond its control, then the date mentioned in Article First hereof shall be extended for a proportionate period not exceeding three months and either party shall give to the other written notice of any claim for such extension. The actual and necessary time during which any injunction or order of the Court, granted in bona-fide and adverse legal proceedings or action, restraining the Power Company from the construction, maintenance or operation of its electric transmission line, shall remain in force, shall not, however, be reckoned as a part of the time within which the Power Company shall commence to deliver power, and the Power Company shall not be obligated to deliver power during the pendency of any such injunction or order of the Court.

EIGHTH. In case the Power Company shall be prevented delivering said electric power, or in case the Purchaser shall be prevented receiving said electric power by strike, riot, fire, invasion, explosion, act of God or the public enemies, or any other cause reasonably beyond its control, then the Purchaser shall not be obligated to pay for such power during such period and the Power Company shall not be obligated to deliver such power during such period; but nothing herein contained shall be construed as permitting the Power Company to refuse to deliver power or the Purchaser to refuse to receive the same as soon as the cause of interruption is removed, and each of the parties hereto shall be prompt and diligent in removing and overcoming such cause or causes.

In case the Power Company shall be prevented delivering power by any other cause than those specified above, then the Purchaser shall be entitled

to a deduction equal to the pro rata value of the power at the price specified in Article Second, for the period of such interruption.

NINTH. The Purchaser shall save the Power Company harmless from any and all loss or damage sustained and any and all liability to any person whomsoever incurred by the Power Company by reason of any negligence on the part of the Purchaser, his officers, agents or employees in constructing, maintaining and operating his works or any machinery, appliances or apparatus used in connection therewith.

TENTH. The Power Company may at any time between the hours of one o'clock and five o'clock A.M. on any one day in any month during the term of this contract suspend the delivery of electric power under this contract for the purpose of making repairs upon or improvements in any part of its generating or distributing system, provided, however, that the Power Company shall in every case give to the Purchaser such reasonable notice thereof as circumstances will permit. Deduction in this case shall be in accordance with second paragraph of Article Eighth.

ELEVENTH. If default shall be made at any time by the Purchaser in paying for the electric power delivered to him by the Power Company under and pursuant to the terms of this contract, and if such default shall continue for a period of sixty days after demand, then the Power Company shall have the right at its option to terminate this contract; or, without terminating or anywise avoiding this contract, to discontinue the delivery of electric power until all money due to it under the terms hereof from the Purchaser shall have been paid; and this option may be exercised by the Power Company whenever and as often as any such default shall occur and continue for said period of sixty days after demand, and delay or omission on the part of the Power Company to exercise such option at any time shall not be deemed to be a waiver by it of its right to exercise such option whenever such default on the part of the Purchaser shall occur.

TWELFTH. The Power Company hereby agrees to sell to the Purchaser and the Purchaser hereby agrees to purchase and take from the Power Company any and all additional electric power which he may require during the term of this contract, for use in or upon his works for the purposes hereinbefore stated and also for the operation of any and all extensions or additions thereto, except as hereinafter provided, and except that the Purchaser may supply from his power house such power as may be necessary to avoid the taking of peak or excess loads from the Power Company. Such additional power shall be paid for by the Purchaser to the Power Company in the same way and under the same terms and conditions as apply to the firm horsepower herein provided for, and at the price specified in Article Second.

The Power Company reserves the right to limit the amount of power to be furnished under this contract to any amount in excess of 750 horsepower in

case, at the time when the Purchaser makes a demand for more than 750 horsepower, the Power Company shall not then have available power unsold sufficient to furnish the Purchaser all he requires; and in that event, the Purchaser shall have the right to generate or to purchase from other parties such power as he may require in excess of the amount that can be furnished by the Power Company.

The Purchaser shall not have the right to sell or dispose of to others any of the electric power which he shall purchase from the Power Company under the terms of this contract, or which may be generated directly or indirectly therefrom, without first obtaining the Power Company's written consent thereto.

THIRTEENTH. The Purchaser shall give to the Power Company notice in writing that additional power will be required thereafter for increasing his service or for extensions or additions to his works six months before the additional power is needed; and the Power Company hereby agrees to deliver to the Purchaser such additional power, not exceeding the above maximum limit, as may be required and as stated in the notice, upon the same terms and conditions as the one hundred fifty firm horsepower agreed to be delivered and paid for hereunder.

FOURTEENTH. The Power Company shall at all times during the existence of this contract have the right of ingress to and egress from the premises of the Purchaser for any and all purposes connected with the delivery of electric power under this contract and the exercise of any and all rights secured to it by this contract.

FIFTEENTH. The Purchaser hereby agrees to send to the Power Company by mail each day a statement of the electric power used and the deficiency of electric power or irregularity of frequency or of voltage, if any, during the preceding twenty-four hours.

SIXTEENTH. The word "day" whenever used in this agreement shall be construed to mean a period of twenty-four hours beginning at twelve o'clock midnight and ending at twelve o'clock midnight twenty-four hours later, and the words "horsepower" or "electric horsepower" whenever used in this agreement shall be construed to mean the equivalent of 746 watts.

SEVENTEENTH. In case of a disagreement between the parties hereto as to any question arising under this agreement such question shall be submitted to arbitrators as herein provided; the Power Company shall nominate one arbitrator and the Purchaser shall nominate one arbitrator, and if the persons so nominated shall disagree as to the matters submitted to them they shall appoint a third arbitrator to be associated with them, if they can agree upon such election; if the arbitrators so elected do not agree upon a third arbitrator then such arbitrator shall be appointed by any Justice of the High Court of

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 1.

Undated and unsigned agreement attached to Power Agreement between The Falls Power Company and Clifton Sand, Gravel and Construction Company.

—continued.

Justice for Ontario upon motion of either party and upon ten days' notice in writing to the other party. The decision of any two of the three arbitrators so nominated shall be binding and conclusive upon both of the parties hereto.

IN WITNESS WHEREOF, on the day and year first above written, the parties hereto have hereunto caused their respective corporate names to be subscribed and their respective corporate seals to be affixed by their respective officers thereunto duly authorized by resolutions duly adopted by their respective Boards of Directors.

Attest: .....

..... By .....

Secretary. *President.*

Attest: .....

..... By .....

Secretary. *President.*

Ex. 2. Letters Patent incorporating Coniagas Reduction Company Limited, 14th April, 1908.

Exhibit No. 2
(Plaintiff's Exhibit.)

Letters Patent incorporating Coniagas Reduction Company Limited.

LETTERS PATENT

INCORPORATING

THE CONIAGAS REDUCTION COMPANY LIMITED

Dated 14th April, 1908
Recorded 15th April, 1908

Lib. 191 Fol 405

I. POPE
Deputy Registrar General of Canada

Ref. No. 52638

CANADA

By the Honourable Richard William Scott, Secretary of State of Canada,

To all to whom these presents shall come, or whom the same may in any wise concern,

GREETING:

WHEREAS, in and by the first part of Chapter 79, of The Revised Statutes of Canada, 1906, and known as "The Companies Act," it is amongst other things, in effect enacted, that the Secretary of State may, by Letters Patent, under his Seal of Office, grant a Charter to any number of persons, not less than five, who having complied with the requirements of the Act, apply therefor, constituting such persons, and others who thereafter become shareholders in the Company thereby created, a Body Corporate and Politic for any of the purposes or objects to which the Legislative Authority of the Parliament of Canada extends, except the construction and working of Railways or of Telegraph or Telephone lines, or the business of Banking and the issue of paper money, or the business of Insurance or the business of a Loan Company, upon the Applicants therefor establishing to the satisfaction of the Secretary of State due compliance with the several conditions and terms in and by the said Act set forth and thereby made conditions precedent to the granting of such Charter.

AND WHEREAS, JAMES JOHN MACKAN, Accountant; THEODORA SULLIVAN, Stenographer; HENRY HERBERT COLLIER, Barrister; NELLA LOUISA NELSON, Stenographer, and ROBERT LEE PEEK, Metallurgist; all of the City of St. Catharines, in the Province of Ontario, have made application for a charter under the said Act, constituting them and such others as may become shareholders in the Company thereby created, a Body Corporate and Politic, under the name of "THE CONIAGAS REDUCTION COMPANY LIMITED" for the purposes hereinafter mentioned, and have satisfactorily established the sufficiency of all proceedings required by the said Act to be taken, and the truth and sufficiency of all facts required to be established previous to granting of such Letters Patent, and have filed in the Department of the Secretary of State a duplicate of the Memorandum of Agreement executed by the said applicants in conformity with the provisions of the said Act.

NOW KNOW YE, that I, the said Richard William Scott, Secretary of State for Canada, under the authority of the hereinbefore in part recited Act, do by these Letters Patent, constitute the said James John Mackan, Theodora Sullivan, Henry Herbert Collier, Nella Louisa Nelson and Robert Lee Peek, and all others who may become shareholders in the said Company, a Body Corporate and Politic, by the name of "THE CONIAGAS REDUCTION COMPANY LIMITED," with all the rights and powers given by the said Act and for the following purposes and objects, namely:—

(a) To prospect for, open, explore, develop, work, improve, maintain and manage gold, silver, copper, coal, iron and other mines, mineral and other deposits and properties and to dig for, raise, crush, wash, smelt, assay, analyze, reduce and amalgamate and otherwise treat ores, metals and minerals, whether belonging to the company or not, and to render the same merchantable, and to sell and otherwise dispose of the same, or any part thereof, or any interest therein;

(b) To acquire by purchase, lease, concession, license, exchange, or other legal title, mines, mining lands, easements, mineral properties, or any interest therein, minerals and ores and mining claims, options, powers, privileges, water and other rights, patent-rights, letters patent of invention, processes and mechanical or other contrivances, and either absolutely or conditionally, and either solely or jointly with others, and as principals, agents, contractors or otherwise, and to lease, mortgage, place under license, hypothecate, sell, dispose of and otherwise deal with the same or any part thereof, or any interest therein;

(c) To construct, maintain, alter, make, work and operate on the property of the company, or the property controlled by the company, tramways, telegraph or telephone lines, reservoirs, dams, flumes, race and other ways, water powers, aqueducts, wells, roads, piers, wharfs, buildings, shops, stamping-mills and other works and machinery, plant, and electrical and other appliances of every description, and to buy, sell, manufacture and deal in all kinds of goods, stores, implements, provisions, chattels and effects required by the company or its workmen or servants;

(d) To build, acquire, own, charter, navigate and use steam and other vessels;

(e) To enter into partnership or into any arrangement for sharing profits, or union of interests with any person or company carrying on or engaged in, or about to carry on or engage in, any business or transaction which this company is authorized to carry on or engage in.

(f) To purchase or otherwise acquire and undertake all or any part of the assets, business, property, privileges, contracts, rights, obligations and liabilities of any person or company carrying on any business which this company is authorized to carry on.

(g) To acquire by purchase, lease or by other arrangement lands, or any interests therein, for the purpose of developing stone quarries, gravel and sand pits, thereupon or therein, and to sell and deal in the products thereof, and to manufacture and sell crushed stone, cement, lime, and similar products, and to explore for natural gas, and to purchase lands, or acquire leasehold interests therein for said purposes, or lands supposed to contain gas, oil, petroleum, and similar products, and to explore the said lands and develop the same; and to construct pipe lines and maintain the same for the purpose of transmitting oil, gas, petroleum and similar products and to engage in the business of quarrymen, oil and gas producers and distributors, and to manufacture and sell, transmit and dispose of artificial gas.

(h) To acquire and utilize water power for the purpose of compressing air, or generating electricity for lighting, heating, and motor purposes in connection with the company's buildings and its works, and also with authority

to sell or otherwise dispose of surplus electricity or power so generated by the company and not required for its own works, provided that when exercised outside the property of the Company the powers contained in this clause shall be subject to all provincial and municipal laws and regulations in that behalf.

The operations of the company to be carried on throughout the Dominion of Canada and elsewhere.

The place within the Dominion of Canada which is to be the chief place of business of the said Company is the City of St. Catharines, in the Province of Ontario.

The Capital Stock of the said Company shall be Two Hundred and Fifty Thousand Dollars divided into Twenty-five Hundred shares of One Hundred Dollars each, subject to the increase of such Capital Stock under the provisions of the said Act.

That the said James John Mackan, Henry Herbert Collier, and Robert Lee Peek are to be the first or Provisional Directors of the said Company.

PROVIDED ALWAYS that nothing in these Presents expressed or contained, shall be taken to authorize the construction and working of Railways or of Telegraph or Telephone Lines, or the business of Banking, and the issue of paper money, or the business of Insurance, or the business of a Loan Company by the said Company.

Given under my hand and seal of office, at Ottawa, this Fourteenth day of April, 1908.

R. W. SCOTT,

Secretary of State.

Secretary of State Canada SEAL

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 3.

Invoice, The Falls Power Company Limited to Clifton Sand, Gravel and Construction Company Limited, for power for month of May, 1908. 1st June, 1908.

Part Exhibit No. 3.
(Plaintiff's Exhibit.)

Invoice, The Falls Power Company Limited to Clifton Sand, Gravel and Construction Company Limited, for power for month of May, 1908.

Office, Ross Block — Welland, June 1, 1908
Phone No. 173
CLIFTON SAND, GRAVEL & CEMENT CO.
St. Catharines, Ont.

FALLS POWER COMPANY, LIMITED

Distributing Power for

THE ONTARIO POWER COMPANY OF NIAGARA FALLS

in the Townships of
Thorold, Pelham, Willoughby, Crowland, Bertie, Humberstone and Wainfleet

Service per agreement for Month of May, 1908..... $43.88

Maximum Demand.....H.P.
Average Demand.....H.P.
Load Factor.....Per Cent.
Rate per H.P. for month
6500 K.W. at .00675

Please remit to Welland

Part Ex. 3.

Cheque, Clifton Sand, Gravel and Construction Company Limited, 15th June, 1908.

Part Exhibit No. 3.
(Plaintiff's Exhibit.)

Cheque, Clifton Sand, Gravel and Construction Company Limited.

St. Catharines, Ont., June 15, 1908

THE CLIFTON SAND, GRAVEL & CONSTRUCTION CO. LIMITED

St. Catharines, Ontario

TO FALLS POWER CO. LIMITED Dr.
Welland, Ont.

1908

June 1 For Service for Month of May..... $43.88

Certified by

Approved by

Received from THE CLIFTON SAND, GRAVEL AND CONSTRUCTION COMPANY, LIMITED, the sum of FORTY-THREE.....88/100 Dollars in full payment of account.

FALLS POWER CO., LIMITED
Per J. D. KNOWLES,
Asst. Treas.

(Endorsement on back)
SPECIAL

Month June, 1908

Register No. 312

THE CLIFTON SAND, GRAVEL and CONSTRUCTION CO., LIMITED
St. Catharines, Ontario

In Favor Of

FALLS POWER CO. LTD.
Welland

$43.88

Charge to

I. & E.	$ 6.75
Smelting	11.48
Rec. & S.	25.65

Part Exhibit No. 4.
(Plaintiff's Exhibit.)

Part Ex. 4.

Invoice, The Falls Power Company Limited to Clifton Sand, Gravel and Construction Company Limited, for power for month of July, 1908. 1st August, 1908.

Invoice, The Falls Power Company Limited to Clifton Sand, Gravel and Construction Company Limited, for power for month of July, 1908.

Office, Ross Block
Phone No. 173

Welland, Aug. 1, 1908

CLIFTON SAND, GRAVEL & CONSTRUCTION CO.
St. Catharines, Ont.

FALLS POWER COMPANY, LIMITED

Distributing power for

THE ONTARIO POWER COMPANY OF NIAGARA FALLS

In the Townships of

Thorold, Pelham, Willoughby, Crowland, Bertie, Humberstone and Wainfleet

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 4.

Invoice, The Falls Power Company Limited to Clifton Sand, Gravel and Construction Company Limited, for power for month of July, 1908. 1st August, 1908.

—*continued.*

Service per agreement for Month of July, 1908 ..... $175.50

Maximum Demand.....H.P.
Average Demand.....H.P.
Load Factor.....Per Cent.
Rate per H.P. for month

Meter reads..... 41
Previous reading... 21
—— 20

Please remit to Welland

Part Exhibit No. 4.
(Plaintiff's Exhibit.)

Plaintiff's cheque in favour of The Falls Power Company Limited.

Part Ex. 4.

Plaintiff's cheque in favour of The Falls Power Company Limited. 11th August, 1908.

St. Catharines, Ont., August 11th, 1908

THE CONIAGAS REDUCTION CO., LIMITED, DR.
To Falls Power Co. Limited,
Welland, Ont.

Date		Amount	Amount
1908	For as follows: Service per agreement for Month of July, 1908.....		$175.50

To THE IMPERIAL BANK OF CANADA:

PAY TO THE ORDER OF FALLS POWER CO. LIMITED...$175.50
ONE HUNDRED AND SEVENTY-FIVE 50/100.....DOLLARS

in full of above account.

J. J. MACKAN, *Secretary* R. W. LEONARD, *President*

(Endorsement on front of cheque)

Negotiable without charge at
any branch of the
Imperial Bank of Canada

IMPERIAL BANK OF CANADA
Welland, Ont.
PAID

IMPERIAL BANK OF CANADA
St. Catharines, Ont.
PAID
August 25th, 1908

(Endorsement on back of cheque)

No. 1 August 11th, 1908

IN FAVOR OF

Falls Power Co. Limited
Welland, Ont.

AMOUNT $175.50
CHARGED TO

No. 23.....$175.50

FALLS POWER CO., LIMITED,

Per J. D. KNOWLES,
Asst. Treas.

This check is as payment in full of the within account. The Payee accepts it as such by endorsement above. No other receipt is necessary or desired.

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 4.

Plaintiff's cheque in favour of The Falls Power Company Limited. 11th August, 1908.

—continued.

Exhibit No. 16.
(Plaintiff's Exhibit.)

Ex. 16.

Agreement between Clifton Sand, Gravel and Construction Company Limited and Plaintiff. 15th December, 1908.

Agreement between Clifton Sand, Gravel and Construction Company Limited and Plaintiff.

THIS AGREEMENT made the 15th day of December, A.D. 1908.

BETWEEN:

THE CLIFTON SAND, GRAVEL & CONSTRUCTION CO., LTD.

hereinafter called the Construction Company

of the First Part

—AND—

THE CONIAGAS REDUCTION COMPANY, LIMITED,

hereinafter called the Reduction Company

of the Second Part.

WHEREAS the Construction Company did, on the 8th day of November, 1907, enter into a contract hereto annexed with the Falls Power Company, Limited;

In the Supreme Court of Ontario.

Exhibits.

Ex. 16.

Agreement between Clifton Sand, Gravel and Construction Company Limited and Plaintiff. 15th December, 1908.

—continued.

AND WHEREAS it was intended that as soon as the Construction Company had completed the erection of certain works upon its lands in the Township of Thorold, the said lands and works and all appurtenances thereto should be conveyed to the Reduction Company;

AND WHEREAS the said lands have been conveyed by the Construction Company to the Reduction Company;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the Construction Company does hereby grant, assign, transfer and set over unto the Reduction Company, all its right, title and interest in and to the annexed contract and all benefits and advantages to be derived therefrom.

AND the Reduction Company hereby covenants and agrees to and with the Construction Company, that it will assume all the obligations in the said contract binding upon the Construction Company, and pay all moneys to which the Falls Power Company, Limited, may become entitled from time to time under the provisions of the said contract, and will indemnify and save harmless the Construction Company of and from all liability of every nature and kind arising out of or in connection with the said contract.

IN WITNESS WHEREOF the said Companies have hereunto caused their corporate seals to be affixed and these presents to be signed by their proper officers in that behalf.

WITNESS: THE CLIFTON SAND, GRAVEL & CONSTRUCTION CO. LIMITED.

Per R. W. LEONARD,
President.
J. J. MACKAN,
Secretary, [SEAL]

THE CONIAGAS REDUCTION COMPANY, LIMITED,

Per R. W. LEONARD,
President.
J. J. MACKAN,
Secretary. [SEAL]

Pencil Memo.

This Assignment is acknowledged in Agreement between the Coniagas Reduction Company and the Falls Power Co., dated Nov. 14, 1909.

Part Exhibit No. 5.
(Plaintiff's Exhibit.)

Invoice, The Falls Power Company Limited to Plaintiff, for power for month of December, 1908.

Part Ex. 5.

Invoice, The Falls Power Company Limited to Plaintiff, for power for month of December, 1908. 1st January, 1909.

Office, Ross Block
Phone No. 173

Welland, Jan. 1, 1909

CONIAGAS REDUCTION CO.,
St. Catharines, Ont.

FALLS POWER COMPANY, LIMITED

Distributing Power For

THE ONTARIO POWER COMPANY OF NIAGARA FALLS

in the Townships of
Thorold, Pelham, Willoughby, Crowland, Bertie, Humberstone and Wainfleet

Service per agreement for Month of Dec., 1908..... $201.83

Maximum Demand.....H.P.
Average Demand.....H.P.
Load Factor.....Per Cent.
Rate per H.P. for month.
Meter reads.....144
Previous reading...121
— 23

Please remit to Welland by
15th inst.

Part Exhibit No. 5.
(Plaintiff's Exhibit.)

Plaintiff's cheque in favour of The Falls Power Company Limited.

Part Ex. 5.

Plaintiff's cheque in favour of The Falls Power Company Limited. 13th January, 1909.

St. Catharines, Ont., January 13th, 1909

THE CONIAGAS REDUCTION CO., LIMITED, Dr.
To Falls Power Co. Limited
Welland, Ont.

Date		Amount	Amount
	For as follows: Service per Agreement for Month of December, 1908, as per account...		$201.83

To THE IMPERIAL BANK OF CANADA:

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 5.

Plaintiff's cheque in favour of The Falls Power Company Limited. 13th January, 1909.

—continued.

PAY TO THE ORDER OF THE FALLS POWER CO. LTD. $201.83/100
TWO HUNDRED AND ONE 83/100.....DOLLARS
in full of above account.

J. J. MACKAN, *Secretary.* R. W. LEONARD, *President.*

(Endorsement on front of cheque)

Negotiable without charge at any branch of the Imperial Bank of Canada
IMPERIAL BANK OF CANADA
St. Catharines, Ont.
Paid Jan. 19, 1909

10

(Endorsement on back of cheque)

No. 269 January 13th, 1909

FALLS POWER CO., Limited
Per J. D. KNOWLES,
Asst. Treas.

IN FAVOR OF
Falls Power Co. Limited,
Welland, Ont.,

Amount $201.83

This check is as payment in full of the within account. The Payee accepts it as such by endorsement above. No other receipt is necessary or desired.

Charged to

No. 24.....$201.83

20

Ex. 17.

Agreement between Plaintiff and The Falls Power Company Limited. 14th November, 1909.

Exhibit No. 17.
(Plaintiff's Exhibit.)

Agreement between Plaintiff and The Falls Power Company Limited.

THIS INDENTURE made in duplicate the 14th day of November. in the year of our Lord, one thousand nine hundred and nine.

BETWEEN:

THE CONIAGAS REDUCTION COMPANY, LIMITED.

hereinafter called the Reduction Company

of the First Part

—AND—

THE FALLS POWER COMPANY, LIMITED,

hereinafter called the Power Company

of the Second Part

WHEREAS the Power Company has requested the Reduction Company to grant it permission to construct a pole line across its property in the Township of Thorold, for the purpose of conveying electric current thereon, and the Reduction Company has agreed to grant the same upon the terms and conditions hereinafter set forth;

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and of the sum of one dollar paid by the Power Company to the Reduction Company, the receipt whereof is hereby by it acknowledged, the Reduction Company hereby grants to the Power Company the right to construct and maintain a twelve thousand volt double current transmission line, to be erected upon twelve wooden poles across that portion of lot number twenty-nine in the Township of Thorold adjacent to the eastern boundary of the right of way of the Welland Division of the Grand Trunk Railway Company, along a strip of land thirty feet in width, commencing at the intersection of the southerly boundary of said lot with the said right of way, and extending northerly along its easterly limit to the northerly limit of that portion of the Reduction Company's property lying adjacent to said right of way.

The location of the said line shall be ten feet distant from the easterly limit of the said right of way and shall be changed from time to time by the Power Company at the request of the Reduction Company upon reasonable notice in writing to that effect, should the Reduction Company desire to use that portion of its lands upon which said location is now made for its works, or any part thereof, and deem it necessary that such change should be made for such purpose, and should the Power Company not, within a reasonable time, make such change of location, the Reduction Company shall be at liberty to make the same at the expense of the Power Company.

The Power Company agrees forthwith at the request of the Reduction Company to connect the said transmission line with the Company's power

In the Supreme Court of Ontario.

Exhibits

Ex. 17.

Agreement between Plaintiff and The Falls Power Company Limited. 14th November, 1909.

—continued.

plant at its works in the said Township so that it may have an alternative line for the receipt of the electric current which the Power Company supplies it under the contract made between it and The Clifton Sand, Gravel and Construction Company, Limited, bearing date the 8th day of November, 1907, the Reduction Company affording all facilities and right of way for such connecting line, and choosing the location thereof.

The Power Company hereby extends the time for the Reduction Company, as assignee of the said The Clifton Sand, Gravel and Construction Company, Limited, to exercise the option mentioned on page two in the above contract to change the method of payment for power to a flat rate to a period ending at three months from the date hereof.

This agreement shall not be binding upon the Reduction Company until the Power Company has procured the consent of the Grand Trunk Railway Company to its crossing the line of the siding of the said Welland Division to the Reduction Company's works, and the authority of the Board of Railway Commissioners for Canada, if such authority is required.

IN WITNESS WHEREOF the said companies have hereunto caused their corporate seals to be affixed, and these presents signed by their proper officers in that behalf respectively.

THE CONIAGAS REDUCTION COMPANY, LIMITED

(Sgd.) R. W. LEONARD,
President.

(Sgd.) J. J. MACKAN,
Secretary.

THE FALLS POWER COMPANY, LIMITED,

(Sgd.) D. ROSS,
President.

(Sgd.) H. E. NICHOLS,
Secretary.

Exhibit No. 21.
(Defendant's Exhibit.)

Letter, Plaintiff to The Falls Power Company Limited.

Ex. 21.

Letter, Plaintiff to The Falls Power Company Limited. 28th December, 1909.

THE CONIAGAS REDUCTION COMPANY, LIMITED

General Offices—St. Catharines, Ontario
Works—Thorold, Ontario

St. Catharines, Ont., Dec. 28th, 1909.

Messrs. The Falls Power Company, Ltd.
Welland, Ontario.

Gentlemen:—

Confirming our agreement on telephone with Mr. McClary of this A.M. re Power supplied to us at Thorold, we will begin taking power on flat rate basis on Jan. 1st, 1910.

Yours very truly,
THE CONIAGAS REDUCTION COMPANY, LIMITED,
Per—J. J. MACKAN (Sgd.)

JJM/H

Part Exhibit No. 20.
(Defendant's Exhibit.)

Extracts from Minutes of Plaintiff's shareholders' meeting.

Part Ex. 20.

Extracts from Minutes of Plaintiff's shareholders' meeting. 22nd December, 1921.

"The President referred to negotiations being carried on with the representatives of the Niagara Alkali Company and The Electro Bleaching Company, regarding the proposed agreement for carrying on the manufacture of Cobalt and Chlorine products at the Thorold Plant, and it was moved by Mr. Longwell, seconded by Mr. Bishop, that the President be authorized to continue such negotiations and take such action in the matter as he may deem advisable.—CARRIED."

Part Exhibit No. 20.
(Defendant's Exhibit.)

Extracts from Minutes of Plaintiff's directors' meeting.

Part Ex. 20.

Extracts from Minutes of Plaintiff's directors' meeting. 18th April, 1922.

"The President referred to the agreement between the Niagara Alkali Co., the Electro Bleaching Gas Company, and The Coniagas Reduction Company, Limited and called on Mr. Collier to explain the agreement. Mr. Collier stated that the name of "The Coniagas Reduction and Alkali Company, Limited" for the proposed new company to be organized under said agreement, had been submitted to the Secretary of State for approval, and that

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 20.

Extracts from Minutes of Plaintiff's directors' meeting. 18th April, 1922.

—*continued.*

objection had been taken by the Department on account of the similarity to the Coniagas Reduction Company, Limited. The Department had suggested the name "The Coniagas Alkali and Reduction Company, Limited." On motion of Mr. Bishop, seconded by Mr. Longwell, Mr. Collier was authorized to agree, on behalf of the company, to the latter name.—CARRIED."

A draft of lease from the Company to the Coniagas Alkali and Reduction Company, Limited, was submitted and approved, and on motion of Mr. Longwell, seconded by Mr. Bishop, the proper officers of the company were authorized to execute the same on behalf of the company, and attach the company's seal thereto.—CARRIED.

The following By-law was, on motion of Mr. Longwell, seconded by Mr. Bishop, approved and duly passed.

BY-LAW No. 10

A By-law to authorize the directors to purchase shares in the Coniagas Alkali and Reduction Company, Limited.

WHEREAS it is deemed advisable to purchase 1,000 shares of the Preferred Stock in the above company, and also to acquire 12,000 Common Shares of no par value, therein.

BE IT THEREFORE ENACTED by the Directors of The Coniagas Reduction Company, Limited, and it is hereby ENACTED:

1. It shall be lawful for the company to purchase 1,000 shares of the Preferred Stock of The Coniagas Alkali and Reduction Company, Limited, and to pay for the same in materials to be supplied to the said company; and, also to acquire 12,000 shares of the said company's Common Stock of no par value, in connection with the leasing of about 24 acres of the Company's property and plant to that company, and granting to it certain other privileges and trade connections and good-will, and the proper officers of the company are authorized to subscribe for and acquire the said shares.

2. The Directors are authorized to purchase or acquire such other shares of the said company, from time to time, as they may deem advisable.

Adopted and passed this 18th day of April, 1922.

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 20

Extracts from Minutes of Plaintiff's directors' meeting. 27th March, 1923.

Part Exhibit No. 20.
(Defendant's Exhibit.)

Extracts from Minutes of Plaintiff's directors' meeting.

"The President read an agreement entered into between The Coniagas Reduction Company, Ltd., The Coniagas Alkali & Reduction Co. Ltd., Niagara Alkali Company and the Electro Bleaching Gas Company, and explained that at an informal meeting of Directors held on the 14th day of February, 1923, the general terms of the agreement had been discussed, whereby the Reduction Company should work up certain materials on hand and dispose of the products in a manner to be agreed on by the respective companies. The agreement was accordingly prepared and executed by the proper officers of the respective companies.

The said agreement, bearing date February 20th, 1923, is now submitted for ratification.

Moved by Mr. Peek, seconded by Mr. Longwell, that the action of the President and Secretary in entering into the said agreement is hereby approved, and the terms and provisions of the said agreement are hereby ratified and confirmed."

Part Ex. 15

Invoice, undated, Defendant to Plaintiff, covering goods sold to Plaintiff.

Part Exhibit No. 15.
(Defendant's Exhibit.)

Invoice, undated, Defendant to Plaintiff, covering goods sold to Plaintiff.

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

Sold to: CONIAGAS REDUCTION COMPANY,
St. Catharines, Ontario.

190 University Avenue

Toronto, Ont.....192

Your Order No. 117-D. Our Order No. PD7-S-258-Z

1923		
Aug. 11	8 lengths 85# Relaying Rails, 33'0" long.	
	2 " " " " 30'0" "	
	Above in first-class condition and complete with twenty (20) Angle Bars, used.	
	Total Weight 9780 lbs. = 4.366 gross tons at $40.00 per gross ton.....	$174.64

GAH/GH

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 15.

Invoice, undated, Defendant to Plaintiff, covering goods sold to Plaintiff.

—continued.

(Endorsement on front of Invoice)

The Coniagas Reduction Company, Limited.
(Operating Coniagas Alkali)

RECEIVED
Aug. 24, 1923

RECEIVED
Aug. 23, 1923

Not previously vouchered
R. T.

Goods received Aug., 1923
Invoice checked . . g
Prices checked . . . g
Acct. Chargeable. 10 $174.64
Goods Approved 10
Signed
. . . . . .
Purch. Agent.

Approved for Payment D.A.M.

Freight 14.40
Duty . . . . . .
Cartage . . . . . .
F.O.B. Nia. Falls

Part Ex. 15.

Plaintiff's cheque in favour of Defendant. 31st August, 1923.

Part Exhibit No. 15.
(Defendant's Exhibit.)

Plaintiff's cheque in favour of Defendant.

St. Catharines, Ont., Aug. 31st, 1923

THE CONIAGAS REDUCTION CO., LIMITED, DR.
OPERATING CONIAGAS ALKALI

TO Hydro-Electric Power Com. of Ontario
Toronto

Date 1923		Amount	Amount
Aug. 11	For Mds. as follows: Relaying Rails, etc., as per Inv. attached		$174.64

To THE IMPERIAL BANK OF CANADA:

PAY TO THE ORDER OF HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO.....$174.64
ONE HUNDRED & SEVENTY-FOUR 64/100.....DOLLARS
In full of above account.

Not good if detached from Statement of Account

J. J. MACKAN, *Secretary.* A. L. BISHOP, *Vice-President.*

(Endorsement on front of cheque)

The Coniagas Reduction Company, Limited
(Operating Coniagas Alkali)

IMPERIAL BANK OF CANADA
PAID
Sept. 14, 1923
Second Teller
St. Catharines, Ont.

(Endorsement on back of cheque.)

Pay to BANK OF MONTREAL
or Order
HYDRO-ELECTRIC POWER
COMMISSION OF ONTARIO
No. 1 Account
J. W. GILMOUR,
Treasurer.

This cheque is payment in full of the within account. The Payee accepts it as such by endorsement above. No other receipt is necessary or desired.

No. 685 Aug. 31st, 1923
IN FAVOR OF
Hydro-Electric Power Com.
of Ontario
Toronto
Amount $174.64
Charged to

10 $174.64

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 20.

Letter, Plaintiff to Roessler & Hasslacher Chemical Company. 19th September, 1923.

Part Exhibit No. 20.
(Defendant's Exhibit.)

Letter, Plaintiff to Roessler & Hasslacher Chemical Company.

THE CONIAGAS REDUCTION COMPANY LIMITED

St. Catharines, Ont., Sept. 19, 1923

Messrs. Roessler & Hasslacher Chemical Co.,
P.O. Box 119, Times Sq. Station,
New York City.

Gentlemen:

We hereby offer you for re-sale in the United States, during the calendar year 1924, for consumption in that country only, one hundred and twenty thousand pounds (120,000 pounds) of our Black Cobalt Oxide, at the price of $2.10 per pound, Canadian or American funds, at our option, F.O.B. our works, Thorold, Ontario, less allowance of 13½¢. per pound to cover all commission, expenses, etc., and one thousand pounds (1,000 pounds) of our Grey Cobalt Oxide at the price of $2.35 per pound, Canadian or American funds, at our option, F.O.B. our works, Thorold, Ontario, less allowance of 15¢. per pound, to cover all commissions, expenses, etc.

We will pay Customs duty up to 20¢. per pound; and customs duties, tariffs, etc., over 20¢. per pound to be paid by you.

We will also pay the freight from Thorold to New York, Cleveland or Chicago; in other words, the Black Cobalt Oxide is to net us $1.76½ per pound, F.O.B. Thorold, less freight to New York, Cleveland, or Chicago, and the Grey Cobalt Oxide is to net us $2.00 per pound F.O.B. Thorold, less freight to New York, Cleveland or Chicago.

All material shipped to be paid for on the 15th of each month for goods shipped during the next previous month.

In the event of our reducing the market price of Cobalt Oxide from $2.10 per pound for Black and $2.35 per pound for Grey, F.O.B. New York, Cleveland or Chicago, we will agree either to reduce your price accordingly on such quantities as you have not sold on the date such reduction goes into effect, or take such quantities off your hands at the price you have paid us, namely, $2.10 for Black, less 13½¢. per pound, and $2.35 per pound for Grey, less 15¢. per pound.

In the event of our reducing the price to you, the above allowances of 13½¢. per pound on Black, and 15¢. per pound on Grey, will be reduced proportionately.

You are to furnish us with a statement on the 15th day of each month, showing sales made by you during the next previous month. This is to be considered of essence.

Yours truly,
THE CONIAGAS REDUCTION CO. LIMITED,
(Operating Coniagas Alkali)
Per A. L. BISHOP, *Vice-President.*

Accepted
The Roessler & Hasslacher R. W. L.
Chemical Co.
J.A.O'B.

W. A. HARMAN,
First Vice-President.

Part Exhibit No. 20.
(Defendant's Exhibit.)

Letter, Roessler & Hasslacher Chemical Company to Plaintiff.

THE ROESSLER & HASSLACHER CHEMICAL COMPANY
MANUFACTURING AND IMPORTING CHEMISTS
709-717 Sixth Avenue

New York, January 10, 1924

123

The Coniagas Reduction Co. Ltd.
St. Catharines, Ont.
Canada.

Gentlemen:

Confirming our discussion with your Mr. Mackan re renewal of Agency Contract dated September 19th, 1923, we hereby agree to extend the said contract until December 31, 1927, for our requirements estimated annually for each of the years 1925, 1926, 1927, at one hundred and twenty thousand pounds (120,000 lbs.) Black Oxide of Cobalt; and one thousand pounds (1,000 lbs.) Grey Oxide of Cobalt; on the same terms, with the understanding that it may be performed on your part by yourselves or assigns.

Yours truly,

THE ROESSLER & HASSLACHER CHEMICAL,

W. MALSCH, Mgr. Cer. Dept. Co.
R. W. L.
J. A. O'B.

In the Supreme Court of Ontario.

—

Exhibits.

Part Exhibit No. 20.
(Defendant's Exhibit.)

Agreement between Plaintiff, Deloro Smelting & Refining Company Limited and Coniagas Mines Limited.

Part Ex. 20.

Agreement between Plaintiff, Deloro Smelting & Refining Company Limited and Coniagas Mines Limited. 5th February, 1924.

MEMORANDUM OF AGREEMENT made this 5th day of February, 1924.

BETWEEN:

CONIAGAS REDUCTION COMPANY LIMITED,
hereinafter called "The Reduction Company",
Of the First Part,

DELORO SMELTING & REFINING COMPANY LIMITED,
hereinafter called "The Deloro Company",
Of the Second Part,

— AND —

CONIAGAS MINES LIMITED,
hereinafter called "The Coniagas Mines",
Of the Third Part.

WHEREAS the Reduction Company owns a smelting plant in the Township of Thorold, in the County of Welland, at which it has been treating the silver Cobalt ores and concentrates of the Coniagas Mines.

AND WHEREAS the Reduction Company is considering the closing down of its said smelting plant and discontinuing the treatment of silver Cobalt ores.

AND WHEREAS the Coniagas Mines is desirous of procuring a sure market for the products of its ores and concentrates and with that end in view has requested the Deloro Company to undertake the treatment of its said ores and concentrates, which the Deloro Company has agreed to do subject to and upon the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants hereinafter contained the parties hereto have agreed as follows:—

1. The Deloro Company agrees with the Reduction Company and the Coniagas Mines that it will forthwith upon the execution of this agreement by the Reduction Company and Coniagas Mines enter into a contract with the Coniagas Mines "*ipissima verba*" with the form of contract hereto annexed and marked for purpose of identification with the letter "A", which said contract shall be deemed to be incorporated with and form part of this agreement. It is expressly understood and agreed between the parties hereto, however, that said contract shall at all times be subject to and contingent upon the due observance and performance by the Reduction Company of all the terms, covenants, conditions and provisoes on the part of the Reduction Company to be observed and performed in this agreement contained.

2. The Reduction Company doth hereby transfer, set over and assign unto the Deloro Company as and from 1st January 1925, all its right, title and interest in and to that certain agency contract as set out in the letter dated the 29th day of September, 1923, from the Reduction Company to Roessler & Hasslacher Chemical Company and renewed by the latter dated 10th January, 1924, from said Roessler & Hasslacher Chemical Company to the Reduction Company (copies of which said letter are also attached hereto and marked for purposes of identification with the letter "B") together with all the benefits and advantages to be derived from said contract, and the Deloro Company agrees to perform said contract and to indemnify the Reduction Company against liability thereunder from and after said 1st day of January, 1925.

3. The Deloro Company covenants and agrees with the Reduction Company that it will pay to the Reduction Company if, as and when received twenty per cent. of all moneys paid to the Deloro Company by said Roessler & Hasslacher Company for Cobalt Oxide supplied by the Deloro Company under said contract up to but not exceeding the sum of fifty thousand dollars ($50,000.00).

4. Subject to the provisions as to standard prices hereinafter mentioned the Reduction Company shall be at liberty to market all its Cobalt products at present on hand undisposed of in such manner as it may see fit provided, however, that if on or before the 1st day of January, 1925, the Reduction Company so elects, and provided such products are of uniform commercial grade, the Reduction Company may call upon the Deloro Company to market the balance of its Cobalt products then remaining through the said Roessler & Hasslacher Chemical Company, and in the event of the Reduction Company so electing the Deloro Company shall be bound to market such products through said Roessler & Hasslacher Chemical Company as ordered from time to time pound for pound with its own Cobalt Oxide marketed through the said Company, and the Deloro Company shall pay to the Reduction Company if, as and when received the actual net amounts paid by the said Roessler & Hasslacher Chemical Company from time to time for the products of the Reduction Company as marketed as aforesaid.

5. The Reduction Company covenants and agrees with the Deloro Company that under no circumstances during the period the Deloro Company shall be treating the ores and concentrates of the Coniagas Mines, its successors or assigns, will the Reduction Company, or its agents, sell or dispose of its Cobalt products or permit the same to be sold or disposed of at prices lower than the standard prices for Cobalt Oxide and Cobalt Metal established and adopted from time to time by the Deloro Company. The Deloro Company covenants and agrees with the Reduction Company that it will advise the Reduction Company from time to time of such standard prices and that same will not be increased or decreased without previous notice being given

to the Reduction Company of any proposed change. Provided, and it is hereby understood and agreed between the parties hereto that in the event of the Deloro Company making any sale of its Cobalt Oxide at prices lower than the standard prices fixed as aforesaid and then prevailing, the Reduction Company shall have the option to the extent of its supply of Cobalt Oxide then on hand to participate pound for pound with the Deloro Company in any such sale.

6. It is understood and agreed that where the Reduction Company, or its agents, shall have quoted prices to a prospective purchaser for its Cobalt Oxide at the standard prices then in effect at the date of such quotation and pending the completion of a binding contract with such prospective purchaser the Reduction Company receives notice from the Deloro Company of a raise in such standard prices, the Reduction Company shall notwithstanding such notice, be entitled to close with such purchaser at the price so quoted provided a binding contract of sale is made within fifteen days from the receipt of such notice and in entering into any such contract of sale as aforesaid the Reduction Company shall not be deemed to have committed a breach of the covenant to maintain standard prices contained in the preceding paragraph hereof.

7. The Reduction Company hereby covenants and agrees with the Deloro Company that it will forthwith on the execution of this agreement discontinue the treatment of silver Cobalt ores and the production of material therefrom at its said smelting plant in the said Township of Thorold, except such ores or materials as are now on hand at said plant awaiting or in process of treatment, and further that it will not for a period of six years from the date hereof, or so long thereafter as the Deloro Company shall continue to treat the ores and concentrates of Coniagas Mines, its successors or assigns use or permit the said smelting plant to be used for the purposes aforesaid or any of them, and in the event of the Reduction Company desiring to sell, lease, or otherwise dispose of its said smelting plant it will exact from the purchaser, lessee, or other party acquiring or using said smelting plant a like covenant, or one to the same effect.

8. This agreement and everything herein contained shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns respectively.

IN WITNESS WHEREOF the parties hereto have affixed their respective corporate seals under the hands of their proper officers in that behalf.

Signed, Sealed and Delivered, in the presence of

THE CONIAGAS REDUCTION CO., LIMITED.
R. W. LEONARD, *President*,
J. J. MACKAN, *Secretary*.

DELORO SMELTING & REFINING CO., LIMITED.
J. A. O'BRIEN, *Vice-President*,
S. F. KIRKPATRICK, *Director*.

CONIAGAS MINES, LIMITED.
R. W. LEONARD, *President*,
J. J. MACKAN, *Secretary*.

Part Exhibit No. 20.
(Defendant's Exhibit.)

Part Ex. 20.

Agreement between Coniagas Mines Limited and Deloro Smelting & Refining Company Limited. 5th February, 1924.

Agreement between Coniagas Mines Limited and Deloro Smelting & Refining Company Limited.

MEMORANDUM OF AGREEMENT made this 5th day of February, 1924.

BETWEEN:

CONIAGAS MINES, LIMITED,
hereinafter called "The Coniagas Company",
Of the First Part,

— AND —

DELORO SMELTING & REFINING COMPANY LIMITED,
hereinafter called "The Deloro Company",
Of the Second Part.

WHEREAS the Coniagas Company has requested the Deloro Company to treat the silver Cobalt ores produced by it from its mining property in the District of Temiskaming, and any other properties operated by the Coniagas Company, which the Deloro Company has agreed to do subject to and upon the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto have agreed as follows:—

1. The Coniagas Company agrees to ship exclusively to and the Deloro Company agrees to accept from and treat for the Coniagas Company at the smelter of the Deloro Company at Deloro, Ontario, all the silver Cobalt ores

and concentrates (other than flotation concentrates) produced by the Coniagas Company from its mining properties in the District of Temiskaming, or from any other properties operated by the Coniagas Company in quantities up to but not exceeding 150 tons per month, provided such ores and concentrates are similar in general character to those heretofore treated by the Deloro Company and Coniagas Reduction Company Limited, and come within the category of what are known as characteristic Silver Cobalt ores. As the principal element that may change the character of the ore and concentrates for smelter purposes is copper, it is hereby understood and agreed that if the ores and concentrates shipped by the Coniagas Company to the Deloro Company as aforesaid shall contain more than 1.5 per cent. of copper the Deloro Company shall accept the same for treatment but the Coniagas Company shall allow to the Deloro Company 50 cents per pound for every pound of copper in the ores or concentrates in excess of 1.5 per cent. and the Deloro Company shall be entitled to deduct the said 50 cents per pound as aforesaid from any payments that may be due to the Coniagas Company from the Deloro Company as hereinafter provided. Nothing herein contained shall obligate the Coniagas Company to ship to the Deloro Company ores and concentrates containing copper in excess of 1.5 per cent., or other ores and concentrates not coming within the category of those to be treated by the Deloro Company as hereinbefore provided, the intention of the parties being that as to all such ores and concentrates the Coniagas Company shall be at liberty, if it so desires, to ship the same for treatment elsewhere.

2. The ores and concentrates so to be shipped and treated as aforesaid shall be classified as follows:—CLASSIFICATION No. 1, CONSISTING OF HIGH SILVER COBALT ORES AND CONCENTRATES ASSAYING 300 OUNCES AND MORE SILVER PER NET TON: CLASSIFICATION No. 2, CONSISTING OF LOW SILVER COBALT ORES AND CONCENTRATES ASSAYING UNDER 300 OUNCES SILVER PER NET TON. The terms and conditions covering the treatment of said ores and concentrates and the payment for the products thereof shall be as hereinafter set forth.

CLASSIFICATION No. 1. The Coniagas Company will pay the Deloro Company a treatment charge of twenty dollars ($20.00) per ton of ores and concentrates treated together with a refining charge of ½¢. per ounce of silver in respect of ores and concentrates containing 3,000 ounces of silver and less per ton, and ¼¢. per ounce of silver in respect of ores and concentrates containing over 3,000 ounces of silver per ton. The Deloro Company will pay in New York funds, or their equivalent at official price as reported by Handy & Harman at settlement dates 98% of the silver contents as determined by assay of which 75% thereof shall be paid thirty days after sampling and 25% thereof ninety days after such sampling, provided the sampling is done at Deloro. In case the sampling is done at Cobalt, 75% of the silver contents as aforesaid shall be paid thirty days after the arrival of cars at Marmora Station and 25% ninety days after such arrival. The Deloro

Company will pay the Coniagas Company 3 cents per unit per pound for the total Cobalt contents if the material assays 4% or over, such payment to be made in Canadian funds with the second payment for silver as hereinbefore provided. In case the Cobalt contents assay less than 4% the Coniagas Company shall not be entitled to any payment therefor.

CLASSIFICATION No. 2. The Deloro Company will make no treatment charge or silver refining charge in respect of ores and concentrates coming within this classification. The Deloro Company will pay the Coniagas Company in New York funds or their equivalent at official price as reported by Handy & Harman at settlement dates 90% of the silver contents as determined by assay 45 days after arrival of cars at Marmora Station. The Deloro Company will pay in Canadian funds 3 cents per unit per pound for the total Cobalt contents if the material assays 4% or over, such payment to be made with the payment of silver as hereinbefore provided. In case the Cobalt contents assay less than 4% Cobalt the Coniagas Company shall not be entitled to receive any payment therefor.

3. Sampling of ores and concentrates coming within either of the above mentioned classifications may be done at Deloro free of charge to the Coniagas Company, in the presence of a representative of the Coniagas Company, or at the option of the Coniagas Company at Temiskaming Testing Laboratories, Cobalt, in which case the cost of sampling will be at the expense of the Coniagas Company. The ores and concentrates will be weighed at Deloro in the presence of a representative of the Coniagas Company, and the weights so determined shall be final, binding and conclusive upon the parties hereto. Assaying will be done at the option of the Reduction Company by either C. L. Constant & Company or Ledoux & Company of New York, at the expense of the Coniagas Company, and in the event of dispute if the parties do not otherwise agree the matter will be referred to whichever of said firms has not done the assaying and the decision of such firm shall be final and binding upon the parties.

4. The freight to Marmora Station in respect of all ores and concentrates coming within CLASSIFICATION No. 1, shall be paid by the Coniagas Company. The freight in respect to ores coming within CLASSIFICATION No. 2, to Marmora Station shall be paid by the Deloro Company if the material contains 6% Cobalt or over, otherwise such freight shall be paid by the Coniagas Company. If freight is paid by the Deloro Company for or on behalf of Coniagas Company same may be deducted from any payments due from Deloro Company to the Coniagas Company.

5. It is further understood and agreed between the parties hereto that if by reason of the acts of God, the King's enemies, strikes, fires, accidents to or derangements of the Deloro Company's power supply, plant, or any part thereof, protracted coal or railroad strikes that may prevent the Deloro Company from receiving necessary supplies, or by reason of any other cause,

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 20.

Agreement between Coniagas Mines Limited and Deloro Smelting & Refining Company Limited. 5th February, 1924.

—continued.

matter or thing beyond the control of the Deloro Company delay or interruption shall occur in the receipt or treatment of shipments, the dates for payment as specified above shall be extended for a period of time equal to the time of such delay or interruption.

6. This agreement shall come into effect as and from its date and shall continue as to ores and concentrates coming within CLASSIFICATION No. 1, for a period of three years, and as to ores and concentrates coming within CLASSIFICATION No. 2, for a period of two years, provided, however, that subject to the adjustment of tariff rates as hereinafter mentioned the Coniagas Company may at its option call for renewals of this agreement as to ores and concentrates coming within the CLASSIFICATION No. 1, for further yearly periods not exceeding three years in all, and as to ores and concentrates coming within CLASSIFICATION No. 2, for further yearly periods not exceeding four years in all, it being understood and agreed, however, that in the event of any renewals as aforesaid the Coniagas Company shall be entitled to the benefit of the best prevailing tariff rates for the time being and from time to time offered to other shippers by the Deloro Company for the treatment of ores and concentrates of a corresponding quality and character.

7. This agreement and everything herein contained shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns respectively.

IN WITNESS WHEREOF the parties hereto have affixed their respective corporate seals under the hands of their proper officers in that behalf.

Signed, Sealed and Delivered,
In the presence of

THE CONIAGAS MINES, LIMITED.
(*Sgd.*) R. W. LEONARD, *President*,
(*Sgd.*) J. J. MACKAN, *Secretary*.

DELORO SMELTING & REFINING CO., LIMITED.
(*Sgd.*) J. A. O'BRIEN, *Vice-President*,
(*Sgd.*) S. F. KIRKPATRICK, *Director*.

Part Exhibit No. 20.
(Defendant's Exhibit.)

Extracts from Minutes of Plaintiff's directors' meeting.

The Secretary read a letter from Mr. Low of the Niagara Alkali Company, in regard to the return of patents to that Company covering the chlorine process for the treatment of Cobalt ores.

Moved by Mr. Peek, seconded by Mr. A. L. Bishop that the Company take the necessary action, having in view the return of such patents and the cancellation of the lease held by the Coniagas Alkali & Reduction Company, Limited, of the Company's property at Thorold.—CARRIED.

Moved by Mr. Longwell, seconded by Mr. Peek, that the agreement dated February 5th, 1924, between the Coniagas Reduction Company, Limited, the Deloro Smelting & Refining Company, Limited, and The Coniagas Mines, Limited, covering the treatment of the ores of the Coniagas Mines, Limited, and the marketing of the product thereof, be approved.—CARRIED.

Part Exhibit No. 20.
(Defendant's Exhibit.)

Extracts from Minutes of Plaintiff's shareholders' meeting.

The President reported that The Coniagas Alkali & Reduction Company, Limited, which had been operating the smelter at Thorold under lease, had not been successful in the treatment of silver Cobalt ores under its patents, and that an agreement had been entered into by which The Coniagas Reduction Company would take over the management of the plant for the Alkali Company in order to complete the treatment of the ores on hand and market the products thereof; that this operation had now been completed and the Smelter closed down on account of insufficient ore supply not permitting of profitable operation of the plant. He further stated that an agreement had been entered into with the Deloro Smelting & Refining Company, Limited, dated February 5th, 1924, by The Coniagas Mines, Ltd., and The Coniagas Reduction Company Limited, by which the Deloro Company would undertake the treatment of the ores of The Coniagas Mines Limited, and the marketing of the finished products on satisfactory terms.

Moved by Mr. Longwell, seconded by Mr. Peek, that the action of the Directors in respect to the operation and closing down of the smelter and in entering into the said agreement with the Deloro Smelting & Refining Company, Limited be approved.—CARRIED.

In the Supreme Court of Ontario.

Exhibits.

Ex. 14.

Agreement between Coniagas Alkali and Reduction Company Limited and Plaintiff. 7th April, 1924.

Exhibit No. 14.
(Defendant's Exhibit.)

Agreement between Coniagas Alkali and Reduction Company Limited and Plaintiff.

THIS INDENTURE made the 7th day of April, one thousand nine hundred and twenty-four.

BETWEEN:

CONIAGAS ALKALI AND REDUCTION COMPANY LIMITED,
Of the one part,

— AND —

THE CONIAGAS REDUCTION COMPANY LIMITED,
Of the other part.

WHEREAS by an indenture dated the first day of March, 1922, and made between the said The Coniagas Reduction Company Limited of the first part, and the said Coniagas Alkali and Reduction Company Limited of the second part, the said The Coniagas Reduction Company Limited did demise and lease unto the said Coniagas Alkali and Reduction Company Limited, all that certain parcel or tract of land and premises situate, lying and being in the Township of Thorld, in the County of Welland, and Province of Ontario, and being parts of Lots numbers twenty-seven and twenty-eight in the said Township, containing by admeasurement twenty-four acres of land, be the same more or less, and shewn on blue print attached to said indenture of lease, and being bounded on the north, west and south by the lands of His Majesty the King, represented by the Department of Railways and Canals now in the occupation of lessor by consent of R. W. Leonard Esq., C.E., as lessee thereof from His Majesty under and by virtue of a certain indenture of lease No. 16,939, bearing date the third day of December, 1907, and on the east by the public road, including the steam travelling crane and two flat cars now on the premises, Together with the right in common with the lessor to use the siding and extensions thereof of the Grand Trunk Railway connecting the demised premises with the Welland Division of the said Railway Company as the same is now located, or may be hereafter located by Together with the privilege of exercising all the rights under a certain contract for electric power made between The Falls Power Company Limited, and The Clifton Sand, Gravel and Construction Company, Limited, for the term of five years from the first day of March, 1922, at the yearly rent of fifteen thousand dollars, and subject to the covenants and conditions therein contained.

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of one dollar now paid by the said The Coniagas Reduction

Company, Limited, to the said the Coniagas Alkali and Reduction Company, Limited, the receipt whereof is hereby acknowledged, the said the Coniagas Alkali and Reduction Company, Limited, hereby assigns and surrenders unto the said The Coniagas Reduction Company Limited, its successors and assigns, the lands and premises comprised in and demised by the said indenture of lease, to the intent that the unexpired residue of the said term of five years created by the said indenture of lease, and all other the estate and interest of the said Coniagas Alkali and Reduction Company Limited in the said lands, under or by virtue of the said Indenture, may be merged and extinguished in the reversion and inheritance of the said lands.

AND the said Coniagas Alkali and Reduction Company Limited, for itself, its successors and assigns, hereby covenants with the said The Coniagas Reduction Company Limited, its successors and assigns, that it, the said Coniagas Alkali and Reduction Company, Limited, now hath in itself good right, full power and absolute authority to assign and surrender the said lands in manner aforesaid, and that it hath not at any time, done or executed any act, deed, matter or thing whereby the unexpired residue of the said term is, shall or may be in any wise charged or encumbered.

IN WITNESS WHEREOF the said Coniagas Alkali and Reduction Company has hereunto caused its corporate seal to be affixed and these presents signed by its proper officers on that behalf.

E. D. KINGSLEY,
President.
J. J. MACKAN,
Secretary.

[SEAL]
CONIAGAS ALKALI AND REDUCTION COMPANY, LIMITED.

Part Exhibit No. 20.
(Defendant's Exhibit.)

Part Ex. 20.

Extracts from Minutes of Plaintiff's directors' meeting. 14th April, 1926.

Extracts from Minutes of Plaintiff's directors' meeting.

"The Vice-President explained that he had made a verbal agreement with B. J. McCormack, of Welland, to pay him 5% commission on the sale of the Thorold property and that Mr. McCormack had just advised him that he had prospective buyers in sight who were willing to pay $120,000.00 for the property including the electrical equipment thereon, comprised of the motors in store, transformers and sub-station equipment. Moved by Mr. H. H. Collier, seconded by Mr. R. L. Peek that the Vice-President and Secretary be authorized to enter into an agreement with Mr. McCormack providing for the sale of the Coniagas Reduction Company's property at Thorold on such terms as they might see fit and they be authorized to pay Mr. McCormack a commission of 5% of the gross price.—CARRIED."

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 20.

Letter, Plaintiff to Colonel B. J. McCormack. 14th April, 1926.

Part Exhibit No. 20.
(Defendant's Exhibit.)

Letter, Plaintiff to Colonel B. J. McCormack.

(Copy of letter addressed to B. J. McCormack, Welland, Ontario, attached to Minutes of Directors' Meeting, April 14th, 1926.)

St. Catharines, April 14th, 1926.

Colonel B. J. McCormack,
Welland, Ontario.

Dear Sir:

We hereby authorize you to make a sale of the property of The Coniagas Reduction Company, Limited, situated in the Township of Thorold, in the County of Welland, bordering on the Welland Ship Canal, including the lands and buildings thereon and the following equipment only:

Motors in store, Transformers and sub-station equipment, together with the benefit of the Power Contract under which the Company has been using electric current supplied by the Hydro Electric Commission of Ontario, upon the following terms:

The price is to be $120,000.00 payable $25,000.00 in cash on execution of contract of sale, balance in thirty days without interest. Your clients will be allowed to leave 50% of the purchase money on mortgage on the property for three years, interest at 6% payable half yearly.

If you effect a sale of this property on the above terms and upon agreement of sale being executed, we agree to pay you a commission of 5% on the purchase price.

This offer to remain open for 10 days from this date.

Yours truly,

THE CONIAGAS REDUCTION COMPANY, LIMITED.
per (Signed) A. L. BISHOP.

Part Exhibit No. 7.
(Plaintiff's Exhibit.)

Letter, Plaintiff to Defendant.

Part Ex. 7.

Letter, Plaintiff to Defendant. 16th September, 1926.

THE CONIAGAS REDUCTION COMPANY, LIMITED.

St. Catharines, Sept. 16th, 1926.

The Hydro-Electric Power Commission of Ontario,
University Ave., Toronto, Ont.

Re Power Contract for Power used by The Coniagas Reduction Co., Ltd., in the Township of Thorold.

Gentlemen:—

We have under consideration the reconstruction of our Works at Thorold and for that purpose desire to have your transmission wires disconnected from our transformers, and we presume you would desire that this work should be done under your supervision. This request is made without prejudice to any of our rights under the contract. We will continue as heretofore, complying in all respect with that contract, although we will not be for some indefinite time actually using power.

Yours truly,
THE CONIAGAS REDUCTION COMPANY, LTD.
per

HHC.M.

Part Exhibit No. 7.
(Plaintiff's Exhibit.)

Letter, Defendant to Plaintiff.

Part Ex. 7.

Letter, Defendant to Plaintiff. 23rd September, 1926.

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

September 23, 1926

The Coniagas Reduction Co., Limited,
St. Catharines, Ontario.

Att'n. MR. J. J. MACKAN, *Sec'y.*

Dear Sirs:—

This will acknowledge receipt of your letter of September 16th, in which you request that certain pole lines of the Commission be moved to permit of construction work at your Plant. Your letter is being handed to the Operating Department, who will get in touch with your men on the ground and take care of this work as required. Any expense in connection with carrying out the work will, of course, be billed to you in the usual way.

Yours truly,
F. A. GABY,
Chief Engineer.

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 6.

Plaintiff's cheque in favour of Defendant. 30th September, 1926.

Part Exhibit No. 6.
(Plaintiff's Exhibit.)

Plaintiff's cheque in favour of Defendant.

St. Catharines, Ont., Sept. 30th, 1926

THE CONIAGAS REDUCTION CO., LIMITED, DR.

TO HYDRO-ELECTRIC POWER COMMISSION
Toronto, Ont.

Date 1926		Amount	Amount
Sept. 30	For as Follows: Power used during the Month of September, 1926.....	.....	$206.25

To THE IMPERIAL BANK OF CANADA:
PAY TO THE ORDER OF HYDRO-ELECTRIC POWER COMMISSION..... $206.25
TWO HUNDRED AND SIX 25/xx.....DOLLARS
in full of above Account.
Not good if detached from statement of Account.

.....*Secretary* A. L. BISHOP, *Vice-President.*

(Endorsement on back of cheque)

Pay to BANK OF MONTREAL
or Order
HYDRO-ELECTRIC POWER
COMMISSION OF ONTARIO
No. 1 ACCOUNT
J. W. GILMOUR,
Treasurer.

This cheque is payment in full of the within account. The Payee accepts it as such by endorsement above. No other receipt is necessary or desired.

No. 16331 Sept. 30th, 1926

IN FAVOUR OF
Hydro-Electric Power Commission
Toronto, Ont.

Amounts $206.25/xx
Charged to

Suspense a/c..... $206.25

Part Exhibit No. 7.
(Plaintiff's Exhibit.)

Letter, Plaintiff to Defendant.

September 30th, 1926.

The Hydro-Electric Power Commission of Ontario,
190 University Ave.,
Toronto 2, Ont.

Attention MR. F. A. GABY, *Chief Engineer.*

Gentlemen:—

We are in receipt of yours of the 23rd. inst. in reply to ours of the 16th inst., from which we fear we did not our meaning clearto you.

What we wish is to have the power cut off on the high tension side of the transformers so that the entire system including the transformer house and transformers will be safe for the men engaged on the alterations which we propose to make.

As pointed out in our letter of the 16th inst., this request is made without prejudice to any of our rights under the contract and we will continue as heretofore complying in all respects with that contract although we may not be for some indefinite time actually using power.

Very truly yours,
THE CONIAGAS REDUCTION COMPANY, LTD.

Per .....

JJM.MM.

Part Exhibit No. 7.
(Plaintiff's Exhibit.)

Letter, Defendant to Plaintiff.

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

October 4th, 1926

The Coniagas Reduction Co., Limited,
St. Catharines, Ontario.

Att'n MR. J. J. MACKAN, *Secretary.*

Dear Sirs:—

We are in receipt of your letter of September 30th, in which you advise that you wish power cut off on the high tension side of your station trans-

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 7.

Letter, Defendant. to Plaintiff, 4th October, 1926.

—*continued.*

formers, so that certain work may be carried on with safety. Your letter is being handed to the Operating Department for attention, and someone will get in touch with you and arrange to assist your Company in connection with this matter.

Yours truly,
F. A. GABY,
Chief Engineer.
per J. J. JEFFREY.

JJJ/C.W.

Part Ex. 6 Invoice, Defendant to Plaintiff, for power for month of September, 1926. 6th October, 1926.

Part Exhibit No. 6.
(Plaintiff's Exhibit.)

Invoice, Defendant to Plaintiff, for power for month of September, 1926.

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

SOLD TO CONIAGAS REDUCTION COMPANY, LTD.,
St. Catharines, Ontario

Toronto, Ont., Oct. 6, 1926

To Power used during the month of September, 1926:—
150 H.P. at $\frac{16.50}{12}$ $206.25

Total $206.25

Time and Date of Peak Load .....

(Endorsement on front)

Goods Received Oct. 1926
Invoice Checked G.
Prices Checked G.
Acc't. Chargeable C. R. Co., Ap 24
Goods Approved .....
Signed
.....
Purch. Agent.
Approved for Payment, T.J.G.

Part Exhibit No. 7.
(Plaintiff's Exhibit.)

Letter, H. M. King, Superintendent Ontario Power plant to Plaintiff.

October 8th, 1926.

The Coniagas Reduction Co., Limited,
St. Catharines, Ont.

Att'n MR. J. J. MACKAN, *Secretary.*

Dear Sir:—

Complying with your request to our Toronto office and telephone instructions from Major Bishop to the writer you opened the switches on the Coniagas lines where they tap the main J & K lines. This makes the lines dead entering the Coniagas property.

These switches were opened and the lines made dead on Thursday, October 7th, 1926 and these lines will not be made alive again until we receive instructions to do so from you.

It is my understanding that this condition does not in any way affect your contract.

Yours very truly,

H. M. KING,
Supt. Ontario Power Plant.

HMK/M.

Part Exhibit No. 8.
(Plaintiff's Exhibit.)

Plaintiff's cheque in favour of Defendant.

St. Catharines, Ont., July 31, 1927

THE CONIAGAS REDUCTION CO., LIMITED, DR.

TO HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

Date 1927		Amount	Amount
July 31.	For as follows: Power for month of July, 1927.....	.....	$206.25

In the Supreme Court of Ontario.

—

Exhibits. Part Ex. 8. Plaintiff's cheque in favour of Defendant. 31st July, 1927.

—*continued.*

To THE IMPERIAL BANK OF CANADA:
PAY TO THE ORDER OF HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO $206.25
TWO HUNDRED SIX DOLLARS TWENTY-FIVE CENTS .....
in full of above Account.
Not good if detached from Statement of Account.
C. S. KENNEDY, *Secretary.* A. L. BISHOP, *Vice-President.*

(Endorsement on front of cheque)

Negotiable without charge at any branch of the Imperial Bank of Canada

EXCISE STAMP
2 Cents

IMPERIAL BANK OF CANADA
PAID
Aug. 24, 1927.
1st Teller
St. Catharines, Ont.

(Endorsement on back of cheque)

Pay to BANK OF MONTREAL
or order
HYDRO-ELECTRIC POWER
COMMISSION OF ONTARIO
No. 1 Account
J. W. GILMOUR,
Treasurer

This check is as payment in full of the within acount. The Payee accepts it as such by endorsement above. No other receipt is necessary or desired.

No. 16429 July 31, 1927

IN FAVOUR OF
Hydro-Electric Power Commission
of Ontario, Toronto, Ont.

Amount $206.25
Charged to

No. 24 ..... $206.25

Part Exhibit No. 8.
(Plaintiff's Exhibit.)

Invoice, Defendant to Plaintiff, for power for month of July, 1927.

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

SOLD TO CONIAGAS REDUCTION COMPANY, LTD.,
Thorold, Ontario.

Toronto, Ont., Aug. 5, 1927

To Power used during the month of July, 1927:—

150 H.P. at $\frac{16.50}{12}$ $206.25

Total $206.25

Time and Date of Peak Load .....

(Endorsement on front)

Goods received Aug. 1927
Invoice checked .... G.
Prices checked .....G. 206.25
Acc't Chargeable C.R. Co., a/c 24.
Goods approved .....
Signed
.....
Purch. Agent
Approved for Payment T.J.G.

RECEIVED
Aug. 11, 1927

Ex. 9.

Letter, Defendant to Plaintiff. 14th May, 1928.

Exhibit No. 9.
(Plaintiff's Exhibit.)

Letter, Defendant to Plaintiff.

May 14th, 1928

Coniagas Reduction Co., Limited,
St. Catharines, Ontario.

Att'n. MR. J. J. MACKAN, *Secretary.*

Dear Sirs:—

The Hydro-Electric Power Commission of Ontario hereby gives notice to the Coniagas Reduction Company of Thorold, Ontario that the agreement

In the Supreme Court of Ontario.

Exhibits.

Ex. 9.

Letter, Defendant to Plaintiff. 14th May, 1928.

—continued.

for power supply between the Coniagas Reduction Company and the Ontario Power Company dated November 8, 1907, is to cease and terminate on and after May 18, 1928.

The Commission does not wish in any way to interfere with the power supply to the Thorold plant of your Company. It is understood, however, that if power supply is to be continued, the rate and terms in connection with such power supply shall be as determined by the Commission and as contained in an agreement now being prepared and which will be submitted to your Company for consideration in the near future. We would be pleased if you would advise the Commission as to the quantity of power required and the term of years your Company desires in connection with the proposed new agreement.

Yours truly,
W. W. POPE,
Secretary.

Ex. 10.

Plaintiff's cheque in favour of Defendant. 31st May, 1928.

Exhibit No. 10.
(Plaintiff's Exhibit.)

Plaintiff's cheque in favour of Defendant.

St. Catharines, Ont., May 31, 1928

THE CONIAGAS REDUCTION CO., LIMITED, DR.

To HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO
TORONTO, ONTARIO

Date 1928		Amount	Amount
May 31	For as follows: Power for month of May, 1928, as per contract.....	.....	$206.25

To THE IMPERIAL BANK OF CANADA:

PAY TO THE ORDER OF HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO..... $206.25
TWO HUNDRED SIX DOLLARS TWENTY-FIVE CENTS..DOLLARS
In full of above Account.

Not good if detached from Statement of Account.

C. S. KENNEDY, *Secretary.* A. L. BISHOP, *Vice-President.*

(Endorsement on front of cheque).

IMPERIAL BANK OF CANADA
June 10, 1928
Second Teller
St. Catharines, Ont.

(Endorsement on back of cheque)

No. 16487 May 31, 1928

Pay to BANK OF MONTREAL
or order
HYDRO-ELECTRIC POWER
COMMISSION OF ONTARIO
No. 1 Account
J. W. GILMOUR,
Treasurer

IN FAVOUR OF
Hydro-Electric Power Commission
of Ontario.
Toronto, Ont.
Amounts $206.25
Charged to

No. 24 ..... $206.25

This cheque is payment in full of the within account. The Payee accepts it as such by endorsement above. No other receipt is necessary or desired.

Exhibit No. 13.
(Plaintiff's Exhibit.)

Ex. 13.

Invoice, Defendant to Plaintiff, for power for month of May, 1928; 7th June, 1928.

Invoice, Defendant to Plaintiff, for power for month of May, 1928.

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

Sold to: CONIAGAS REDUCTION COMPANY, LTD.,
St. Catharines, Ont.

Toronto, Ont., Jun 7, 1928

To Power used during the month of May, 1928:—

150 H.P. at $\frac{16.50}{12}$,

from May 1st to 17th inclusive,

$\frac{150 \times 17 \times 16.50}{31 \times 12}$ $113.10

Total $113.10

Time and Date of Peak Load .....

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 8.

Invoice, Defendant to Plaintiff, for power for month of May, 1928; 7th June, 1928.

—continued.

Ex. 11. Plaintiff's cheque in favour of Defendant. 30th June, 1928.

RECEIVED PAYMENT

July 7/28

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

Per J. W. BARKER.

Exhibit No. 11.
(Plaintiff's Exhibit.)

Plaintiff's cheque in favour of Defendant.

St. Catharines, Ont., June 30, 1928

THE CONIAGAS REDUCTION CO., LIMITED, DR. 10

TO: HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO,
Toronto, Ont.

Date 1928		Amount	Amount
June 30	For as follows: Power for June, 1928, as per contract. 150 H.P.C. $\frac{16.50}{12}$ (Minimum Charge).		$206.25

TO THE IMPERIAL BANK OF CANADA:

PAY TO THE ORDER OF HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO..... $206.25 20
TWO HUNDRED SIX DOLLARS TWENTY-FIVE CENTS..DOLLARS

In full of above Account.
Not good if detached from Statement of Account.

C. S. KENNEDY, *Secretary.* A. L. BISHOP, *Vice-President.*

(Endorsement on front of cheque)

CANCELLED

(Endorsement on back of cheque)

To BANK OF MONTREAL
or Order,
HYDRO-ELECTRIC POWER
COMMISSION OF ONTARIO
No. 1 Account
J. W. GILMOUR,
Treasurer.

CANCELLED

This Cheque is payment in full of the within Account. The Payee accepts it as such by endorsement above. No other receipt is necessary or desired.

No. 16492 June 30, 1928

IN FAVOUR OF
HYDRO-ELECTRIC POWER
COMMISSION OF ONTARIO,
Toronto, Ont.
Amounts $206.25
Charged to

No. 24..... $206.25

CANCELLED

Part Exhibit No. 12.
(Plaintiff's Exhibit.)
Letter, Defendant to Plaintiff.

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

July 6, 1928.

The Coniagas Reduction Company, Ltd.,
St. Catharines, Ont.

Att'n. MR. C. S. KENNEDY, *Sec'y.*

Dear Sirs:

I am instructed to advise you that the Commission will apply the proceeds of your cheque in the sum of $206.25 in settlement of its power bill rendered to you in the sum of $113.10, as per receipted account enclosed herewith. The balance of the cheque, $93.15 is placed to the credit of your company to apply against future power accounts.

Yours truly,

.....
Secretary.

In the Supreme Court of Ontario.

Exhibits.

Part Ex. 12.

Part Exhibit No. 12.
(Plaintiff's Exhibit.)

Letter, Defendant to Plaintiff.

Letter, Defendant to Plaintiff. 24th July, 1928.

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

July 24, 1928.

The Coniagas Reduction Company,
St. Catharines, Ontario.

Att'n. MR. C. S. KENNEDY, *Sec'y.*

Dear Sirs:

The Commission at its meeting on July 11, 1928, approved of supplying power to your Company for a period of five years, commencing on the 18th day of May, 1928, at a rate of $25.00 per horsepower per annum; the maximum amount of power to be supplied, approximately 250 horsepower, and the voltage 12,000 volts.

It will be necessary for your company to supply a bond satisfactory to the Commission for an amount of $1,500.00.

Instructions are being issued to the Accounting Department of the Commission to bill your company with any power supplied since May 18, 1928, at the rate of $25.00 per horsepower per year, and, if satisfactory to your officials, an agreement will be prepared on the basis set out herein and forwarded for signature.

We shall be pleased to hear from you in connection with this matter.

Yours truly,

Secretary.

JJJ/C.W.
R.T.J.
G

Part Ex. 12.

Part Exhibit No. 12.
(Plaintiff's Exhibit.)

Letter, Plaintiff to Defendant.

Letter, Plaintiff to Defendant. 28th July, 1928.

July 28, 1928.

Hydro-Electric Power Commission of Ontario,
Toronto, Ontario.

Attention W. W. POPE.

Dear Sir:

Re your letter of the 24th received, you must be aware that we have issued a writ claiming that you are not entitled to discontinue the contract

which we claim is in force. We, therefore, dispute your right to make the charge you suggest.

Very truly yours,

THE CONIAGAS REDUCTION COMPANY, LIMITED

per C. S. KENNEDY.

CSK.T

Part Exhibit No. 12.
(Plaintiff's Exhibit.)

10 **Letter, Defendant's Solicitor to Plaintiff.**

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

September 19th, 1928.

The Coniagas Reduction Company, Ltd.,
St. Catharines, Ontario.

Re—POWER ACCOUNT

Dear Sirs:

I am returning herewith three cheques of the Coniagas Reduction Company, Limited, dated respectively June 30th, July 31st and August 31st, 1928, each for the sum of $206.25, received by the Commission and held by
20 our Accounting Department, there being no contract to which these cheques can be applied.

I am enclosing also the Commission's cheque for $93.15 being the amount of overpayment on May account. The cheque in question was forwarded by you covering minimum charge for power under the contract expiring May 18th last, and the balance of $93.15 is calculated from that date until May 31st.

Yours truly,

"I. B. LUCAS."

In the Supreme Court of Ontario.

Exhibits.

Ex. 18.

Letter, Defendant's Solicitor to Plaintiff. 18th March, 1929.

Exhibit No. 18.
(Plaintiff's Exhibit.)

Letter, Defendant's Solicitor to Plaintiff.

Received—March 20, 1929

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

LEGAL DEPARTMENT

190 University Avenue,
Toronto 2.

March 18th, 1929

The Coniagas Reduction Company, Ltd.,
St. Catharines, Ontario.

Re: CONIAGAS VS. HYDRO

Dear Sirs:

I have your cheque dated February the 28th, 1929, amounting to $206.25 which has been handed to me for attention. I am returning it herewith, there being no contract to which it can be applied.

It would appear to me to be unnecessary to continue sending these cheques each month to the Commission. I would be prepared to admit that for the future you will not be in default in not continuing to send cheques and that your failure to do so will not prejudice the rights of the parties in any way. This will save a lot of correspondence and trouble.

Yours truly,

I. B. LUCAS.

FCSE/H

Exhibit No. 19.
(Plaintiff's Exhibit.)
Letter, Plaintiff to Defendant.

May 27th, 1929

Hydro-Electric Power Commission of Ontario,
190 University Avenue,
Toronto 2, Ontario.

Dear Sirs:

Pursuant to the telephone message of Mr. Evans to Mr. Collier this day, stating that a portion of the wires have been stolen from the line leading to the property of the Coniagas Reduction Company in Thorold Township, and that it is your desire to salvage that part of the line not removed without prejudice to the rights of either party in the action now pending, wherein The Coniagas Reduction Company, Limited, is plaintiff, and your Commission is defendant, we beg to say that we will have no objection to your doing the salvage work which you desire on condition that you shall, in the event of it being determined by the Court that the contract in question in litigation between your Commission and this Company is valid and subsisting, restore the line so as to supply the undersigned Company with the power which it is entitled to under the above contract.

Very truly yours,
THE CONIAGAS REDUCTION COMPANY, LIMITED,
Per:
.....

CSK.T.