

5, 1934

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL OF
BRITISH COLUMBIA

BETWEEN :

THE CORPORATION OF THE DISTRICT OF
MATSQUI

Plaintiff (Respondent)

AND

WESTERN POWER COMPANY OF CANADA
LIMITED

Defendant (Appellant)

RECORD OF PROCEEDINGS

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Solicitor for Defendant (Appellant)

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W. A. Riddell, Esq.,

Counsel.

Messrs. Martin & Sullivan,

Solicitors for Plaintiff (Respondent)

E. C. Mayers, Esq., K.C.,

A. M. Manson, Esq., K.C.,

G. E. Martin, Esq.,

Counsel.

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In the Supreme Court of British Columbia

Between:

CORPORATION OF THE DISTRICT OF MATSQUI,
Plaintiff,

—and—

WESTERN POWER COMPANY OF CANADA, LIMITED
Defendant.

RECORD

*In the Supreme
Court of British
Columbia.*

No. 1
Endorsement
on Writ.
29th June, 1931.

ENDORSEMENT ON WRIT

The Plaintiff's claim is for specific performance by the De-
10 defendant of the terms of an agreement made 29th March, 1913,
between the Plaintiff and Western Canada Power Company
Limited (of which the defendant is assignee or successor) and for
an order that the defendant, free of charge, make the necessary
connections and instal electric service for the residence and build-
ings of Lloyd Truman Beharrell situate on the Sim Road, Matsqui,
and to other residents of Matsqui entitled to such service under the
terms of the said agreement; AND for an order that the defendant
supply electric light, heat and power, and instal electric service to
20 the residents of Matsqui at the same rate as charged for such ser-
vice in the Municipality of Burnaby; AND IN THE ALTERNA-
TIVE that the defendant remove its towers, poles, wires and
equipment off the roads of the Municipality of Matsqui.

Writ issued the 29th June, 1931.

RECORD

*In the Supreme
Court of British
Columbia.*

No. 2
Amended State-
ment of Claim.
8th Dec., 1931.

AMENDED STATEMENT OF CLAIM

Writ issued 29th June, 1931.

1. By agreement dated the 29th March, 1913, the Plaintiff granted to Western Canada Power Company Limited the right and privilege to sell electric energy for light, heat, power and industrial purposes and other purposes incidental thereto within the limits of Matsqui Municipality and the Plaintiff granted to the said Company the right to construct, erect and maintain steel towers with standard brackets, cross-arms and attachments; and to string wires thereon and to operate a line or lines of wire along and across certain roads in the said agreement mentioned and such other highways within the Municipality as might from time to time be determined by the Municipal Council, for the purpose of carrying its transmission wires in, through and beyond the said Municipality on the terms and conditions set out in the said agreement. 10

2. The "Western Canada Power Company Limited Light and Power By-law, 1912" of the Plaintiff Municipality authorizing the execution by the plaintiff of the said agreement was duly passed by the Municipal Council of the Plaintiff and received the assent of the electors of the Municipality of Matsqui on the 19th day of October, 1912, and was reconsidered and finally passed on the 29th day of March, 1913, and was duly registered. 20

3. In and by the said agreement the said Company agreed that it would free of charge to the customer make the necessary connections and instal electric service to anyone requiring service within one-quarter of a mile of certain roads mentioned in said agreement, including that road known as the Sim Road.

4. In and by the said agreement the said company covenanted and agreed with the Corporation that the Company would not make any charge for the "supplying" of electrical energy to the Corporation or any inhabitant of the Municipality greater than that paid for "similar service" by any Municipality or the inhabitants thereof other than a city, and would not in any way discriminate against the Corporation or residents of the Municipality. 30

4a. At the date of the said agreement, the Western Canada Power Company Limited was an independent company, carrying on business in competition with the British Columbia Electric Railway Company Limited, but subsequently the defendant, the successor in title to the said Western Canada Power Company Limited, became and now is affiliated and connected in interest with the British Columbia Electric Railway Company Limited, the British Columbia Electric Power and Gas Company Limited, and the British Columbia Power Corporation Limited, all of which three latter companies are interconnected in interest. 40

5. The said Company after the passing of the said by-law and execution of the said agreement erected steel towers and wooden poles on the roads in the Municipality of Matsqui and beyond and sold electric light and energy to the inhabitants of the said Municipality.

6. Lloyd Truman Beharrell is the owner of part 90.068 acres of Lots 64 and 384A, Group 2, described in Certificate of Title No. 70008E, and situate at Sim Road in the Municipality of Matsqui one of the roads referred to in paragraph 11 of the said agreement and by letter dated 15th May, 1931, required the defendant free of charge to make the necessary connections and instal electric service for his residence and buildings situate on the lands aforesaid less than one-quarter of a mile from the Sim Road and the defendants have refused to comply with such demand.

7. In contravention of the covenant and agreement of said Western Power Company Limited in paragraph 4 hereof mentioned the defendant has charged and now charges the inhabitants of the Municipality of Matsqui a greater price for the supply of "electric energy" than that paid by the inhabitants of the Municipality of Burnaby for similar service.

Particulars: The defendant charges to all the consumers in the Municipality of Matsqui a rate of six (6) cents per kilowatt hour, while the consumers in the Municipality of Burnaby pay to the British Columbia Electric Railway Company Limited, or the British Columbia Electric Power and Gas Company Limited, or the British Columbia Power Corporation Limited, or one or more or all of them a rate of five (5) cents per kilowatt hour.

8. The Western Canada Power Company Limited was dissolved in the year 1922, having previously, namely on the 1st of November, 1916, by a contract in writing of that date, assigned to the defendant all its rights and obligations under the said agreement of the 29th of March, 1913, which said rights and obligations were duly acquired and assumed by the defendant.

9. The defendant without any right or authority in that behalf has been carrying on within the Municipality of Matsqui the business of selling electric light and energy and has maintained steel towers and poles with their attachments and lines of wires on the highways within the Municipality of Matsqui.

The Plaintiff claims:

(a) A declaration that by the terms of the said contract dated the 29th day of March, 1913, made between the Plaintiff and the Western Canada Power Company Limited the defendant without charge to the customer is bound to make the necessary connections and instal electric service to anyone requiring such

RECORD
In the Supreme
Court of British
Columbia.

No. 2
Amended State-
ment of Claim.
8th Dec., 1931.
(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

No. 2
Amended State-
ment of Claim.
8th Dec., 1931.
(Contd.)

service whose premises are located within one-quarter of a mile of the Glenmore Road between the Township Road and the Fraser River.

The Township Line Road between the Glenmore Road and the Canadian Pacific Railway right-of-way (Mission Branch).

The Matsqui-Mt. Lehman Road from the Glenmore Road eastward for about two miles east of the aforesaid right-of-way.

The Page Road for about two miles east of the aforesaid right-of-way; the Fore Road; the Bell Road and the Sim Road.

(b) A declaration that the defendant is bound to make the 10 necessary connections and instal electric service between the power line of the defendant and the premises of Lloyd Truman Beharrell situate within one-quarter of a mile of the Sim Road within the Municipality of Matsqui.

(c) Specific performance by the defendant of the agreement dated the 29th day of March, 1913.

(d) A declaration that the defendant company has without any right or authority in that behalf, been carrying on in the Municipality of Matsqui the business of selling electric light and energy, and has maintained steel towers and poles with their 20 attachments, and lines of wires on the highways within the Municipality of Matsqui.

(e) A declaration that the defendant is bound to supply electric energy to the Plaintiff and to the inhabitants of the Municipality of Matsqui at no greater charge than that paid by the inhabitants of the Municipality of Burnaby for similar service.

(f) An account of all moneys overcharged to the consumers in the Municipality of Matsqui and repayment thereof.

Place of Trial—New Westminster, B. C.

30

MARTIN & SULLIVAN,
Plaintiff's Solicitors.

DELIVERED this 8th day of December, 1931, by Martin & Sullivan, 402-404 Westminister Trust Block, New Westminster, B. C., solicitors for the Plaintiffs.

To the defendant, and to:

V. Laursen, Esq.,
Solicitor for the defendant.

AMENDED STATEMENT OF DEFENCE.

RECORD

*In the Supreme
Court of British
Columbia.*No. 3
Amended State-
ment of Defence.
6th May, 1932.

1. The Defendant admits an agreement was entered into on the 29th of March, 1913, between the Plaintiff and the Western Canada Power Company Limited, but otherwise denies each and every allegation of fact contained in paragraph 1 of the Amended Statement of Claim herein, and craves leave to refer to the said agreement at the Trial of this action.

2. The Defendant admits the allegations of fact set out in paragraph 2 of the Amended Statement of Claim herein.

10 3. The Defendant denies each and every allegation of fact contained in paragraph 3 of the Amended Statement of Claim herein.

4. The Defendant denies each and every allegation of fact contained in paragraph 4 of the Amended Statement of Claim herein, but with further reference to paragraphs 3 and 4 of the Amended Statement of Claim herein, the Defendant refers to the aforesaid agreement of the 29th of March, 1913, for the correct recital of the matters therein referred to.

20 4. (a) In answer to paragraph 4 (a) of the Amended Statement of Claim the Defendant admits that at the date of the said agreement referred to in the said paragraph 4 (a) the Western Canada Power Company Limited was an independent company carrying on business in competition with the British Columbia Electric Railway Company Limited, and admits that subsequently the Defendant became the successor in title to the said Western Canada Power Company Limited. The Defendant denies that it ever became, or now is, affiliated or connected in interest with the British Columbia Electric Railway Company Limited, the British Columbia Electric Power and Gas Company Limited, or
30 the British Columbia Power Corporation Limited, and denies that any of the three latter companies are inter-connected in interest as alleged.

In further answer to paragraph 4 (a) the Defendant will contend that the said paragraph 4 (a) discloses no cause of action against the Defendant.

5. The Defendant admits the allegations of fact set out in paragraph 5 of the Amended Statement of Claim herein.

6. The Defendant denies each and every allegation of fact in paragraph 6 of the Amended Statement of Claim herein. In
40 the alternative the Defendant says that an agreement was entered

RECORD
 In the Supreme
 Court of British
 Columbia.

No. 8
 Amended State-
 ment of Defence.
 6th May, 1982.
 (Contd.)

into on the 23rd of September, 1921, between the Plaintiff and the Defendant by which paragraph 11 of the agreement of March 29th, 1913, was deleted and in lieu thereof certain other clauses substituted and the Defendant craves leave to refer to the said amended agreement at the Trial of this action.

7. The Defendant denies each and every allegation of fact in paragraph 7 of the Amended Statement of Claim herein.

In the alternative, and in further answer to the said paragraph 7 and the Particulars thereof, the Defendant says that if it has charged and now charges the inhabitants of the Municipality of Matsqui a greater price for the supply of electric energy than that paid by the inhabitants of the Municipality of Burnaby to the British Columbia Electric Railway Company Limited, or the British Columbia Power and Gas Company Limited, or the British Columbia Power Corporation Limited, which is denied, such greater price charged is not in contravention of the covenant and agreement referred to in the said paragraph 7, nor is it charged for similar service, as alleged in the said paragraph 7. 10

7. (a) The Defendant says that the word "service" as used in the said agreement has a distinct technical or trade meaning, namely—that it means and includes the effort and expense made and incurred in supplying electrical energy, and in particular such service means and includes: 20

1. The cost of generation, transmission and distribution, including the cost of constructing, erecting and maintaining the generating, transmission and distribution systems and plant;

2. The cost of meter reading, accounting, billing, collections and general charges; 30

3. That in relation to the foregoing factors must be considered:

(a) The number of customers and the nature of the service, whether domestic, commercial or industrial,

(b) The average revenue per customer,

(c) Population to be served and density of population,

(d) Area to be served,

(e) Load factors, including quantity of consumption,

(f) Density and diversity of load.

7 (b) That "similar service" as used in the said agreement has a distinct technical or trade meaning and means a service in which there is a substantial similarity in the service as set out in paragraph 7 (a) of the amendment.

10 7. (d) That the said services for supplying electrical energy graphs set forth was the meaning which the parties to the said contract meant and understood the said words, and alternatively that the said words so generally had the meaning as above set forth that it must be presumed that the parties to the said agreement so understood them and intended them to mean in the said agreement.

7. (d) That the said services for supplying electrical energy in Matsqui were not similar to those supplied in Burnaby and as to which comparison has been made in the Statement of Defence, in the following particulars:

20 (1) The cost of the distribution plant in Matsqui, including depreciation and maintenance cost, is \$9.65 per customer per year, and in Burnaby \$4.37 per customer per year, while the average revenue per customer in Burnaby was \$18.75 per year and in Matsqui \$22.90.

(2) The cost of reading meters per customer per year, Matsqui 84c and in Burnaby 24c.

(3) The Matsqui average consumption per customer per year 434 K.H., Burnaby per year 510 K.H.

30 (4) The said differences in cost as above set out are due to the factors set forth in paragraph 7 (a), sub-paragraph (3) (a), (b), (c), (d), (e) and (f).

8. The Defendant admits each and every allegation of fact in paragraph 8 of the Amended Statement of Claim.

RECORD

*In the Supreme
Court of British
Columbia.*

No. 3
Amended State-
ment of Defence.
6th May, 1982.
(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

No. 8
Amended State-
ment of Defence.
6th May, 1932.
(Contd.)

9. The Defendant denies each and every allegation of fact in paragraph 9. In further answer to the said paragraph 9 the Defendant says that by an agreement in writing dated November 1st, 1916, the Western Canada Power Company, Limited, assigned to the Defendant all its right, title and interest in and to the said agreement of 29th of March, 1913, and by the aforesaid agreement of September 23rd, 1921, the Plaintiff formally recognized the Defendant as the assignee of the said agreement of March 29th, 1913, and has since continued to deal with and recognize the Defendant as the successor in title to the Western Canada Power 10
Company, Limited.

10. In further answer to paragraph 9 of the Amended Statement of Claim herein the Defendant says that it is rightfully carrying on within the Municipality of Matsqui the business of selling electrical energy and is maintaining steel towers and poles with their attachments and lines of wires on the highways within the Municipality of Matsqui under and by virtue of the right and authority in that behalf conferred upon Power Companies by the Water Clauses Consolidation Act, Chapter 190, R.S.B.C. 1897, subsequent amendments and substitution thereto and there- 20
for.

DATED at Vancouver, B. C., this 6th day of May, A.D. 1932.

V. LAURSEN,
Solicitor for the Defendant.

DELIVERED this 6th day of May, A.D. 1932, by V. Laursen, whose place of business and address for service is at Room 318, 425 Carrall Street, Vancouver, B. C.

To the Plaintiff,
And to Messrs. Martin & Sullivan,
402 Westminster Trust Bldg.,
New Westminster, B. C.,
Plaintiff's Solicitors.

30

REPLY TO AMENDED STATEMENT OF DEFENCE.

RECORD

1. The Plaintiff joins issue on the amended defence, save in so far as the same consists of admissions.

2. The alleged agreement of the 23rd day of September, 1921, was never submitted to the electors nor was its execution ever authorized by a by-law nor has it ever been approved by the Lieutenant-Governor-in-Council.

*In the Supreme
Court of British
Columbia.*

No. 4
Reply to Amended
Statement of De-
fence.
21st Dec., 1931.

MARTIN & SULLIVAN,
Plaintiff's Solicitors.

10 DELIVERED this 21st day of December, 1931, by Martin & Sullivan, 402-404 Westminster Trust Block, New Westminster, B. C., Solicitors for the Plaintiff.

To:

V. Laursen, Esq.,
Solicitor for the Defendant.

RECORD

*In the Supreme
Court of British
Columbia.*

No. 5

Rejoinder.
24th Dec., 1931.

REJOINDER

1. The defendant denies each and every allegation of fact in paragraph 2 of the Reply herein.

2. In further answer to the said paragraph 2 the Defendant says that if the agreement of the 23rd day of September, 1921, was not submitted to the electors nor its execution authorized by By-law nor the approval of the Lieutenant-Governor-in-Council obtained therefor, that such admission, authorization or approval was unnecessary.

3. The defendant further says that if it was necessary to have had the said agreement of 23rd of September, 1921, submitted to the electors or its execution authorized by by-law or approval of by the Lieutenant-Governor-in-Council, which necessity the defendant does not admit, it was the duty of the plaintiff to have passed such authorizing by-law and to have submitted same to the electors for approval or in the alternative to have obtained the approval thereof by the Lieutenant-Governor-in-Council and the plaintiff is now estopped from pleading its failure to perform such duty. 10

4. The defendant has carried out all its obligations to date under the said agreement of September 23rd, 1921, and has expended large sums of money in so doing, and the plaintiff is therefore estopped from repudiating the said agreement. 20

V. LAURSEN,
Solicitor for Defendant.

DELIVERED this 24th day of December, A.D. 1931, by V. Laursen, whose place of business and address for service is at Room 318, 425 Carrall Street, Vancouver, B. C.

To the Plaintiff,

And to: Messrs. Martin & Sullivan,
402 Westminster Trust Block,
New Westminster, B. C.
Plaintiff's Solicitors.

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Filed the 28th day of December pursuant to an order of the Honourable Chief Justice dated the 16th day of November, 1931.

L. A. MENENDEZ,
District Registrar.

IN THE SUPREME COURT OF BRITISH COLUMBIA

(Before the Honourable Mr. Justice Murphy)

New Westminster
80/31Vancouver, B. C.,
December 19, 1932.

RECORD

*In the Supreme
Court of British
Columbia.*Proceedings
at Trial.

Plaintiff's Case.

Discovery of
W. G. Murrin.
Dec. 19, 1932.

BETWEEN :

THE CORPORATION OF THE DISTRICT OF
MATSQUI

Plaintiff

10

AND

WESTERN POWER COMPANY OF CANADA
LIMITED

Defendant

PROCEEDINGS AT TRIAL

E. C. Mayers, Esq., K.C., A. M. Manson, Esq., K.C., and
G. E. Martin, Esq., appearing for the Plaintiff.J. W. deB. Farris, Esq., K.C., and W. A. Riddell, Esq.,
appearing for the Defendant.20 Mr. Mayers: Mr. Manson, Mr. Martin and myself appear for
the Plaintiff, my lord.

Mr. Farris: I appear, with Mr. Riddell, for the Defendant.

The Court: I have read the pleadings, Mr. Mayers. You
may go ahead.Mr. Mayers: I understand, of course, that we begin *de novo*
entirely, as if all the proceedings before Mr. Justice Gregory were
wiped out.

The Court: Is that right, Mr. Farris?

Mr. Farris: I suppose so, yes.

30 The Court: Well, I know nothing about that. I am here to
go on with it. I understand that you gentlemen start now *de novo*?Mr. Mayers: Yes, my lord. I will put in some of the exam-
ination for discovery of Mr. Murrin: questions 1 to 4, 8 to 43, 51
to 58, 67 to 79, 135 to 169, 173 to 207. Questions 1 to 4 (reading)

(Document marked Exhibit No. 1)

The date of the agreement is stated as 29th March, 1931, in
the statement of claim. It should be 29th March, 1913. I ask that
that be amended.

Questions 8 to 43 (reading)

(Letter, 19th November, 1931, marked Exhibit No. 2.)

40 (Letter, 15th May, 1931, marked Exhibit No. 3.)

Questions 51 to 58 (reading)

Questions 67 to 79 (reading)

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

Discovery of
Murrin.
19th Dec., 1932.

(Memorandum, 27th June, 1931, marked Exhibit No. 4.)

(Schedule of Rates marked Exhibit No. 5.)

In regard to exhibit 5, I want just to make a remark about that.

The Court: That is a schedule of rates for Matsqui?

Mr. Mayers: It is the schedule of rates for not only Matsqui but all those municipalities, and I think I will show it to you, my lord, because it may help to make the rest of it intelligible. You see, these are the rates. Now in Burnaby they have 5 cents and 2 cents, and in the Fraser Valley east of Rosedale, in which we come, they have 6 cents and 3 cents, which shows what our grievance is. 10

The Court: That is Exhibit 5.

Mr. Mayers: Now I must just make a comment on that. Exhibit 5 bears on its face the legend to the effect that it was in effect July 1st, 1931. Our action was started on the 29th June, 1931, and neither Mr. Farris nor myself noticed that before, and accordingly a day or so ago I wrote to Mr. Farris drawing his attention to this, and he kindly furnished me with a letter of Mr. Laursen to this effect (reading). And I think that may go in as Exhibit 5-A, my lord. 20

(Letter marked Exhibit No. 5-A.)

I will put in the exhibit which is Exhibit 6——

The Court: What is it?

Mr. Mayers: It is a bill, my lord, and I just would like your lordship to look at it, or look at the heading, because you see what I am driving at.

(Document marked Exhibit No. 6.)

135 deals with that question. 135 to 169 (reading). 173 to 207 (reading). 30

I should have put in an exhibit just before that. Exhibit 7 is a letter from myself to Mr. Farris, 24th February, 1932, in which I said (reading).

(Letter marked Exhibit No. 7.)

Exhibit 8 is a letter from Mr. Farris to myself of the 26th February, 1932, agreeing to that suggestion (reading).

(Letter marked Exhibit No. 8.)

(Annual Report B. C. Power Corporation, 1931,
marked Exhibit No. 9.)

This Exhibit 10 was marked Exhibit 8 on the examination for discovery. 40

(Eight Bills marked Exhibit No. 10.)

I will call Mr. Beharrell.

Mr. Farris: My friend Mr. Riddell has just called my attention to something I had not noticed before, that in question 178 there is an ambiguity. I do not think you misunderstood it, but if you have I will point it out and if necessary we will get it later. You see "they." It is clear that "they" belongs to B. C. Power.

Mr. Mayers: Well, I do not know what Mr. Murrin meant, but you can no doubt prove what is the effect. You say "they" means British Columbia Power Corporation?

10 Mr. Farris: Here is the chart (showing diagram).

Mr. Mayers: So that "they" in 178 means British Columbia Power Corporation?

Mr. Riddell: Yes.

Mr. Mayers: I will call Mr. Beharrell.

LLOYD BEHARRELL, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MAYERS:

Q. You live in Matsqui Municipality, do you? A. Yes.

20 Q. What is the name of the road on which you live? A. Simms Road.

Q. And how far are you from Simms Road? A. I live right on, practically on the road, about 20 yards off the road.

Q. So that you are within a quarter of a mile of the road itself? A. Yes.

Q. How long have you lived there? A. Roughly around 20 years. I don't remember the exact date.

Q. You made a demand for an electric light connection, did you not? A. Yes, sir.

30 Q. Did you make that verbally or in writing first of all? A. First of all I made it verbally.

Q. And to whom did you make it? A. I made it to the company supplying power and light in the Valley.

Q. Where did you make your demand? A. At the company's office at Abbotsford.

Q. There was some individual there, was there? A. Manager of that office, yes.

Q. And then what happened on that verbal demand? A. No. No result.

40 Q. And then you signed this document, did you? That is your signature to Exhibit 3, is it? A. Yes, sir.

The Court: What is the date of it?

Mr. Mayers: May 15th, 1931.

Q. What happened as a result of that? A. No result.

Q. Did anything happen prior to the date of the issuing of the writ in this action on the 29th June, 1931? A. No, sir.

Q. You did not get your light connection at all? A. No.

RECORD

In the Supreme Court of British Columbia.

Proceedings at Trial.

Plaintiff's Case.

Lloyd Beharrell,
Direct Exam.
19th Dec., 1932.

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

Richard Bolton,
Direct Exam.
19th Dec., 1982.

Mr. Mayers: All right; thank you.
The Court: Any questions, Mr. Farris?
Mr. Farris: No.

(Witness aside.)

Mr. Mayers: Mr. Bolton.

RICHARD BOLTON, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MAYERS:

Q. Where do you live? A. Burnaby. 859 Marine Drive.

Q. What is your position? A. Treasurer. 10

Q. Of the Municipality of Burnaby? A. Of the Municipality of Burnaby.

Q. And you live in Burnaby, of course? A. I do.

Q. Have you any electric light service in your own house?
A. I have.

Q. And do you get bills for it? A. I do.

Q. Is that one of them? (showing document). A. It is.

Mr. Mayers: That will be exhibit—

Mr. Farris: My lord, I wish to take this objection to this evidence, that this is not evidence against the defendant. On 20 the question of our supplying light in Burnaby, I understand my friend will take the position he did before, to which I have no objection. If he is taking the broader ground that we are obligated to supply light at the same rate that another company may supply it and it is introduced on that ground, I have objection and I wish to preserve my rights on that.

The Court: I will take it subject to the objection.

Mr. Mayers: I do not want to have any misunderstanding. This document is admitted as admissible. I have a number of grounds which my friend may subsequently dispute, and I am 30 not abandoning any of them.

The Court: Oh, no.

Mr. Mayers: The next will be exhibit 12, and it is already 12, so this Beharrell letter is exhibit 11 also, because I proved it again by him.

The Court: All right then, the bill will be 12.

(Bill marked Exhibit No. 12.)

Mr. Mayers: Q. Now this will be Exhibit 12, and is that the rate which you had been paying for—how long? A. I would say for at least six years that is the rate that I have been paying. 40

Q. You paid that bill Exhibit 12? A. I did.

Q. The Municipality itself takes light and power from somebody who supplies it? A. It does.

Q. Does it not? A. It does.

Q. And do you get bills from some mysterious entity? A. We do.

Q. Are those some of them?

Mr. Farris: Nothing mysterious about it.

A. They are.

(Bundle of documents marked Exhibit No. 13.)

10 Mr. Mayers: The mystery, my lord, to me which has never yet been solved is that the bill is rendered by three companies, including the Western Power Company of Canada Limited. There are 21 documents in Exhibit 13.

Q. Now the bills which are contained in Exhibit 13 were paid by the Municipality of Burnaby, were they? A. I would like to look at the Exhibit. They were.

Q. And what is the rate at which— What is the primary rate, I should say, at which the light was charged? A. Five cents.

Q. Five cents was the primary rate. And the secondary 20 rate? A. Two cents.

Q. These bills in Exhibit 13, they were for what? A. Various accounts, including street lighting, power accounts, Municipal Hall and lighting of other buildings, lighting for other buildings.

Q. The Municipal Hall would come under domestic light rate, would it? A. Yes.

The Court: Any questions?

Mr. Farris: No, my lord.

(Witness aside.)

Mr. Mayers: Mr. Cruickshank.

30 GEORGE A. CRUICKSHANK, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MAYERS:

Q. Where do you live? A. At Matsqui.

Mr. Farris: Ask Mr. Bolton not to go. There is some other matter—

Mr. Mayers: Let us finish with him now.

(Witness stood aside.)

RICHARD BOLTON, recalled, testified further as follows:

CROSS-EXAMINATION BY MR. FARRIS:

40 Q. What is approximately, do you know, the area of your Municipality, Burnaby? A. The area of the Municipality is 38 square miles.

RECORD

In the Supreme Court of British Columbia.

Proceedings at Trial.

Plaintiff's Case.

Richard Bolton,
Direct Exam.
19th Dec., 1932.

(Contd.)

Richard Bolton,
Cross-Exam.
19th Dec., 1932.

RECORD

*In the Supreme
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Proceedings
at Trial.

Plaintiff's Case.

Richard Bolton,
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19th Dec., 1932.
(Contd.)

Q. And what is the population? A. 26,000.

Q. Do you know about how many lines, miles of line of electric energy there is in the Burnaby Municipality?

Mr. Mayers: Well, of course, if this is intended to test Mr. Bolton's credibility it would be material, but I object to it because it hasn't any relation to anything pleaded.

The Court: Well, go on, Mr. Bolton.

A. I have not got the figures in my mind, but I have a record of those figures.

Mr. Farris: Q. Could you get those for me? A. I could. 10
They are published in the annual report.

Q. Of your Municipality? A. Yes.

Q. You make your return to the Municipal Assessor? A. No, the company makes returns.

Mr. Farris: All right.

The Witness: Do I understand that I produce those afterwards, my lord?

The Court: No, they are not being pressed.

(Witness aside.)

GEORGE A. CRUICKSHANK, resumed the stand: 20

DIRECT EXAMINATION CONTINUED BY MR. MAYERS:

Q. I think you have told me you live in Matsqui. And you are the Reeve of the Matsqui District Corporation? A. Yes.

Q. You sign cheques, do you? A. I do.

Q. On behalf of the Municipality? A. I do.

Q. I produce to you six documents. Just see if those are the bills rendered to the plaintiff for light, and the cheques signed by you in payment of those bills? A. They are.

(Documents marked Exhibit No. 14.)

Q. The electric light was supplied to the Municipality of Matsqui, was it? A. Yes. 30

Q. What rate was charged to Matsqui for its light? A. Might I see which months those are again?

Q. Yes. Just give him the exhibit, Mr. Registrar, please. A. (referring to Exhibit 14). One is on the minimum rate of a dollar, and one of them would be on 7 cents and one on 6. The rate was reduced, I think it was the 31st May, 1931, to 6 cents.

Q. From what? A. From 7 to 6. I am not positive if it was the 1st May or the 31st May.

Q. 1931? A. Yes. 40

Q. And ever since some date in May, 1931, the Municipality of Matsqui has been charged 6 cents as its primary rate, has it? A. 6 its primary rate.

Q. And 3 cents for its secondary rate? A. Yes.

George A.
Cruikshank,
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Q. Did you see the bill which was—or rather the cheque—which was sent in payment of the rent under this contract Exhibit 1? A. I saw one of them.

Q. When was that? A. Some time in March of this year.

Mr. Farris: What is that, Mr. Mayers?

Mr. Mayers: In Exhibit 1 there is paragraph 3, which says the Company shall pay an annual sum of \$400 to the Municipality for the privilege of erecting and operating steel towers and poles.

Q. By whom was that cheque signed? A. I don't remember.
10 The signature was B. C. Electric, and we issued the receipt to the B. C. Electric Company.

Q. The cheque was drawn by the B. C. Electric Railway Company? A. I don't remember who signed it.

Q. Apart from the individual signature, it was signed on behalf of—

Mr. Farris: I don't know about that. I have never been asked to produce it.

Mr. Mayers: You should have produced it in your affidavit of documents. I have not got the cheque.

20 The Court: Well, you cannot give secondary evidence when you have no notice to produce.

Mr. Mayers: Well, I can show by whom something was paid, surely, my lord. The cheque is only a piece of paper. I can show by whom an account was paid to me.

Q. However, that is a fact, that the payment was made by the British Columbia Electric Railway Company, isn't it? A. Yes.

The Court: Well, we will see whether it is proved.

CROSS-EXAMINATION BY MR. FARRIS:

30 Q. All you are basing that on is what you read on the cheque, I take it? A. Yes, what was on the cheque.

Q. Now what is the area of Matsqui? A. 54,542 acres.

Q. And what is the population? A. Oh, I should say about 7,200.

Q. Do you know the mileage of wires of electric energy? A. On the 30th October the B. C. Electric submit that themselves.

Q. They submit it to whom? A. According to the Municipal Act they must submit it on the 31st October of every year.

Q. You received it? A. This year. We didn't last.

40 Q. Do you check it up to satisfy yourself it is correct? A. No, we haven't got the money.

Q. You don't know whether it is correct or not? A. I presume the B. C. Electric would not give me anything else.

Q. You say rates have been reduced in Matsqui from time to time? A. They were reduced in the entire Fraser Valley.

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In the Supreme Court of British Columbia.

Proceedings at Trial.

Plaintiff's Case.

George A. Cruickshank, Direct Exam. 19th Dec., 1932.

(Contd.)

George A. Cruickshank, Cross-Exam. 19th Dec., 1932.

RECORD

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Plaintiff's Case.

George A.
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Q. And they have been previously reduced from time to time? A. I could not say that. I have only been Reeve for two years.

Q. And you don't know what the rates were before that? A. I could assume.

Q. You were born and brought up there? A. I was not born there.

Q. You have lived there all your life? A. Yes.

Q. You don't know whether they were reduced before? A. I could not say because I haven't got the bills here. 10

Q. Of your own knowledge, don't you know that they were higher than 6 cents and 7 cents? A. Well, from my past experience I would presume they were possibly about 15 when they started.

Q. That is, the present Defendant at one time charged 15 cents in Matsqui? A. I am just presuming by rates we have here. It might have been 20.

Q. Don't you know it was 15? A. No, I don't.

Q. Well, why did you mention 15? A. Well, I say I can't say what the rates were before. 20

Q. Did you ever have to pay any? A. Yes.

Q. And you don't know that they were high? A. Unless I could get my sister to pay them—I don't remember, Mr. Farris, the different accounts.

(Witness aside.)

Mr. Mayers: That is my case, my lord.

Mr. Farris: My lord, I propose to call evidence. There are two branches to this case. For the moment I would like to confine myself to the question of rates, and anything I may have to say about the issues on the other, I will say later. 30

On the question of rates, which comes under the clause that my learned friend has read in this agreement of 1913, Clause 11, the Company covenants and agrees with the Corporation that the Company will not make any charge for the supplying of electric energy to the Corporation or any of the inhabitants greater than that paid for similar service by any municipality. My first issue with my learned friend is on what is meant by "similar service." I have now set up similar service as a technical trade meaning.

Mr. Mayers: Well, I don't know that you have set up anything. 40

Mr. Farris: In my pleadings I thought I did.

Mr. Mayers: No, with respect, we are proceeding under the original pleadings.

Mr. Farris: I don't understand. I understood we had amended pleadings.

Mr. Mayers: How can you amend when everything done before Mr. Justice Gregory is wiped out?

Mr. Farris: I did not know this case was proceeding on a trick argument, my lord.

Mr. Mayers: There is no trick about it. I maintained my position that we were starting *de novo* and that everything that happened before Mr. Justice Gregory is wiped out, and I so stated at the beginning of my case.

10 Mr. Farris: I did not know that I was being trapped, in the change of my pleadings.

Mr. Mayers: I do not know what my friend means.

Mr. Farris: I mean just what I said, that I did not know that I was being trapped into a position by a catch question getting a catch answer.

Mr. Mayers: I don't care what my friend may think. I think he is very offensive.

Mr. Farris: I intend to be.

Mr. Mayers: Yes, but it does not affect me.

20 The Court: So far as I am concerned, I understood this case began *de novo*. I am not concerned with what happened before Mr. Justice Gregory at all.

Mr. Farris: I understood as far as today goes, yes; but Mr. Justice Gregory made an order for the amendment of pleadings, and they were amended and filed. Now this suggestion that because I passed that question in that form that I understood today, that now the order for amendment is wiped out, that is why I take objection, and take very serious objection—

30 Mr. Mayers: I do not care in the least what my friend assented to or did not assent to. This trial proceeded for some time before Mr. Justice Gregory, and then my friend was driven to apply to amend his pleadings, and Mr. Justice Gregory allowed him to amend his pleadings. Now clearly if that trial had gone on before Mr. Justice Gregory, I would have been entitled to appeal on any order or ruling given by Mr. Justice Gregory, or any order for leave to amend. Now is it going to be a case, because Mr. Justice Gregory is unable to hear this trial, that my learned friend is going to establish that point. All this offensive language is unnecessary, because if I were wishing to be offensive, which I never am, I might accuse my friend of trying to escape an appeal
40 from the order which he got from Mr. Justice Gregory, which I now cannot test on appeal because Mr. Justice Gregory unfortunately is unable to take the trial. I do not wish to be offensive, and I never am offensive.

Mr. Farris: I submit that the question put by my friend now in the opening never had any significance as to the order made. What was really put was the question of evidence taken

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de novo. Now that order was made and made in open court, and that order, I submit, stands.

The Court: I am afraid I cannot accede to your position, Mr. Farris. It was stated here that we were starting *de novo* as if nothing had occurred at all, and I must take the words for what they would mean *prima facie*.

Mr. Mayers: I am not basing my position on any technicality. It is entirely a matter of indifference to me, the language he uses to me. I say that is the only possible proceeding in a case of this kind, where a judge is ill, to take it *de novo*. 10

The Court: At any rate, Mr. Farris, I think you will have to make a statement to me.

Mr. Farris: My statement is this. My friend is not putting this on the basis of any statement I have made.

Mr. Mayers: Certainly not.

Mr. Farris: Then I say the thing stands as it did when we came in this morning, and I say that this trial, on account of the illness of Mr. Justice Gregory, is to be heard so far as the evidence is concerned *de novo*. But Mr. Justice Gregory made an order in this case— 20

The Court: The trouble is he made it during the trial.

Mr. Farris: It does not make any difference whether he made it during the trial or whether he made it in chambers. He made it as an order in this case. Surely the order stands? I am not objecting to anyone making this argument. What I did object to was that my friend in his opening based it on the common ground that we were starting *de novo*.

The Court: Now let me just get clearly what stand you are taking. Are you taking the stand here that it was announced in open court that this trial was to proceed *de novo*? If you are, 30 that ends it.

Mr. Mayers: That is the only term on which I propose to go on. My lord, I do not think it rests with my friend to assent or dissent. When a judge is ill and cannot continue a trial, and a new judge sits in the matter, surely the matter must begin *de novo*? Are all my rights going to be affected because a judge happens to be ill?

The Court: I think that is a serious ground, Mr. Farris. There would be no appeal against a ruling on the amendment to the pleadings if I take the pleadings as amended now by the order of Mr. Justice Gregory, whereas it might well be that it would be a ground for appeal, so I think you will have to make an application. I trust it will not mean any adjournment. 40

Mr. Mayers: There will be no request for an adjournment, but I propose to oppose the application.

The Court: All right. I think you will have to make it, Mr. Farris.

Mr. Farris: Well, I will certainly make it, my lord.

The Court: Well, I am afraid you will have to. It must be made because I must regard this as a *de novo* proceeding.

Mr. Farris: I understand we are clear now that this application is not based on any admission of mine in the opening of this court? That is right?

Mr. Mayers: Well, now, I do not think it rests with you to accede.

10 Mr. Farris: Then that clears that up. Now my submission is that so far as Mr. Justice Gregory did not adjudicate upon this case, that this is a hearing *de novo*, but so far as making the order amending the pleadings, that was disposed of. He ordered that the pleadings be amended. Supposing, my lord, that the case had been adjourned on account of the illness of one of counsel for a few days, and during the adjournments we had applied in chambers and got this order from Mr. Justice Gregory—

20 The Court: If you had there might have been an interlocutory appeal. You see, it is only a matter, as I understand it, since there is not going to be any adjournment or possibility of my not making such an order comes up; but apart from that, to reserve all rights or to make sure that if there be any ground of appeal on the proposition that such an order was made during the trial, that that ground will remain now. So I think that I will have to have you make it. If you prefer, I suppose you may appeal.

Mr. Farris: Well, my lord, I make the formal application.

The Court: What is the objection?

30 Mr. Mayers: Well, the objection, my lord, is this: that I went to trial and I have come to trial today on the construction of a written document. Now my friend is asking to amend in a way which is very serious. Would your lordship look at the proposed amendments, because I do not suppose you have seen it yet?

The Court: Well, it is underscored in red, I think, in the pleadings.

Mr. Mayers: It is in the record, is it?

The Court: Yes, the rules require that and it has been done.

40 Mr. Mayers: Your lordship sees that that sets up in the first place a custom, but it involves, or would involve if we were to contest it, a rates inquiry; that is, an inquiry into the whole structure of the rates for those two municipalities; what very often takes months, or at any rate weeks, when there is a person who is in a position to contest a matter of this kind and to conduct an inquiry. Now this Municipality is quite incapable of conducting any such inquiry. The cost would be more, probably, than the whole wealth of the Municipality itself. And my friend Mr.

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Proceedings at Trial.

Plaintiff's Case.

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Farris was warned by me before this action ever came to trial at all that on his pleadings as they originally stood it was not open to him to raise any of the questions he was seeking to raise. To read the very last paragraph of Mr. Murrin's examination, I said, "I don't suppose for a moment it is necessary, but I would like to say now, so that there will be no mistake later on, that I do not consider your pleadings cover the point you apparently have in mind, and I propose to take that objection at the trial." So that my friend was warned long before the matter came to trial before anyone that it was not open to him to raise this point at all. No application to amend was made before the matter came before Mr. Justice Gregory. As a matter of fact, no application to amend has been made at all until just now before your lordship, according to my view of the correct position. And I submit, my lord, it would be grossly unjust to one of these small municipalities to allow its position to be so gravely affected, as it would be by forcing upon it an inquiry which it is absolutely incapable of undertaking because it has not got the money to do it. I submit this should be held on the first original pleadings; and this is one of the rare cases when there would be gross injustice upon one of the parties to allow them to amend. 10

Mr. Farris: I would like to point out to your lordship one or two facts. In the first place we would have a perfect right to have set up this pleading originally. When the matter came up before Mr. Justice Gregory in April last, my friend made this same argument about all this expense he would have to go to. Mr. Justice Gregory has been seized of this case from April until October, my lord, or November—I am not sure which—of this fall. We have had a date set for the hearing of this case. We appeared, my learned friend and I, before Mr. Justice Gregory in September, in Vacation. Prior to that time my friend's solicitor, Mr. Martin, was written to on April 7th; a letter in which we said this in regard to the books (reading letter). That letter was written on the 7th April, after Mr. Justice Gregory had adjourned the case and intended to go on with it before Vacation. Negotiations were on before Vacation and they delayed it and something else happened—my friend was in another court or something—and all the time until it came on before Mr. Justice Gregory there was not a hand lifted to make any of these investigations of which he has been talking, and there was no suggestion of an appeal. My friend could have appealed under those circumstances from the order, because I think you can appeal from an order made during the trial. The next point is that this does not involve an examination of the rate structure of the company. It only involves the question of whether there are substantial differences of service in the two municipalities. You are not con- 30 40

cerned with the rates of Burnaby if it appears that the service in the two municipalities is different, and all that involves, if my figures are correct, is this: are the services similar? Is it the same kind of service? The case of a city of 28,000 to 30,000 people, and in a strictly country municipality with a very scattered population. Now that is all that is involved. We are not concerned, and cannot possibly be in this case——

10 Mr. Mayers: All that is beside the point, because I made the same objection before Mr. Justice Gregory, and Mr. Justice Gregory having ruled against me, I should have had ground for appeal on that point. Certainly we knew that Mr. Justice Gregory had allowed the amendment; we told Mr. Justice Gregory at the time that we would have very great difficulty in finding money to pursue this inquiry. We have since ascertained that it was quite impossible to do so.

The Court: Well, I am of the opinion that this amendment should be allowed. I do not think that the question of expense is a reason for disallowing an amendment. So that the amendment is allowed, but if you want time, Mr. Mayers——

20 Mr. Mayers: No, my lord. It is hopeless for us to try to raise the money.

The Court: All right. That puts you in the position to raise it in the higher court, which is your object, I suppose. Go on, Mr. Farris.

Mr. Farris: I will call Mr. Gray. I think I was interrupted just as I was making a statement, about the effect of the clause. Perhaps it may assist your lordship—has your lordship Clause 11 before you?

30 The Court: I think I know what it is about. You are contending this is not a similar service at all.

Mr. Farris: Yes. I will call Mr. Gray.

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*In the Supreme
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Proceedings
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Defendant's Case.

Henry L. Gray
Direct Exam.
19th Dec., 1932.

DEFENCE

HENRY L. GRAY, a witness called on behalf of the Defence, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FARRIS:

Q. Mr. Gray, where do you reside? A. In Seattle, Washington.

Q. What is your profession? A. I am a consulting engineer, specializing in public utility work.

Q. Would you state briefly your qualification, your previous experience? A. I was educated in the Engineering School for the University of Missouri. I am a member of the American Society of Civil Engineers and the American Institute of Electrical Engineers; they correspond to your Canadian National Societies. My experience in public utility work in the early days was with the Railroad Commission and Public Service Commission in the State of Washington. I entered the employ of the Public Service Commission of Washington in 1906 as an assistant engineer. In 1908 I became chief engineer on the Public Service Commission, and remained in that position until 1913.

Q. What, in a general way, is the jurisdiction of that Commission in your state? A. The Commission has jurisdiction over all public utilities and service, and also as to facilities.

Q. It holds inquiries, I suppose? A. Yes.

Q. Investigations? A. Yes, constant inquiries, both formal and informal.

Q. You were appointed in 1913 you say? A. I left in 1913. I was appointed in 1906. During my term of employment by the Public Service Commission of Washington I acted also as consulting engineer for the Public Service Commission of Oregon; not continually, but on several occasions I was called in for that purpose.

Q. And since that time what has your occupation been? A. Since 1913 I have maintained my office in Seattle as a consulting engineer specializing in work very similar to that which I did while on the Public Service Commission. My work is very largely with public utilities for municipalities and city departments, all having to do with public utility property, public utility rates and public utility service. In that capacity I have been employed by practically all of the large power companies of the Pacific northwest, in fact of the Pacific Coast. Would you like to have me go on—

Q. Yes, would you run down them briefly. A. Well, I made a record here of some of them, if I may be permitted. I will give them from memory as near as I can. Puget Sound Power & Light

Company, which serves territory in Washington immediately adjoining British Columbia; Pacific Power & Light Company, which serves northern Oregon and central Washington; the Western Water Power Company, which serves western Washington and Idaho; the Portland Electric Power Company, which serves electric utilities in and around Portland, Oregon; Northwestern Electric Company, which also serves the city of Portland and adjacent territory; the Pacific Gas & Electric Company, which serves all southern California; Mountain States Power Company, which serves northern Oregon. I will now refer to my notes. Gray's Harbor Railway & Light Company, which serves northern Washington. And many small companies which I will not enumerate. I have also in my capacity as consulting engineer, been employed by the Secretary of State of Washington in connection with the administration of what we call the "Blue Sky Law" in its reference to electric utilities. I have on occasions represented the Tax Commission in the State of Washington in connection with its public utility tax matters. I have been employed by numerous cities—

20 Mr. Farris: Q. I think that is sufficient. Now, has the word "service" in the electrical industry, a distinct trade and technical meaning? A. Yes.

Q. What is it?

Mr. Mayers: I object to the question.

The Court: I allow the question.

A. In public utilities circles "service" means the act of supplying some general demand.

Mr. Farris: Q. What are the factors making up such service?

30 Mr. Mayers: Well, I object to that question.

The Court: Taken subject to objection.

A. Are you referring now to service generally, or electric?

Mr. Farris: Q. I am referring to electric service. A. Electric service—will, I should amplify my definition now. Electric service would be—electric service would mean the act of providing facilities and supplying electric energy. That is what we generally understand is electric service.

Q. What are the factors going to make up electric service?

A. Those factors are, first, the providing of facilities—

40 Mr. Mayers: Well, I take it that my objection will go to all of this.

The Court: Yes, everything; all this evidence.

A. The first factor you might say, is the providing facilities; the second factor would be the maintaining and operating of the facilities. The third factor would be something slightly different,

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Henry L. Gray
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Direct Exam.
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(Contd.)

akin thereto, such as accounting and the educational features or programme of the company.

Mr. Farris: Q. Are you at all familiar with the electric service in Matsqui and in Burnaby? A. Yes, I am familiar with it. I have been over both territories for the purpose of this case.

Q. From your investigation and with the definition you have given, would you say that the services are similar for electric light and power? A. I would say that they are not similar.

Mr. Mayers: I suppose every question is subject to my objection, my lord? 10

The Court: Oh, yes. You need not continuously object to every question. This is subject to objection undoubtedly.

Mr. Farris: Will you read the last question?

(Reporter reads question.)

The witness: That comes back to the definition of "similar." Of course that has no technical meaning. I don't know that there is any trade meaning of the word "similar," although it is used.

Mr. Farris: Q. Using the word "similar" in its usual sense, and the word "service" in the sense you have given it to his lordship, would you state your reasons for saying the services are not similar? A. Similar means nearly corresponding. Now the service rendered in the two districts does not nearly correspond. 20

Q. In what particulars? A. They do not correspond by reason of the fact that the distribution investment or the property required to serve a consumer in Matsqui would be greater than in Burnaby. There would also be a greater use of the products, a greater use of the energy for a customer in Burnaby than in Matsqui.

Q. How would that affect the service? A. It affects the service as indicating the facilities required to render the service and the efforts required on the part of the company to render the service. 30

Q. How would that affect the service? A. In order for the service in one district to be similar to the service in another district, to nearly correspond, there should be nearly correspondence in the general type of load, in the use of the load, and in the unit facilities required to perform the service, and in the unit cost of operating the facilities. Anyone familiar with the properties by an investigation of the two districts would know that differences would exist in all of those particulars. To just what extent, just what the difference might be of course, could not be determined. 40

Q. We have it in evidence that the area of Burnaby is 38 square miles, and Matsqui is 84.6, or 84 in round figures.

The Court: That is not square miles in Matsqui. It is given in acres. You are putting it that Matsqui is very much bigger.

Mr. Farris: Well, it is, my lord. Matsqui covers a greater area. I have not worked those out, but they are substantially the same; 38 square miles in Burnaby and 84 in Matsqui, and the population 21,000 round figures in Burnaby and 4500 in Matsqui.

The Witness: The testimony, I think, Mr. Farris, was that the population of Burnaby was 7200.

Mr. Farris: Q. No. Matsqui was 7200 and Burnaby 26,000. All right. Taking those figures you heard here this morning, what relation have they to the question we are considering? A.

10 Well, they would have a very marked relation if all the territory was served in each case. It would indicate that the more sparsely settled territory would require a greater unit investment in distribution lines, because there would naturally be a smaller number of customers per mile of distribution line. As near as I can tell there would be at least two and a half to three times as many customers per mile of distribution line in Burnaby than in Matsqui. I think that probably is about correct.

Q. These factors which you have given—what effect would they have on the cost of service? I am asking you from your
20 knowledge of what you have investigated in Burnaby and Matsqui. A. They would have a decided effect on the cost of service. Just how much, of course, I am not prepared to say. But my statement that they would affect the cost of service is apparent from the fact that a mile of transmission line in Burnaby will have two and a half to three times the number of consumers attached to it as a mile of transmission line in Matsqui. Now, if all consumers used the same number of kilowatt hours, that feature alone would make a larger investment cost, a higher maintenance cost per kilowatt hour to be assessed against the con-
30 sumer in Matsqui than of Burnaby. That would be one thing. There is no doubt but that the consumer in Burnaby as an average will use more kilowatt hours per consumer than the Matsqui consumer.

Q. Why do you make that observation? A. It is a different type of community. Burnaby is the ordinary suburban community, a growing place; it is difficult to detect whether or not it is part of Vancouver; whereas Matsqui is a rural community, decidedly rural, and the type of use would be different. Then in addition to that there is a very considerable power load
40 in Burnaby. There are several industries which use considerable power, and we do not find that condition in Matsqui. There is a brick yard, which is now removed from Matsqui, and some pumps operated by the municipality, and perhaps a few farm motors, but I did not detect any other power load in Matsqui. I will make one more observation in my answer if I may.

RECORD

In the Supreme Court of British Columbia.

Proceedings at Trial.

Defendant's Case.

Henry L. Gray.
Direct Exam.
19th Dec., 1982.

(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Defendant's Case.

Henry L. Gray.
Direct Exam.
19th Dec., 1932.
(Contd.)

Q. Yes. A. That is that Matsqui, being remote from the centre of operations as compared with Burnaby, there would naturally be a higher unit maintenance cost in Matsqui. I understand that, I am informed that the cost of reading the meters in Burnaby is done under a contract of some two cents a meter. Meters in Matsqui cannot be read for anything like that; it would cost considerably more.

Q. Is the reading of meters part of the service? A. Reading the meters is part of the service.

Q. Just what do you mean by unit facilities, as you use the 10 expression? A. By unit facilities I mean the physical property required to serve a customer. You may consider the customer as a unit, and the customer as a unit in Matsqui would require more facilities in the use of distribution than the customer in Burnaby.

Q. Why? Will you explain that in detail? A. I think I explained that.

Q. Well, even at the risk of repeating, will you explain that again? A. There are many more customers for a mile of distribution line in Burnaby than in Matsqui. I do not know exactly 20 how many, but in my opinion between two and three times as many. That would be quite apparent to anyone, even to anyone not trained in electric industry; just by riding through that could be seen. There is another feature of that which is rather technical, and that is that the Burnaby consumer unquestionably has a higher load factor and he uses his demands, he uses his individual facilities to a greater extent than the Matsqui consumer does, and that affects the generating facilities to some extent. He makes a greater use of what the company provides for him.

Q. Would you say whether the difference is substantial or 30 slight, in the service? A. I would say the difference was substantial.

Mr. Farris: Your witness.

Mr. Mayers: No questions.

(Witness aside.)

EDMUND ERNEST WALKER, a witness called on behalf of the defence, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FARRIS:

Q. Mr. Walker, what is your position? A. I am the sales engineer of the B. C. Electric Railway Company in charge of the 40 light and power department.

Q. How long have you held that position? A. Seventeen years.

Edmund Ernest
Walker.
Direct Exam.
19th Dec., 1932.

Mr. Farris: There is one further question that I want to call Mr. Gray on. I think I should do it first. I find I have omitted one question.

(Witness stood aside.)

HENRY L. GRAY, recalled.

Mr. Farris: Q. Mr. Gray, will you produce that little pamphlet you had the other night? A. Unfortunately I have mislaid it.

(Witness aside.)

10 EDMUND ERNEST WALKER, resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. FARRIS:

Q. How long has your experience been, Mr. Walker? A. Twenty-nine years in the public utility business.

Q. How long in British Columbia? A. Seventeen years.

Q. All the time with this company? A. Yes, sir.

Q. Where did you study your profession? A. My first contact with electric public utility business was as a pupil of Mr. R. L. Aeland, borough electrical engineer, the Chesterfield Corporation. I was with the Chesterfield Corporation as a pupil and as assistant engineer from 1903 until 1907, four years. I then went and acted as assistant electrical engineer and tramway superintendent at Glossop near Manchester, and was there for four years. Then in 1911 I was appointed resident engineer and manager for the Caterham Valley & Dorking in Surrey, England, which is south of London. I was with the company there to 1915, when I came to Canada.

Q. Has the word "service" in the electrical industry a distinct trade and technical meaning?

Mr. Mayers: I take it that all my objections are raised.

30 The Court: Yes. A. It has.

Mr. Farris: Q. What is that meaning? A. I would define the meaning of "service" as the act of furnishing certain facilities in the electrical business as you supply in the railway or telephone business. In other words, you are supplying a general service or demand.

Q. You are speaking of now— Has it always had that meaning to your knowledge? A. To the best of my knowledge.

Q. Considering electrical service: What are the factors which make up such service? A. I should say there are two prime factors, one being the physical and the other being the utilization factor. The physical would include such things as the generation of power, transmission lines, sub-stations for transformer and distribution system. As far as utilization is concerned, into that would come the maintenance, the actual giving of the service to

RECORD

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Defendant's Case.

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RECORD

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Court of British
Columbia.*

*Proceedings
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Defendant's Case.

*Edmund Ernest
Walker.
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(Contd.)*

the customer, the reading of the meters, and bill collection, and general educational facilities.

Q. Yes. You, of course, are familiar, I understand, with the services as rendered by your company in Matsqui and in Burnaby? A. I am.

Q. From your experience, are those services similar? A. They are not.

Q. Will you state in detail—not in too much detail, but in substantial detail—how they differ? A. In the first place Matsqui is approximately 30 miles from Vancouver. Burnaby, the western boundary of Burnaby joins the city of Vancouver and is strictly urban or suburban territory. Matsqui is a rural territory. 10

Q. How far is Matsqui away, do you know? A. Approximately 30 miles; 30 or 35 miles. There are other features where they are dissimilar. The population of Burnaby is very much greater, as has been shown this morning, than Matsqui; which means that the density of the load that one could obtain per mile of line is very much less in Matsqui than in would be in Burnaby. There is dissimilarity there.

Q. How does that affect the effort? A. It affects the effort and costs of the effort as regards both transmission and distribution. For instance, your distribution cost per customer would be higher at Matsqui than in Burnaby. 20

Q. Can you state what the difference is, from your knowledge? A. I would say, roughly, two and a half times more per customer in Matsqui than in Burnaby.

Q. That is distribution costs? A. That is distribution cost.

Q. What other items are there to be considered? A. There is the question of meter reading. It is more expensive to read our meters on account of the houses being more scattered. It costs us I think seven cents to read a meter in Matsqui, and costs two cents in Burnaby. Collecting facilities are almost in the same proportion. There is also the use of electrical energy in Matsqui. I think before the Clayburn brick plant shut down—that was in Matsqui area—the consumption was about 85%, if my memory serves me right, of the consumption in Matsqui. But if you take out the power end of it, the consumption per customer would be very much less. As to the density of load or density of consumers per mile of line, I would say that the residential customer per mile of line in Matsqui would be approximately ten per mile of line, as against forty-one or forty-two in Burnaby per mile of line. 30 40

Q. And I suppose what you are stating as now, was true as of the date when the writ was issued in this case, less than two years ago, the 29th of June, 1931? A. Yes, that is right.

Mr. Mayers: No questions.

(Witness aside.)

Mr. Farris: If my friend will pardon me, the document I want is not here and I want to see if this will serve my purpose. I would like to recall Mr. Gray.

HENRY L. GRAY, recalled.

DIRECT EXAMINATION CONTINUED BY MR. FARRIS:

Q. I am producing a little pamphlet which I understand is issued by your company, Mr. Gray? A. It is issued by the body which is now known as the Department of Public Works. It corresponds to the Public Service Commission.

10 Mr. Farris: I wish to put this in, my lord, if I may, to support Mr. Gray's statement as to the meaning of the term.

The Court: I do not think you can do that, Mr. Farris. Rules and regulations issued by a foreign company in connection with its business—I do not see that you can do that.

Mr. Farris: It is using the English language, my lord.

The Court: Well, you may put it in for identification, in case I am wrong.

The Witness: May I correct your impression. Your lordship, this is not issued by a company. It is issued by a State
20 Department.

Mr. Farris: I might ask, with your lordship's permission, if my friend does not object—

Mr. Mayers: Well, I object to the whole proceeding. It is all so bad that I do not think anything could be singled out.

The Court: All right.

Mr. Mayers: Why not put in the Bible, because that is in the English language.

Mr. Farris: Q. The meaning you have given, of service, has that always been the meaning within your time and knowledge?

30 A. To my knowledge and in my time, yes.

(Witness aside.)

STANLEY ARTHUR HORNER, a witness called on behalf of the defence, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FARRIS:

Q. Mr. Horner, I have here a little diagram— It might be convenient if I filed that. (Showing document to Mr. Mayers.) Not the printing that is on it, but merely the diagram.

Mr. Mayers: You are just going to file that, are you, without the legend. I haven't read all this.

40 Mr. Farris: Yes, without the legend. Just simply to display to the eye what Mr. Riddell has already said.

The Court: It is defining the relations between the companies?

Mr. Farris: Yes.

RECORD

In the Supreme Court of British Columbia.

Proceedings at Trial.

Defendant's Case.

Henry L. Gray. Recalled. Direct Exam. 19th Dec., 1982.

Stanley Arthur Horner. Direct Exam. 19th Dec., 1982.

RECORD

(Document marked Exhibit No. 15.)

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Defendant's Case.

Stanley Arthur
Horner.
Direct Exam.
19th Dec., 1932.
(Contd.)

Q. Mr. Horner, what is your position with the B. C. Electric Railway Company? A. Assistant controller.

Q. And what duties does that particularly assign to you?

A. Well, I am in charge of the general accounting department.

Q. Does the B. C. Electric Railway Company under your direction keep books? A. The B. C. Electric Railway Company?

Q. Yes. A. Yes, sir.

Q. Are books also kept for any other companies? A. Yes.

Q. For this Defendant? A. Yes.

Q. What sources of revenue has the Defendant Company?
A. The Defendant Company?

Mr. Mayers: Well, I object to all of this, my lord.

The Court: I do not see what relevancy it has.

Mr. Farris: It has this: my friend has suggested the interlocking of these companies; to try to show the extent of the interlocking my friend has put in what he calls this mysterious form of bill. I think when the system of bookkeeping and the moneys coming in from the Defendant Company in Matsqui are proved, and how their books are kept, it simply clears up what their relations are. 20

The Court: I think their relations were established by their shareholdings. However,—

Mr. Mayers: Oh, go on. Of course, it is perhaps useless to object to anything in this trial, but how can the way this gentleman kept their books, affect the outside public.

Mr. Farris: It may be no more than that you may have to make an argument.

The Court: I do not see how this can be relevant at all?

Mr. Mayers: What he is giving is obviously second-hand 30
evidence.

Mr. Farris: No, I am simply offering evidence of the system of these companies. It is suggested that these companies are so interlocked that you cannot distinguish one from the other. I am asking to show the system, and that these books insured that the system was kept separate.

The Court: If the bills are put in I will take it subject to objection. I am taking it as explanatory as to how these bills come to be as they are. I do not think it is admissible at all at present.

Mr. Mayers: Your lordship sees he can only be speaking 40
from some books, and therefore is only giving secondary evidence.

The Court: He is talking of the system in which the books are kept.

Mr. Mayers: That again should be primary evidence, but primary evidence is the books themselves.

Mr. Farris: Q. Are separate books kept for the Defendant, the Western Power Company, from the B. C. Electric? A. Yes.

Q. In the case of cheques from the municipality of Burnaby coming to the office, the office in Vancouver, marked for the Defendant Company, the Western Power Company, what is the practice in regard to those cheques?

Mr. Mayers: That, again, is something that ought to be proved by having these books and cheques, if there is any point in it.

The Witness: The cheque would be endorsed over to the B. C. Electric Railway Company.

10 Mr. Farris: Q. And then would be put in their books? A. Put in their books.

Q. I suppose of course there are full and adequate books of account for all transactions, kept by the B. C. Electric?

Mr. Mayers: If that is an issue before this court, who could decide whether they were full and adequate except by inspection before the court.

The Court: I think, Mr. Mayers, you are so right that even I will not admit it.

20 Mr. Farris: Q. Could you outline in general what the books are which you keep for the B. C. Electric Company? A. You mean the system of—

Q. Yes. A. Well, the B. C. Electric Railway, of course, has its own separate general ledger, as have all the other companies. The work of my department comprises keeping the company's bank account, the payment of accounts, the assembling of the revenues, and operating expenses, as they come from the different company operations, and eventual recording of those in the different ledgers of the company.

30 Q. All kept separate? A. All separate. And the final preparation of balance sheets and profit and loss account of each company.

Q. There is only one staff occupied in all this work? A. Yes.

Q. Is that expense all borne by the B. C. Electric? A. No, sir. The B. C. Electric in the first place pays those expenses, has the use of the staff, and the B. C. Electric—that is the accounting staff of the B. C. Electric—charges each one of those companies with a certain amount each year for accounting services rendered.

Q. Including the Defendant Company, Western Power Company? A. Including the Defendant Company.

40 Mr. Mayers: No questions.

(Witness aside.)

Mr. Farris: I wonder if your lordship would call this a morning.

The Court: All right. Court will adjourn until half past two.

(Proceedings adjourned at 12.55 until 2.30 p.m.)

RECORD

In the Supreme Court of British Columbia.

Proceedings at Trial.

Defendant's Case.

Stanley Arthur Horner.

Direct Exam. 19th Dec., 1982.

(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Defendant's Case.

Discussion.
19th Dec., 1932.

(Proceedings resumed at 2.30 p.m. pursuant to adjournment.)

Mr. Farris: My lord, I am not calling any further evidence on that branch of the case. On the question of connections I have only two positions to take. One is that the Municipality is estopped. What has happened is this: assuming that my friend's interpretation of the agreement is correct, that agreement was admitted to be modified by an agreement of '21 in which we undertook to expend some extra moneys in the Municipality and the Municipality undertook to waive this provision in paragraph 11. That was passed by resolution of the Council signed by the Mayor and the City Clerk. It was not ratified by the electors, which I do not think was necessary; it was not put in the form of a by-law. That is to say, there is more procedure under a by-law than merely the one resolution. There are two resolutions. There are other formalities necessary to make this a by-law, and I must concede that this is not a by-law. So that my position there is that there is an estoppel because we have performed the extra work that was required and it is accepted by the Municipality. My other position is one of interpretation, which I need not mention now, but only in my argument. So I tender now the agreement, not to prove its execution finally, because I admit it was not approved by by-law, but to prove the facts as stated. I think it is Exhibit 23 on the other trial. This book was prepared for the purpose of the last trial, which is not being relied on now. We had an arrangement—Mr. Mayers will recall—that the copies were sufficient, by letter.

The Court: What is the date?

Mr. Farris: 23rd of September, 1921.

Mr. Mayers: Cannot you put in a separate one?

Mr. Farris: I was going to have it torn out of this book. You could let me have that, and we will have it cut out of this later. My friend has a spare copy, my lord. It purports to be executed by the Reeve under seal of the Municipality, and this copy purports to be a certified copy of the original.

(Document produced marked Exhibit No. 16.)

Mr. Farris: Probably my learned friend will admit that it was passed by resolution but not by by-law.

The Court: All right. I'll admit it.

Mr. Farris: Now, to supplement that is the discovery of Mr. Cruickshank, the Reeve, questions 52 to 61 inclusive.

The Court: I have no discovery of the Reeve. However, I suppose I can follow it. All right. I have it now.

Mr. Farris: There was an objection to 54. I am not sure whether this was all covered by my learned friend's objection, but I will put it in. (Reading said questions 52 to 61 inclusive, and answers.)

Mr. Farris: I want to recall on this question, Mr. Walker.

EDMUND ERNEST WALKER, recalled.

Mr. Farris: Q. Mr. Walker, you are already sworn. Now, I am calling attention, my lord—in this agreement it provides that Clause 11 be deleted and the following substituted, and I want you to pay attention as I read 11 (a). (Reading paragraph 11 [a] of Exhibit 16.) From your knowledge has the company carried out these works under that paragraph 11 (a)? A. It has.

Mr. Mayers: That is objected to.

10 Mr. Farris: Q. Has that been an additional expense to the company? A. Yes, to the best of my knowledge, it has.

(Witness aside.)

Mr. Farris: That is the defence, my lord.

Mr. Mayers: I would just like to refer again to the question of this amendment. I want to establish that no such amendment was ever asked for until the case had proceeded before Mr. Justice Gregory. The plaintiff's case was in and a witness had been called for the defence, who I think was Mr. E. E. Walker. He was asked:

20 "Have you anything to do with the fixing of rates in connection with light and power?"

He answered:

"I have to make recommendations from time to time, yes."

And I objected that the evidence was not admissible under the pleadings, and a very extended argument occurred, taking up pages 51 to 58, in the course of which Mr. Farris said:

30 "I propose to offer this evidence; in the general nature of things that in the electrical, and in the commercial distribution of electricity service is universally regarded as not merely the product, but all the efforts—"

Mr. Farris: Is my learned friend going to put in part of my argument? It is not part of the record.

Mr. Mayers: It is all in the record.

The Court: The best thing is to put the whole transcript of what occurred before Mr. Justice Gregory, in, and then you have it before the Court of Appeal, if that is the object.

Mr. Mayers: Then I put in from page 50, when Mr. E. E. Walker was called, down to page 90.

40 Mr. Farris: Of course, it is not in as proof of anything there I take it.

Mr. Mayers: No, it is simply proving the position taken by myself and my friend before Mr. Justice Gregory.

RECORD

In the Supreme
Court of British
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Defendant's Case.

Edmund Ernest
Walker.
Recalled.

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The Court: Well, your argument.

(Argument by Mr. Farris.)

(Proceedings adjourned at 4.10 p.m. until the following day at
11 a.m.)

Vancouver, B. C., December 20, 1932.

(Proceedings resumed at 11 a.m. pursuant to adjournment.)

(Argument continued by Mr. Farris.)

(Argument by Mr. Mayers.)

(Judgment reserved.)

I hereby certify the foregoing to 10
be a true and accurate report of
the said proceedings.

D. Langfield,
Deputy Official Stenographer.

EXCERPT FROM EXAMINATION FOR DISCOVERY
OF
WILLIAM GEORGE MURRIN

EXAMINED BY MR. MAYERS:

"1. Q. You are William George Murrin? A. Yes.

"2. Q. And you have been sworn? A. Yes.

"3. Q. What position do you hold with the Western
"Power Company of Canada Limited? A. I am president
"of the Western Power Company of Canada Limited.

10 "4. Q. How long have you held that office? A. About
"three years."

"8. Q. Do you hold any office in the British Columbia
"Electric Railway Company Limited?

"Mr. Farris: You do not need to answer that.

"Mr. Mayers: 9. Q. Do you hold any office in the
"British Columbia Electric Power & Gas Company Limited?

"Mr. Farris: You do not need to answer that.

20 "Mr. Mayers: 10. Q. Well, will you please answer, wit-
"ness, do you hold any office in the British Columbia Electric
"Railway Company Limited? A. On the instructions of my
"legal adviser, I am not replying. I mean I am not.

"11. Q. Do you hold any office in the British Columbia
"Electric Power & Gas Company Limited? You must say
"you refuse to answer or not? A. Yes, under the advice of
"counsel, I am not answering.

"12. Q. You refuse to answer? A. Well, all right.

"13. Q. It is one thing or the other? A. Yes.

"Mr. Farris: He says that.

30 "Mr. Mayers: 14. Q. I understand you refuse to
"answer? A. On the advice of counsel.

"15. Q. Do you hold any office in the British Columbia
"Power Corporation Limited?

"Mr. Farris: The same position will be taken as to any
"company except this one, this Defendant.

"Mr. Mayers: The witness must answer.

"16. Q. Do you hold any office in the British Columbia
"Power Corporation Limited? A. On the advice of counsel
"I refuse to answer.

40 "17. Q. Do you hold any office in the Vancouver Power
"Company Limited? A. On the advice of my counsel I refuse
"to answer that.

"18. Q. That is the signature of Mr. Laursen, isn't it?

"Mr. Farris: What is this?

"Mr. Mayers: (Produces to counsel.)

"Mr. Farris: That is admitted.

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

Excerpt from ex-
amination for Dis-
covery of W. G.
Murrin.
18th Feb., 1932.

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

Excerpt from ex-
amination for Dis-
covery of W. G.
Murrin.
18th Feb., 1932.
(Contd.)

“Mr. Mayers: 19. Q. That is Mr. Laursen’s signa-
“ture? A. It looks like it.

“20. Q. He is the solicitor for the Defendant, is he? A.
“Yes.

“21. Q. You notice here, witness, that Mr. Laursen tells
“us that all but a small fraction of the common shares are
“held by the Vancouver Power Company Limited and all the
“common shares of the Vancouver Power Company Limited
“are held by the British Columbia Electric Power & Gas Com-
“pany Limited. You observe that, do you? A. Yes, I notice 10
“that there.

(Document referred to marked No. 2 for identification.)

“22. Q. Will you look at paragraph 4-A of the state-
“ment of claim, the amended statement of claim, and para-
“graph 4-A of the amended defence. You notice, witness, that
“the Plaintiff— A. I have not read these yet.

“23. Q. I beg your pardon? A. Yes.

“24. Q. You notice that the Plaintiff asserts and the
“Defendant denies that the Defendant is affiliated or con- 20
“nected in interest with the British Columbia Electric Rail-
“way Company Limited, the British Columbia Electric Power
“& Gas Company, or the British Columbia Power Corporation
“Limited. Do you maintain that now in the face of that letter,
“Exhibit 2? A. Yes, I maintain this.

“25. Q. Then, you tell me that there is no connection
“at all between the Defendant and the three companies that
“I have mentioned, do you? A. That is not the same thing.

“26. Q. What do you tell me, witness, is there any con-
“nection between the Defendant and the three companies I
“have mentioned? A. The only connection that I—yes, there 30
“is a connection. The connection is that one of the companies
“you mentioned owns shares in the Western Power Company
“of Canada.

“27. Q. Isn’t it perfectly obvious from Exhibit 2 that
“the British Columbia Electric Power & Gas Company
“Limited holds all the shares of the Vancouver Power Com-
“pany and that the Vancouver Power Company in turn holds
“all but a small fraction of the shares of the Western Power
“of Canada Limited, that is right, isn’t it? A. Perfectly
“correct. 40

“28. Q. And the British Columbia Electric Railway
“Company Limited, is that not connected in any way with
“these other companies?

“Mr. Farris: You do not need to answer about the
“British Columbia Electric Railway Company.

“Mr. Mayers: 29. Q. You refuse to answer? A. On
“the advice of my counsel.

“30. Q. I show you a publication which purports to be
 “an annual report of the British Columbia Power Corpora-
 “tion Limited in 1931. Is that a publication put forth by the
 “British Columbia Power Corporation Limited?

“Mr. Farris: You do not need to answer that, Mr.
 “Murrin.

“Mr. Mayers: 31. Q. You refuse to answer that? A.
 “Yes.

(Document referred to marked “A” for identification.)

10 “32. Q. Now, I ask you specifically whether there is any
 “connection by way of holding of shares or otherwise between
 “the British Columbia Electric Railway Company Limited
 “and the British Columbia Electric Power & Gas Company
 “Limited?

“Mr. Farris: Between the British Columbia Electric
 “Railway and what?

“Mr. Mayers: And the British Columbia Electric Power
 “& Gas Company.

“Mr. Farris: You do not need to answer that.

20 “A. I refuse to answer on the advice of counsel.

“Mr. Mayers: 33. Q. I ask you whether there is any
 “connection by way of holding of shares or otherwise between
 “the British Columbia Electric Railway Company Limited
 “and the British Columbia Power Corporation Limited.

“Mr. Farris: The same answer.

“A. I refuse to answer.

“Mr. Mayers: 34. Q. You refuse to answer? A. Yes.

30 “35. Q. Is there any connection by way of holding of
 “shares or otherwise between the British Columbia Power
 “Corporation Limited and the British Columbia Electric
 “Power & Gas Company Limited?

“Mr. Farris: The same answer.

“Mr. Mayers: 36. Q. You refuse to answer? A. I
 “refuse to answer.

“37. Q. Is there any connection by way of holding of
 “shares or otherwise between the Vancouver Power Company
 “Limited and either of the three companies mentioned in
 “paragraph 4-A of the defence, or the amended defence? A.
 “Which are those companies?

40 “38. Q. They are there before you?

“Mr. Farris: Can you split that question up a bit, Mr.
 “Mayers?

“Mr. Mayers: 39. Q. I will take each one, is there any
 “connection by way of holding of shares or otherwise between
 “the Vancouver Power Company Limited and the British
 “Columbia Electric Railway Company Limited?

“Mr. Farris: The same answer.

RECORD

*In the Supreme
 Court of British
 Columbia.*

Proceedings
 at Trial.

Plaintiff's Case.

Excerpt from ex-
 amination for Dis-
 covery of W. G.
 Murrin.

18th Feb., 1932.

(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

Excerpt from ex-
amination for Dis-
covery of W. G.
Murrin.
18th Feb., 1932.
(Contd.)

"A. I refuse to answer on the advice of counsel.

"Mr. Mayers: 40. Q. Is there any connection by way
"of holding of shares or otherwise between the Vancouver
"Power Company Limited and the British Columbia Electric
"Power & Gas Company Limited? A. I refuse to answer.

"41. Q. Is there any connection by way of holding of
"shares or otherwise between the Vancouver Power Company
"Limited and the British Columbia Power Corporation
"Limited? A. I refuse to answer that.

"42. Q. Will you give me the letter from L. T. Beharrell, 10
"dated the 15th day of May, 1931, which is No. 23 in the
"affidavit of documents. (Document produced.)

"Mr. Mayers: This is the document, is it?

"Mr. Farris: I do not know that Mr. Murrin knows. I
"produce it as such.

(Document referred to marked No. 3 for identification.)

"Mr. Mayers: 43. Q. The Defendant received that
"document?

"Mr. Farris: We admit that."

"Mr. Mayers: 51. Q. I take it on the first receipt you 20
"did refuse Mr. Beharrell's request? A. My information
"is that we did, although I do not know from personal
"knowledge.

"52. Q. Has anything further been done in the matter
"since the first refusal by the Defendant?

"Mr. Farris: So far as this Defendant is concerned, we
"admit we refused, but as to any other defendants, we refuse
"to answer.

"Mr. Mayers: I was not aware that there was any more
"than one defendant. 30

"Mr. Farris: I used the wrong expression, so far as to
"the other parties to whom you address your question.

"Mr. Mayers: I see that is what is troubling you.

"53. Q. The Defendant refused? A. Yes.

"54. Q. You do not know whether these other institu-
"tions did anything at all because you know nothing about
"them?

"Mr. Farris: He refuses to answer.

"A. Yes.

"Mr. Mayers: 55. Q. Has anything been done in regard 40
"to the demand of Mr. Beharrell since it was made, by any-
"body, to this witness' knowledge?

"Mr. Farris: I instruct the witness not to answer the
"question in that form, except as to the Defendant Company.

"Mr. Mayers: 56. Q. Do you refuse to answer? A.
"Yes, I refuse, except as to the Defendant Company.

"57. Q. I do not want to be put off in that way, I am asking you, of your knowledge has anything been done in regard to Exhibit 3 since the first refusal?"

"Mr. Farris: My advice to Mr. Murrin is if he knows of anything done by the Defendant Company to answer.

"A. As to the Defendant Company, no.

"Mr. Mayers: 58. Q. Nothing has been done? A. No, so far as I know, nothing has been done."

10 "67. Q. Has the Defendant Company been supplying power and light to the inhabitants of the District of Matsqui?"

"A. Not directly, since my connection with the company.

"68. Q. Well, what has been happening? A. The B. C. Electric has been supplying under an agreement, under an arrangement.

"69. Q. With whom? A. With my company.

"70. Q. With the Defendant Company? A. Yes.

"71. Q. Yes, have you a copy of that agreement, or the agreement itself? A. Yes.

20 "72. Q. Let me have a look at it?"

"Mr. Farris: We have been using it, and apparently I left it on my desk.

"Mr. Mayers: Could we send for it right away?"

"Mr. Riddell: Yes.

"Mr. Mayers: 73. Q. Witness, it is the fact, is it not, that you have not disclosed that in your affidavit of documents? A. I did not hear that, you say it is a fact I have not disclosed this in what?"

30 "74. Q. In the affidavit of documents filed on behalf of the Defendant.

"Mr. Farris: Who took the affidavit?"

"Mr. Mayers: Mr. Laursen.

"Mr. Farris: If it is not here, it is not here. It is no good having Mr. Murrin presume it.

"Mr. Mayers: I want Mr. Murrin to assure himself that it is not there.

"Mr. Laursen: It should have been in the affidavit of documents and was overlooked.

"A. Yes. I have not the personal conduct of that.

40 "Mr. Mayers: 75. Q. And have you a schedule of rates which are charged to the inhabitants of Matsqui for the supply of light and power? A. Oh, here it is. This is the agreement you are asking for.

"76. Q. That will help. This is a memorandum dated the 27th of June, 1921, between the Western Power Company of Canada Limited and the British Columbia Electric Railway Company Limited.

(Document referred to marked No. 4 for identification.)

RECORD

In the Supreme Court of British Columbia.

Proceedings at Trial.

Plaintiff's Case.

Excerpt from examination for Discovery of W. G. Murrin.

18th Feb., 1932.

(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

Excerpt from ex-
amination for Dis-
covery of W. G.
Murrin.
18th Feb., 1932.
(Contd.)

“Mr. Mayers: Have you a schedule of rates?”

“Mr. Farris: This is a British Columbia Electric sched-
ule, but we will produce it.

(Document referred to marked No. 5 for identification.)

“Mr. Mayers: 77. Q. This is the schedule of rates
charged to the inhabitants of Matsqui, is it? A. Yes. It
contains the rates charged to Matsqui, I mean.

“78. Q. Do you recognize this form as being one of
yours?”

“Mr. Farris: What do you mean by “one of yours”?” 10

“Mr. Mayers: One of the Defendant Company’s? A.
It looks familiar.

(Document referred to marked No. 6 for identification.)

“79. Q. It is one of your forms, isn’t it, witness? A.
Yes.”

“Mr. Mayers: 135. Q. Yes. There is only one thing
I want to ask you, I am instructed that the bills that were
sent out to the inhabitants of the Municipality of Burnaby
bear exactly the same heading as Exhibit 6, namely, debtor
to British Columbia Electric Railway Company and British
Columbia Electric Power & Gas Company Limited or West- 20
ern Power Company of Canada Limited? A. I am not
aware that we sent any bills out to Burnaby.

“136. Q. Do your companies act philanthropically and
gratuitously? A. I do not think we have a single customer
in Burnaby.

“137. Q. All I am asking the witness to answer is the
question and if he cannot, he may say so? A. Oh, no, no.
You asked me whether this bill which was sent out in Matsqui
was the same as we sent out in Burnaby. To the best of my 30
knowledge—

“138. Q. That is not my question? A. I am sorry.

“139. Q. My question was this, do the bills which you
send out to the inhabitants of Burnaby bear the same title
as Exhibit 6, of the three companies?

“Mr. Farris: ‘You’ being the Defendant Company?

“A. To the best of my knowledge there is not a single
bill sent to the inhabitants of Burnaby.

“Mr. Mayers: 140. Q. The bills sent out to the in-
habitants of Burnaby bear the same title as Exhibit 6? A. I 40
have answered that question.

“141. Q. No, you have not? A. I say to the best of my
knowledge there are no bills sent out to anybody in Burnaby
by the Western Power Company of Canada of which I am
president.

“142. Q. That is not the question? A. I am very sorry.

“143. Q. Just try and listen to it and say yes or no, or
“refuse to answer? A. No, I do not refuse to answer.

“Mr. Farris: As to any other company, refuse to answer.

“Mr. Mayers: 144. Q. My question is simple, the bills
“sent out to the inhabitants of Burnaby bear the same heading
“as Exhibit 6? A. By whom?

“145. Q. I am not going to add to or subtract from my
“question. A. All right, from Spencers or Woodwards, no.

10 “146. Q. Is that your answer? A. From the Western
“Power Company of Canada, to the best of my knowledge
“and I am here speaking in that connection, to the best of
“my knowledge there is no similar bill sent out to the in-
“habitants of Burnaby.

“Mr. Farris: 147. Q. As to any other company, you
“refuse to answer? A. As to any other company, I refuse to
“answer.

20 “Mr. Mayers: 148. Q. I point out again you have not
“answered the question and if you do not want to make further
“answers, all right, we will not take up time? A. I am en-
“titled to say this, it is my intention to answer and I believe
“that I have fully answered. If I have not, I have not under-
“stood your question.

“149. Q. Do bills for electric light and power sent out
“to the inhabitants of the Municipality of Burnaby bear the
“same heading as Exhibit 6 with regard to the names of the
“three companies appearing on Exhibit 6? A. My final and
“only answer, that speaking as president Western Power
“Company of Canada, to the best of my knowledge not a bill
“is sent out to the inhabitants of Burnaby.

30 “150. Q. That is not an answer to the question? A. I
“am sorry that is the only answer.

“151. Q. If you would refuse to answer that would
“shorten the matter? A. I have given my answer and I
“cannot say anything more. I am not refusing anything. I
“am giving you the answer and you cannot put words in my
“mouth.

40 “152. Q. You do understand the question? A. I believe
“I understand the question and I try to give you the answer
“that occurs to me, the correct answer. I am not dodging this
“thing.

“153. Q. I was not asking you for your idea of the
“correct answer, I was asking for the truth? A. I object to
“that. I am speaking and I am informed by my lawyer that
“I am entitled to speak as president of the Western Power
“Company of Canada, and in that capacity, I can only speak
“as to the bills sent out by that company.

“154. Q. No, you may have seen them? A. That is my
“answer.

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

Excerpt from ex-
amination for Dis-
covery of W. G.
Murrin.

18th Feb., 1932.

(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

Excerpt from ex-
amination for Dis-
covery of W. G.
Murrin.
18th Feb., 1982.
(Contd.)

"155. Q. I point out, Mr. Murrin, as president of the
"Western Power Company of Canada Limited you may have
"very easily seen bills sent out by other companies? A. In
"any other capacity, I am instructed by my counsel to refuse
"to answer.

"156. Q. You do refuse? A. I am instructed on the
"advice of counsel.

"157. Q. And you refuse to answer? A. Yes.

"158. Q. In order that there may be no misunderstand- 10
"ing between us I am instructed by the gentlemen who are
"instructing me, Mr. Manson and Mr. Martin, that the bills
"which are sent out to the inhabitants of the Municipality
"of Burnaby are exactly in the form of Exhibit 6 so far as
"the heading is concerned. I do not happen to have one with
"me, but I propose to produce one on affidavit on the appli-
"cation I am going to make. Do you now suggest that any
"such bill as I propose to produce, headed with the name of
"the Defendant Company is so headed without any authority
"from the Defendant Company. You heard my question?
"A. Yes, this bill is used in Matsqui and Haney. It is used in 20
"Haney and—I am saying that this bill is used by the Western
"Canada Power Company.

"159. Q. This form of bill? A. Yes.

"160. Q. In how many municipalities? A. Where we
"do business.

"161. Q. How many municipalities, witness? A. I
"could not tell you.

"162. Q. Tell me some? A. In Haney.

"163. Q. Anywhere else? A. In Mission.

"164. Q. Yes? A. I will get you a list, if you like. 30

"165. Q. In Burnaby? A. I have answered you in
"Burnaby, so far as I know there is not a single bill sent out
"in Burnaby.

"166. Q. Are you saying that this form of bill in Exhibit
"6 is not sent out in Burnaby?

"Mr. Farris: By the Defendant Company.

"A. By our company, yes.

"Mr. Mayers: 167. Q. If there are bills in the form
"of Exhibit 6 headed with the name of the Defendant Com- 40
"pany sent to inhabitants in Burnaby, it is done without
"authority of the Defendant Company, do you say that? I
"want an answer direct? A. Within my knowledge, I cannot
"give you any specific authority.

"168. Q. Do you say there is no authority and that that
"is done without authority? A. No.

"169. Q. You won't say that is done without authority?
"A. I won't say that, because I don't know the actual con-
"nection."

"173. Q. With your assistance, I can very materially shorten this? A. Yes.

"174. Q. Does the British Columbia Power Corporation Limited own and control the British Columbia Electric Railway Company Limited, British Columbia Electric Power & Gas Company Limited, Vancouver Power Company Limited, and Western Power Company of Canada Limited? A. Yes.

10 "Mr. Farris: The word 'control' is an ambiguous word. I think what you mean is do they hold the shares.

"Mr. Mayers: 175. Q. I am using your own language? A. May I explain the situation existing between those, perhaps it would help.

"176. Q. I am content with your own publication? A. This is not a legal document, and every document is not scrutinized. In a rough and ready way that is correct, but I can tell you the exact situation.

20 "177. Q. If you like? A. The British Columbia Power Corporation owns the common shares of the British Columbia Electric Railway Company Limited.

"178. Q. Yes? A. And they own the common shares of the British Columbia Electric Power & Gas Company Limited.

30 "179. Q. Yes? A. The British Columbia Electric Railway Company Limited owns the shares of certain other companies, which are mentioned there, but are not in your question. On the other hand the British Columbia Electric Power & Gas Company Limited own the shares of the Vancouver Power Company Limited which in turn owns the shares of the Western Power Company of Canada Limited. There is the direct connection.

"180. Q. But from a practical point of view all these companies, the five companies I have mentioned, form part of the one system which is administered 'as a whole,' that is right, isn't it? A. Yes, in a rough and ready way that is so. Each of these companies have separate identity and such control as is exercised is used by virtue of the fact that the common stock exists—

40 "181. Q. I understand that they are separate legal entities? A. Yes.

"182. Q. But from a practical business point of view they are operating as one system, isn't that right? A. In a rough and ready way, yes, although as I say there is that separate entity.

"183. Q. I realize they are separate legal entities, but from a practical business point of view they are operating as one system, that is right, isn't it? A. As I interpret that, yes.

RECORD

In the Supreme Court of British Columbia.

Proceedings at Trial.

Plaintiff's Case.

Excerpt from examination for Discovery of W. G. Murrin.

18th Feb., 1932.

(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

Excerpt from ex-
amination for Dis-
covery of W. G.
Murrin.
18th Feb., 1932.
(Contd.)

"184. Q. Now, would you just identify this annual report. I do not want to put the whole of it in, because a great deal of it has nothing to do with this action. I want to put in page 2. Would you look at it, page 2.

"Mr. Farris: Why doesn't it all go in?

"Mr. Mayers: If you want it, I have no choice, but there is a mass of it that has nothing to do with the action.

"Mr. Farris: You had better put it all in if you are going to use it.

"Mr. Mayers: 185. Q. That is a true copy of the 10
annual report of the British Columbia Power Corporation
Limited? A. Yes.

(Document marked No. 7 for identification.)

"186. Q. I show you Exhibit 5 on this examination. Could you tell me if Matsqui District Corporation is included in this item, Fraser Valley east to Rosedale? A. Yes, I think so. I am pretty certain unless it is specially mentioned somewhere else.

"187. Q. That is correct? A. I have not looked through 20
this. I think that is included.

"188. Q. Look through it and satisfy yourself? A.
Yes, I believe that is correct.

"189. Q. Mainland District and Mainland Territory
would include Matsqui District Corporation and Burnaby
District Corporation? A. Oh, yes, might I look at that
again?

"190. Q. Yes? A. The Mainland District, yes, I think
that is right.

"191. Q. And Exhibit 5 is in force in respect of all the
localities mentioned in it, is that right? A. This is Ex- 30
hibit 5?

"192. Q. Yes? A. Yes.

"193. Q. And it has been in force since the 1st of July,
1931? A. This speaks for itself. I mean, I can only say
that I would have to read this.

"194. Q. It is there? A. It is there, and I assume it
is correct.

"195. Q. You accept that, do you? A. Yes, I assume
that. If you want to check that up—but I think this in all
probability is correct in all particulars. 40

"196. Q. Exhibit 5? A. Yes.

"197. Q. You are satisfied with the correctness of Ex-
hibit 5? A. I believe it is correct. I won't say there is not
an error in it.

"198. Q. If there is one, you will no doubt let me know
before the trial? A. Yes, all right.

“199. Q. I show you Exhibit 4 which you produced to me on your examination, that is in effect, is it? A. Yes.

“200. Q. And has been in effect since the date, the 6th of July, 1921? A. Yes, it is dated June 27th. Yes, that has been in effect—it is in effect now, and I assume it has been in effect continuously right through.

10 “201. Q. Is all power generated by the Defendant Company and the British Columbia Electric Railway Company Limited used as an undivided mass and distributed to the inhabitants of Matsqui District Corporation and Burnaby District Corporation indiscriminately? A. The power goes into a common network, and may be taken by any one municipality or any other, although it is separately measured and kept separate from its point of origin.

“202. Q. But it is used under this agreement, Exhibit 4, paragraph 1, it is used in an individual mass? A. Yes. I can say that this agreement does explain it in better words than I can give you, the exact relationship between the two.

20 “203. Q. That is the fact that the power generated by the Defendant Company and the British Columbia Electric Railway Company Limited is used as an undivided mass? A. I cannot tell any more. There is the clause that gives it exactly. That means yes. I would assume that in interpreting the answer to your question. There is not anything I can give more completely than this specifically.

“204. Q. Couldn't you answer that question. It is very simple? A. As I understand the question, yes.

30 “205. Q. That undivided mass you indiscriminately put in the supply to Matsqui District Corporation and Burnaby District Corporation among others? A. Yes.

“206. Q. Are bills identical in form sent to the consumers of Matsqui District Corporation and Burnaby District Corporation? A. Yes.

“207. Q. And Exhibit 6, you observe, already marked, that is the one taken from Matsqui District Corporation, and I now show you one from Burnaby District Corporation which we will mark Exhibit 8? A. There is one common form of bill.”

(Document marked No. 8 for identification.)

RECORD

In the Supreme Court of British Columbia.

Proceedings at Trial.

Plaintiff's Case.

Excerpt from examination for Discovery of W. G. Murrin.

18th Feb., 1932.
(Contd.)

RECORD

*In the Supreme
Court of British
Columbia,*

Proceedings
at Trial.

Defendant's Case.

Excerpt from ex-
amination for Dis-
covery of G. A.
Cruikshank.
22nd March, 1932.

EXCERPT FROM EXAMINATION FOR DISCOVERY
OF G. A. CRUICKSHANK

"52. Q. The 23rd of September, 1921. Do you know—

"Mr. Martin: I object to questions with reference to
"the agreement of 1921, as being irrelevant to the issue; and
"that Mr. Cruickshank has only information by hearsay. But,
"subject to that objection, you can answer the question.

"53. Q. (Mr. Farris): You are not refusing to let him
"answer? You are just taking the objection?

"Mr. Martin: Yes.

10

"54. Q. (Mr. Farris): You have the Minutes of Council
"in which this agreement was entered? A. Yes; in so far
"as what records there are.

"55. Q. Are they here (indicating)? A. Yes; they
"are marked, there.

"56. Q. You are producing the Council Minute Book.
"The book does not seem to be paged—Meeting of September
"3rd, 1921. I will read this into the notes, so that we can
"have it. The first Minute I see is Minute—21st May, 1921,
"under the heading 'Communications', 'W. G. Murrin, 20
"Assistant General Manager, explaining the company's pro-
"position for light and power and service in connection with
"the agreement of the Western Power Company of Canada.
"Mr. Rummell for the company was present, to give any
"needed information. After consideration, it was decided
"to arrange for a meeting in Vancouver with Mr. Murrin, on
"Monday, May 30th.' That seems to be all, at that meeting.
"The next is a meeting of the Council on June 4th, 1921, 'In
"connection with the light and power to be provided by the
"B. C. Electric Railway Company under the Western Power 30
"Company of Canada agreement, a delegation of the persons
"interested along the Page and Sims Roads interviewed the
"Council to press their claim for better consideration under
"new agreement. Moved by Councillor Benson, seconded by
"Councillor Bell and carried, that the B. C. Electric Railway
"Company be requested, in connection with the Western
"Power Company's agreement for light and power on
"Matsqui Prairie, to send one of their engineers as soon as
"possible to meet the parties interested, so as to decide on
"which roads the most revenue could be obtained.'—The one 40
"next is dated Saturday, June 25th,—I suppose still 1921.
"Communications. B. C. Electric Railway, submitting the
"revised course for their proposed extension of light and
"power on Matsqui Prairie in connection with the Western
"Canada Power Company's agreement. Filed.' Then, Sep-
"tember 3rd, 1921: 'Moved by Councillor Benson, seconded

“by Councillor Geldhill and carried, that the Reeve and Clerk
 “be authorized to execute the supplementary agreement of
 “the Western Power Company of Canada, Limited, and in-
 “struct the Municipality’s Solicitor to accept the proposition
 “of the B. C. Electric Company in a letter dated August 19th,
 “1921.’—That is all the records in the book. Are there any
 “other, Mr. Cruickshank? A. Not to the best of my
 “knowledge.

10

“57. Q. Well, has anybody checked up? A. Yes; the
 “Clerk has made a search as far as we can.

“58. Q. You instructed him? A. Yes. He has taken a
 “statement that, to the best of his knowledge, that that is all
 “there is in the office.

“59. Q. Have you got a copy of that agreement, that
 “we can identify? I have not got a copy with me today. A.
 “That is ours—the amended agreement (indicating).

“60. Q. Well, that is the one we are talking about. You
 “are producing a copy—typewritten copy? A. Yes.

20

“61. Q. Of this agreement that was authorized to be
 “executed by the Reeve and Clerk. — This purports to be
 “signed by Alexander McCallum, Reeve, and John LeFeuvre,
 “the Clerk; and the Western Power Company of Canada,
 “Limited,—George Kidd and W. G. Murrin, Directors; and
 “Adams, Secretary. That is a correct copy of the document
 “as executed by those parties? A. In 1921,—so I am in-
 “formed.”

RECORD

*In the Supreme
 Court of British
 Columbia.*

Proceedings
 at Trial.

Defendant’s Case.

Excerpt from ex-
 amination for Dis-
 covery of G. A.
 Cruickshank.

22nd March, 1932.

(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

Proceedings
at Trial.

Plaintiff's Case.

Excerpt from pro-
ceedings before
Gregory, J.
5th April, 1932.

EXCERPT FROM PROCEEDINGS BEFORE
MR. JUSTICE GREGORY

“Mr. Mayers: That is precisely the text I wish to argue
“on. My friend is basing his case, as he necessarily must, by
“calling evidence to explain what are technical terms in a con-
“tract. Technical terms in a contract can only be explained
“when there has been a proper pleading to that effect, and by
“usage of the trade in which the contract is made the words
“bear the interpretation which the party seeks to put upon
“them—not being the natural, ordinary and grammatical 10
“meaning of the words. So in the first place my learned friend
“has entirely omitted to plead any such thing, and he therefore
“cannot call this evidence at all, because he has not overcome
“the first two steps, which are these: To plead that these words
“have the technical meaning, which he alleges, according to a
“usage in the trade they meant at the time, and then proceed
“to the second step which is this: To show that the parties
“either knew of that usage and therefore passively assented to
“the use of the words in that sense; or that the usage was so
“general and so well known in the trade at the time that the 20
“parties must be taken to have contracted subject to that
“usage; also that the usage was reasonable, also that it con-
“tradicted no express terms in the contract.”

“Mr. Farris: And the third one: that I regard with great
“seriousness—a letter was given to my learned friend on Feb-
“ruary 17th in which was set out to him fully the principal
“factors entering into what constituted similarity of service.

“I am not going to rely on that. I do not think it is suffi-
“cient for my purposes, and as long as my learned friend has
“seen fit to take this position, I think my pleadings should be 30
“amended, and I am prepared to submit to any terms your
“lordship deems reasonable.”

IN THE SUPREME COURT OF BRITISH COLUMBIA

REASONS FOR JUDGMENT
OF THE
HONOURABLE MR.
JUSTICE MURPHY

CORPORATION OF THE
DISTRICT OF MATSQUI
v.
WESTERN POWER COM-
PANY OF CANADA LTD.

RECORD
In the Supreme
Court of British
Columbia.
No. 6
Reasons for
Judgment.
Murphy, J.
5th Jan., 1933.

Dealing first with the defence of estoppel it is conceded that Ex. 16 is inoperative because the requirement of the relevant sections in the Municipal Act necessary for its validity have not been complied with. It is contended, however, that Defendant with the knowledge of Plaintiff changed its position in reliance on said Ex. 16. Assuming, without deciding, that the evidence led in support would establish the defence of estoppel the law seems to be clear that estoppel cannot be set up where the result of giving effect to such a plea would be in effect to repeal statutory provisions.

- 10
 - 20
 - 20
- Waterman v. Slavanka* (1929) 1 W.W.R. 598.
Canterbury Corporation v. Cooper (1908) 99 L.T. 612.
Vestry of the Parish of St. Mary's, Islington vs. Hornsey Urban District Council (1900) 1 Ch. 695.

The case then is to be disposed of by construing the contract, Ex. 1, and particularly paragraph 11 thereof, which reads:

“11. The Company covenants and agrees with the Corporation that the Company will not make any charge for the supplying of electric energy to the Corporation or any of the inhabitants of the Municipality greater than that paid for similar service by any Municipality or the inhabitants thereof other than a city, and will not in any way discriminate against the Corporation or residents of the Municipality; AND the Company will, free of charge to the customer, make the necessary connections and install electric service to anyone requiring service, PROVIDED that such installation be located within one-quarter of a mile of the following roads:

“Glenmore Road between the Township Line Road and the Fraser River.

“The Township Line Road between the Glenmore Road and the Canadian Pacific Railway Right-of-Way (Mission Branch).

“The Matsqui-Mt. Lehman Road from the Glenmore Road eastward for about two miles east of the aforesaid Right-of-Way.

RECORD

*In the Supreme
Court of British
Columbia.*

Reasons for
Judgment.
Murphy, J.
5th Jan., 1933.
(Contd.)

“The Page Road for about two miles east of the afore-
“said Right-of-Way.

“The Fore Road.

“The Bell Road.

“The Sim Road.

“ALSO PROVIDED that when fifteen or more proposed
“customers resident within a radius of one mile of the Com-
“pany’s main distribution line petition for service in portions
“of the Municipality not served by the Company’s main
“distribution lines, the Company shall supply such lighting 10
“and power service upon such customers entering into a
“contract with the Company to pay the cost of supplying
“Standard poles and erecting the same for such service PRO-
“VIDED that roads are accessible for pole lines to install
“such service, or right-of-way will be furnished by such cus-
“tomers to the Company, the poles and right-of-way thus
“provided to become the property of the Company; PRO-
“VIDED also that when thirty customers are connected up
“with such distribution line and are being furnished with 20
“light and power service from the Company, the initial cost
“of supplying and erecting the poles will be refunded by
“the Company to the party or parties who paid for the cost
“of the same.”

It is contended first that the true construction is that Defen-
dant will not charge Plaintiff Municipality or inhabitants thereof
rates in excess of what it charges other Municipalities. To so
construe this paragraph would necessitate insertion of qualifying
words not found in it. As it stands its meaning is clear, i.e., that
the Defendant will not make any charge greater than that paid 30
for similar service by any rural Municipality or the inhabitants
thereof. No evidence was given of the circumstances under which
the contract was executed so that if the plain meaning of the
language is to be cut down, the reason for so doing must be
gathered from the contract itself. It is suggested that, taken
as it reads, the resultant obligation on Defendant Company would
be so onerous as to make it obvious such could not have been the
intention since the limitation as to charges might be world-wide.
Apart from the fact that the contract is made in British Columbia
to be carried out in British Columbia, the Court, as Plaintiff’s 40
Counsel pointed out, has judicial knowledge through the Statutes
of the Province that there are District Municipalities and City
Municipalities in British Columbia, whereas it has no knowledge
of the existence of such bodies beyond Provincial limits. If the
Company, as the first recital in the contract shows, was desirous
of furnishing the inhabitants with electric energy for the purposes

therein expressed, why should it not agree to what the plain language used says it did agree to? There is no inherent difficulty in carrying out the contract according to its terms other than possible financial loss and no one would contend that such a possibility is a reason for a court to read into a contract that which the contract does not contain. I hold the contract must be given the interpretation contended for by Plaintiff. Then it is said that the words "service" in paragraph 11 is a technical word as there used meaning the effort entailed in supplying electric energy which effort is to be measured by the cost of production and distribution instead of meaning, as Plaintiff asserts, the use to which such energy is put by the consumer or the benefit derived by the consumer. Defendant's contention, in my opinion, embodies two mutually exclusive propositions: First — That "service," as it appears in said paragraph, is technical; Second— That it is ambiguous. If it is technical it cannot, of course, be ambiguous, for *ex hypothesi* it has a defined meaning differing, it is true, from the ordinary accepted meaning, but none the less clear and undisputed. Dealing first with the argument that "service" is here used in a technical sense, no evidence was led to show that in British Columbia, in making contracts between Municipalities and Light & Power Companies this word has acquired a technical meaning. The authorities seem clear as to what such evidence must be. "The character and description of the evidence admissible for such a purpose is the fact of general usage and practice prevailing in a particular trade and province and not the judgment and opinions of witnesses. For the contract may be safely and correctly interpreted by reference to the fact of such usage as it may be presumed that such fact is known to the contracting parties and that they contracted in conformity thereto." *Lewis v. Marshall* (1844) 13 L.J.C.P. 195, and see *Robinson v. Mollett* (1875) L.R.E. & I. Appeal Cases at p. 818, and *Sea Steamship Co. v. Price* (1903) Com. Cases p. 235. The only evidence before me is not in connection with the making of such contracts as the one under consideration at any time and certainly not in British Columbia in 1913. This would seem to dispose of the first branch of the argument on this phase of the case.

As to the second, evidence was given that the word "service" in connotation with the use of electricity has a meaning from the standpoint of him who furnishes electric energy which differs from what would be its ordinary meaning from the standpoint of the consumer. Such evidence was, I think, scarcely necessary, as dictionary definitions of the word "service" would show this to be the case. To decide in which sense it was used in the paragraph under discussion one must study the contract itself, a course

RECORD

In the Supreme
Court of British
Columbia.

No. 6
Reasons for
Judgment.
Murphy, J.
5th Jan., 1938.
(Contd.)

RECORD

In the Supreme
Court of British
Columbia.

No. 6
Reasons for
Judgment.
Murphy, J.
5th Jan., 1933.
(Contd.)

which I think clears up all difficulty. The argument made to distinguish effort from the only method of ascertaining what that effort is in connection with this contract, i.e., cost of production and distribution, seems to be more ingenious than convincing. Plaintiff Corporation on this contention must embark on an inquiry as to similarity of effort by Defendant Company in comparison with that of itself or other Companies elsewhere than in Plaintiff Municipality, in order to ascertain whether there has been a breach of contract or not. The only way suggested of measuring effort is by ascertaining the cost of production and distribution. What this involves is shown by paragraph 7 of the Defence. It is argued that no such exhaustive investigation as is there indicated need be carried out because obviously it would cost more to furnish electrical energy to a widely scattered population than to a thickly settled community. If that be so, why the pleading? To my mind such increased cost does not necessarily follow from the sparsity of population in the district served and if inquiry has to be entered upon it would be difficult to say where it should stop short of what is indicated by the statement of defence as necessary to determine the question of relative cost. It would seem scarcely probable that the parties to this contract could have contemplated an enquiry of this character. But, in my opinion, it is unnecessary to stress this feature because the contract read in its entirety shows clearly I think what the words "similar services" were meant to express. The first recital sets out that it is Defendant Company which is desirous *inter alia* of supplying the inhabitants of plaintiff Municipality with electric energy for lighting, heating, power and industrial purposes. These are the various kinds of services which Defendant wishes to render to plaintiff. By paragraph 1 Plaintiff Corporation gives Defendant Company the right to sell electrical energy for lighting, heating, power, industrial and other purposes. Paragraph 4 gives power to Defendant Company to set up poles, etc. "which may be necessary in the supplying of electrical energy for lighting, industrial power, heating or other purposes." Then comes paragraph 11 in which again we have the words "the supplying of electric energy." We know from the preceding clauses the purposes for which it is proposed to furnish this energy. It is to be for lighting, industrial, power, heating and other purposes. This energy is not to be charged for at a higher rate than is paid for similar service etc. The word service here, in my opinion, refers to what the Plaintiff Corporation and its inhabitants are to get. The Defendant Company is, as the agreement shows, the party desirous that the contract be entered into. Defendant Company states the uses to which it expects electric energy will be put by the inhabitants and

Plaintiff. These uses vary in kind but from the standpoint of Plaintiff and its inhabitants they are services according to the ordinary meaning of the word. In paragraph 11 Defendant is making a term in favor of Plaintiff and its inhabitants. To my mind the reasonable interpretation of this paragraph is that the concession therein granted must refer to what persons in the position of Plaintiff and its inhabitants would understand to be meant by the word "service." This view is strengthened by referring to the use of the word "service" later on in the same

10 paragraph. "And the Company will free of charge to the customer make the necessary connections and install electric service to anyone requiring service. It is true that "service" as first used in this sentence cannot be given the meaning of "use or benefit to the consumer" unless the sentence be regarded as elliptical but the objection is equally strong to making it mean "the effort to produce and distribute electric energy such effort to be measured by the cost of production and distribution." Neither one thing nor the other can be installed. But the use of "service" the second time seems to make plain the sense in

20 which it is being used. Here again a concession is being made. Why should language be strained to make the words "to anyone requiring service" which in their ordinary meaning in the context in which they are used would seem clearly to indicate the use to which the electric energy will be put by such person to some such meaning as "to anyone requiring the effort to produce and distribute such energy such effort to be measured by the cost of production and distribution." This is emphasized I think by the use of the word "lighting and power service" in the provisos to said paragraph 11. Why then if the word "service"

30 has been given a definite meaning in one part of the contract should it receive a different interpretation when it occurs elsewhere in the same document unaccompanied by any indicia that it is being used in a different sense. I hold that "similar service" refers to the use to which Plaintiff and its inhabitants put the electric energy supplied, i.e., lighting, power, heating, etc. The evidence is clear that Defendant is charging Plaintiff and its inhabitants more than Burnaby and its inhabitants pay and that Burnaby is a municipality other than a city. In my view Plaintiff is entitled to succeed.

40 On the other branch of the case, the breach to make the necessary connections and install electric service to persons within certain prescribed areas, such breach was proven. One defence is that the parties so applying are not shown to be customers. This contention is I think disposed of by the decision in *Maple Ridge v. Western Power Company* 37 B.C.R. 252. The other defence is estoppel with which I have already dealt. It follows plaintiff succeeds on this branch also.

January, 1933.

RECORD

In the Supreme
Court of British
Columbia.

No. 6
Reasons for
Judgment.
Murphy, J.
5th Jan., 1933.
(Contd.)

D. MURPHY, J.

RECORD

*In the Supreme
Court of British
Columbia.*

IN THE SUPREME COURT OF BRITISH COLUMBIA

No. 7
Formal Judgment. BETWEEN :
5th Jan., 1933.

CORPORATION OF THE DISTRICT OF
MATSQUI

Plaintiff

AND

WESTERN POWER COMPANY OF CANADA
LIMITED

Defendant

Stamps 10
\$1.10

BEFORE THE HONOURABLE } THURSDAY, the 5th day
MR. JUSTICE MURPHY } of January, 1933.

THIS ACTION coming on for trial on the 5th and 6th days of April, 1932, before the Honourable Mr. Justice Gregory, and on the 19th and 20th days of December, 1932, before the Honourable Mr. Justice Murphy, without a jury, in the presence of Mr. E. C. Mayers, K.C., Mr. A. M. Manson, K.C., and Mr. George E. Martin, of Counsel for the Plaintiff, and Mr. J. W. deB. Farris, K.C., and Mr. W. A. Riddell, of Counsel for the Defendant; 20
UPON READING the pleadings and proceedings in this action, AND UPON HEARING the evidence adduced for the Plaintiff and Defendant and what was alleged by Counsel aforesaid and judgment having been reserved until this day and the said action coming on this day for judgment:

THIS COURT DOTH DECLARE that the Defendant has committed a breach of the contract in the pleadings mentioned, dated the 29th March, 1913, and made between the Plaintiff and the Western Canada Power Co. Limited, which contract was assigned by the Western Canada Power Co. Limited to the De- 30
fendant on the first day of November, 1916, in that it has made charges for the supplying of electrical energy to the Plaintiff and to the inhabitants of the Plaintiff Municipality greater than that paid by the District Municipality of Burnaby, in the Province of British Columbia, and its inhabitants, for the supplying of electrical energy for similar services.

AND THIS COURT DOTH ADJUDGE that the Defendant be and it is hereby restrained and ordered to desist from charging for the supply of electrical energy to the Plaintiff and to the in-

habitants of the Plaintiff Municipality rates greater than that paid by any other municipality or the inhabitants thereof other than a city for the supplying of electrical energy for similar services.

AND THIS COURT DOTH FURTHER ORDER, AD-
JUDGE AND DECLARE that the Defendant is and has, since
the first day of November, 1916, been bound to make, free of
charge to the customer, the necessary connections and to install
electrical service to anyone within the Plaintiff Municipality re-
quiring the supply of electrical energy or service whose premises
are located within one-quarter of a mile of the following roads in
the Plaintiff Municipality:

Glenmore Road between the Township Line Road and the
Fraser River;
The Township Line Road between the Glenmore Road and the
Canadian Pacific Railway right-of-way (Mission Branch);
The Matsqui-Mt. Lehman Road from the Glenmore Road east-
ward for about two miles east of the aforesaid right-of-way;
The Page Road for about two miles east of the aforesaid
right-of-way;
The Fore Road;
The Bell Road;
The Sim Road.

AND THIS COURT DOTH DECLARE that the Defendant
was bound, free of charge, to make the necessary connections be-
tween the power line of the Defendant and the premises of Lloyd
Truman Beharrell in the pleadings mentioned, and to install free
of charge electrical service to the said Lloyd Truman Beharrell.

AND THIS COURT DOTH FURTHER ORDER that the
Plaintiff do recover against the Defendant its costs of this action
to be taxed.

By the Court,

"L. A. MENENDEZ,"

District Registrar.

Entered this 17th February, 1933.

"L. A. MENENDEZ,"

District Registrar.

"G.E.M."

"W.A.R."

Seal

RECORD

In the Supreme
Court of British
Columbia.

No. 7
Formal Judgment.
5th Jan., 1933.
(Contd.)

RECORD

No. 8
 Notice of Appeal.
 18th Feb., 1933.

BETWEEN :

CORPORATION OF THE DISTRICT OF
 MATSQUI

Plaintiff

AND

WESTERN POWER COMPANY OF CANADA
 LIMITED

Defendant

B.C.L.S.

10c.

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New Westminster Reg.

Feb. 20/33.

NOTICE OF APPEAL

TAKE NOTICE that the Defendant intends to appeal and does hereby appeal from the Judgment of the Honourable Mr. Justice Murphy pronounced herein on the 5th day of January, A.D. 1933, and entered in the New Westminster Registry, February 17th, 1933.

AND FURTHER TAKE NOTICE that a motion will be made to the Court of Appeal at the Law Courts, at the City of Vancouver, Province of British Columbia, on Tuesday, the 7th day of March, A.D. 1933, at the hour of 11 o'clock in the forenoon, or so soon thereafter as Counsel may be heard, on behalf of the said Defendant for an order that the said Judgment be reversed and the Plaintiff's action be dismissed on the following amongst other grounds:

1. The said Judgment is against the evidence.
2. The said Judgment is against the law.
3. The learned Judge erred in holding that the Plaintiff was not estopped. 30
4. The learned Judge erred in holding that similar service did not mean what was contended for by the Defendant.
5. The learned Judge erred in holding that he could not take judicial notice that municipalities and cities exist in other parts of Canada and the British Empire.
6. The learned Judge erred in holding that service did not have the technical or trade meaning contended for by the Defendant.
7. The learned Judge erred in holding that the rate charged by the Defendant for electrical energy in Matsqui was in violation of the contract between the 40

parties because of the rate paid for electrical energy by the inhabitants of Burnaby.

8. The learned Judge erred in not holding that clause 11 of the agreement of March 29th, 1913, was limited to amounts paid by the inhabitants of any other municipality for similar service to cases when the amounts were paid to the Defendant Company.
9. The learned Judge erred in holding that the said agreement of March 29th, 1913, was broken by evidence of amounts paid by the inhabitants of Burnaby.
10. The learned Judge erred in holding that evidence of the amounts paid by the inhabitants of Burnaby was material evidence of a breach of the contract in the absence of proof that such payments were made to the Defendant.
11. The learned Judge erred in holding that the services rendered in Burnaby were similar to those rendered in Matsqui.
12. The learned Judge erred in holding that the agreement of March 29th, 1913, was in any way broken or violated by the Defendant.
13. The learned Judge erred in holding that the Defendant was obligated to make any connections to any of the inhabitants of Matsqui free of charge for the installation of electric service.
14. The learned Judge erred in holding that the Defendant was obligated in any way to install electric service to Lloyd Truman Beharrell, and in holding that the said Beharrell was a customer or a person entitled to such installation.
15. The learned Judge erred in restraining and ordering the Defendant to desist from charging for the supply of electrical energy to the Plaintiff and to the inhabitants of the Plaintiff Municipality rates greater than that paid by any other municipality or the inhabitants thereof.
16. The learned Judge should have found that there was no evidence that the Defendant had broken the contract or violated any of its terms.

40 DATED at Vancouver, B. C., the 18th day of February, A.D. 1933.

V. LAURSEN,
Solicitor for the Defendant.

To the Plaintiff,
And to its Solicitors,
Messrs. Martin & Sullivan.

RECORD
—
*In the Supreme
Court of British
Columbia.*
—
No. 8
Notice of Appeal.
18th Feb., 1933.
(Contd.)

RECORD

*In the Court of
Appeal for
British Columbia.*

Notice of
Contention,
1st March, 1933.

B. C.

10c

L. S.

Vancouver,
March 3, 1933,
Registry.

COURT OF APPEAL

NOTICE OF CONTENTION

TAKE NOTICE that the above-named Plaintiff (respondent) intends upon the hearing of the appeal under the Defendant's (appellant's) Notice of Appeal dated the 18th of February, 1933, from the judgment of the Supreme Court of British Columbia dated the 5th of January, 1933, to contend that the said judgment should be varied by including therein the following order and adjudication:— 10

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that it be referred to the District Registrar of this court at New Westminster, B. C., to take an account for the period of six (6) years prior to the date of the writ herein, of what moneys have been paid to the defendant by the Plaintiff and the inhabitants of the District Municipality of Matsqui as and by way of rates for the supply of electrical energy, which rates have been in excess of rates for similar services paid by the District Municipality of Burnaby or the inhabitants thereof, and to find the difference between the amount of moneys so paid and the amount which would have been paid if the charges made by the Defendant for the supply of electrical energy to the Plaintiff and the inhabitants of the District Municipality of Matsqui had been no greater than that paid for the supply of electrical energy for similar services by the District Municipality of Burnaby or the inhabitants thereof and that the Plaintiff be at liberty to enter judgment for the difference so found. 20 30

DATED at New Westminster, B. C., this 1st day of March, 1933.

MARTIN & SULLIVAN,
Solicitors for the Plaintiff (Respondent).

COURT OF APPEAL

CORPORATION OF THE
DISTRICT OF MATSQUI
v.
WESTERN POWER COM-
PANY OF CANADA

}

JUDGMENT
OF THE HONOURABLE
THE CHIEF JUSTICE

RECORD

*In the Court of
Appeal for
British Columbia.*

Reasons for
Judgment of
the Honourable
the Chief Justice.
June 6th, 1933.

I entirely agree with the learned trial Judge. The appeal should, therefore, be dismissed.

(Sgd.) J. A. MACDONALD,

C.J.B.C.

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VICTORIA, B. C.,
6th June, 1933.

RECORD

COURT OF APPEAL

*In the Court of
Appeal for
British Columbia.*

Reasons for
Judgment of
the Honourable
Mr. Justice
McPhillips.
June 6th, 1933.

THE CORPORATION OF
THE DISTRICT OF
MATSQUI

v.

WESTERN POWER COM-
PANY OF CANADA LTD.

JUDGMENT
OF THE HONOURABLE
MR. JUSTICE McPHILLIPS

This is an appeal from the judgment of Murphy, J., in respect of the terms of a contract providing for the supply in the Municipality of Matsqui, Province of British Columbia, Canada, of electrical energy for lighting, heating, power, industrial and other purposes incidental thereto within the limits of the Municipality, and the whole question is the construction of the terms of the contract. The judgment of the learned trial Judge is in the following terms:

Dealing first with the defence of estoppel it is conceded that Ex. 16 is inoperative because the requirement of the relevant sections in the Municipal Act necessary for its validity have not been complied with. It is contended, however, that Defendant with the knowledge of Plaintiff changed its position in reliance on said Ex. 16. Assuming, without deciding, that the evidence led in support would establish the defence of estoppel the law seems to be clear that estoppel cannot be set up where the result of giving effect to such a plea would be in effect to repeal statutory provisions. *Waterman v. Slavanka* (1929) 1 W.W.R. 598; *Canterbury Corporation v. Cooper* (1908) 99 L.T. 612; *Vestry of the Parish of St. Mary's, Islington v. Hornsey Urban District Council* (1900) 1 Ch. 695.

The case then is to be disposed of by construing the contract, Ex. 1, and particularly paragraph 11 thereof, which reads:

"11. The Company covenants and agrees with the Corporation that the Company will not make any charge for the supplying of electric energy to the Corporation or any of the inhabitants of the Municipality greater than that paid for similar service by any Municipality or the inhabitants thereof other than a City, and will not in any way discriminate against the Corporation or residents of the Municipality; AND the Company will, free of charge to the customer, make the necessary connections and install electric service to anyone requiring service, PROVIDED that such installation be located within one-quarter of a mile of the following roads:
"Glenmore Road between the Township Line Road and the Fraser River.

“The Township Line Road between the Glenmore
“Road and the Canadian Pacific Railway Right-of-way
“(Mission Branch).

“The Matsqui-Mt. Lehman Road from the Glen-
“more Road eastward for about two miles east of the
“aforesaid Right-of-way.

“The Page Road for about two miles east of the
“aforesaid Right-of-way.

“The Fore Road.

“The Bell Road.

“The Sim Road.

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“ALSO PROVIDED that when fifteen or more pro-
“posed customers resident within a radius of one mile
“of the Company’s main distribution line petition for
“service in portions of the Municipality not served by
“the Company’s main distribution lines, the Company
“shall supply such lighting and power service upon such
“customers entering into a contract with the Company
“to pay the cost of supplying Standard poles and erecting
“the same for such service PROVIDED that roads are
“accessible for pole lines to install such service, or right-
“of-way will be furnished by such customers to the Com-
“pany, the poles and right-of-way thus provided to be-
“come the property of the company; PROVIDED also
“that when thirty customers are connected up with such
“distribution line and are being furnished with light and
“power service from the Company, the initial cost of
“supplying and erecting the poles will be refunded by
“the Company to the party or parties who paid for the
“cost of the same.”

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It is contended first that the true construction is that
Defendant will not charge Plaintiff Municipality or inhabi-
tants thereof rates in excess of what it charges other Muni-
cipalities. To so construe this paragraph would necessitate in-
sertion of qualifying words not found in it. As it stands its
meaning is clear, *i.e.*, that the Defendant will not make any
charge greater than that paid for similar service by any rural
Municipality or the inhabitants thereof. No evidence was
given of the circumstances under which the contract was
executed so that if the plain meaning of the language is to be
cut down, the reason for so doing must be gathered from the
contract itself. It is suggested that, taken as it reads, the
resultant obligation on Defendant Company would be so
onerous as to make it obvious such could not have been the
intention since the limitation as to charges might be world-
wide. Apart from the fact that the contract is made in

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RECORD

*In the Court of
Appeal for
British Columbia.*

Reasons for
Judgment of
the Honourable
Mr. Justice
McPhillips.
June 6th, 1933.
(Contd.)

RECORD

In the Court of
Appeal for
British Columbia.

Reasons for
Judgment of
the Honourable
Mr. Justice
McPhillips.
June 6th, 1933.
(Contd.)

British Columbia, to be carried out in British Columbia, the Court, as Plaintiff's Counsel pointed out, has judicial knowledge through the Statutes of the Province that there are District Municipalities and City Municipalities in British Columbia, whereas it has no knowledge of the existence of such bodies beyond Provincial limits. If the Company, as the first recital in the contract shows, was desirous of furnishing the inhabitants with electric energy for the purposes therein expressed, why should it not agree to what the plain language used says it did agree to? There is no inherent difficulty in carrying out the contract according to its terms other than possible financial loss and no one would contend that such a possibility is a reason for a court to read into a contract that which the contract does not contain. I hold the contract must be given the interpretation contended for by Plaintiff. Then it is said that the words "service" in paragraph 11 is a technical word as there used meaning the effort entailed in supplying electric energy which effort is to be measured by the cost of production and distribution instead of meaning, as Plaintiff asserts, the use to which such energy is put by the consumer or the benefit derived by the consumer. Defendant's contention, in my opinion, embodies two mutually exclusive propositions. First—That "service," as it appears in said paragraph, is technical; Second—That it is ambiguous. If it is technical it cannot, of course, be ambiguous, for *ex hypothesi* it has a defined meaning differing, it is true, from the ordinary accepted meaning, but none the less clear and undisputed. Dealing first with the argument that "service" is here used in a technical sense, no evidence was led to show that in British Columbia, in making contracts between Municipalities and Light and Power Companies this word has acquired a technical meaning. The authorities seem clear as to what such evidence must be. "The character and description of the evidence admissible for such a purpose is the fact of general usage and practice prevailing in a particular trade and province and not the judgment and opinions of witnesses. For the contract may be safely and correctly interpreted by reference to the fact of such usage as it may be presumed that such fact is known to the contracting parties and that they contracted in conformity thereto." *Lewis v. Marshall* (1844) 13 L.J.C.P. 195, and see *Robinson v. Mollett* (1875) L.R.E. and I. Appeal Cases at p. 818, and *Sea Steamship Co. v. Price* (1903) Com. Cases, p. 235. The only evidence before me is not in connection with the making of such contracts as the one under consideration at any time and certainly not in British Columbia in 1913. This would seem to dispose of the first branch of the argument on this phase of the case.

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As to the second, evidence was given that the word "service" in connotation with the use of electricity has a meaning from the standpoint of him who furnishes electric energy which differs from what would be its ordinary meaning from the standpoint of the consumer. Such evidence was, I think, scarcely necessary, as dictionary definitions of the word "service" would show this to be the case. To decide in which sense it was used in the paragraph under discussion one must study the contract itself, a course which I think clears up all difficulty. The argument made to distinguish effort from the only method of ascertaining what that effort is in connection with this contract, *i.e.*, cost of production and distribution, seems to be more ingenious than convincing. Plaintiff Corporation on this contention must embark on an inquiry as to similarity of effort by Defendant Company in comparison with that of itself or other Companies elsewhere than in Plaintiff Municipality, in order to ascertain whether there has been a breach of contract or not. The only way suggested of measuring effort is by ascertaining the cost of production and distribution. What this involves is shown by paragraph 7 of the Defence. It is argued that no such exhaustive investigation as is there indicated need be carried out because obviously it would cost more to furnish electrical energy to a widely scattered population than to a thickly settled community. If that be so, why the pleading? To my mind such increased cost does not necessarily follow from the sparsity of population in the district served, and if inquiry has to be entered upon it would be difficult to say where it should stop short of what is indicated by the statement of defence as necessary to determine the question of relative cost. It would seem scarcely probable that the parties to this contract could have contemplated an inquiry of this character. But, in my opinion, it is unnecessary to stress this feature because the contract read in its entirety shows clearly I think what the words "similar services" were meant to express. The first recital sets out that it is Defendant Company which is desirous *inter alia* of supplying the inhabitants of Plaintiff Municipality with electric energy for lighting, heating, power and industrial purposes. These are the various kinds of services which Defendant wishes to render to Plaintiff. By paragraph 1 Plaintiff Corporation gives Defendant Company the right to sell electrical energy for lighting, heating, power, industrial and other purposes. Paragraph 4 gives power to Defendant Company to set up poles, etc., "which may be necessary in the supplying of electrical energy for lighting, industrial power, heating or other purposes." Then comes paragraph 11, in which again we have the words "the supply-

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*In the Court of
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the Honourable
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In the Court of
Appeal for
British Columbia.

Reasons for
Judgment of
the Honourable
Mr. Justice
McPhillips.
June 6th, 1938.
(Contd.)

ing of electric energy." We know from the preceding clauses the purposes for which it is proposed to furnish this energy. It is to be for lighting, industrial, power, heating and other purposes. This energy is not to be charged for at a higher rate than is paid for similar service, etc. The word service here, in my opinion, refers to what the Plaintiff Corporation and its inhabitants are to get. The Defendant Company is, as the agreement shows, the party desirous that the contract be entered into. Defendant Company states the uses to which it expects electric energy will be put by the inhabitants and Plaintiff. These uses vary in kind but from the standpoint of Plaintiff and its inhabitants they are services according to the ordinary meaning of the word. In paragraph 11 Defendant is making a term in favor of Plaintiff and its inhabitants. To my mind the reasonable interpretation of this paragraph is that the concession therein granted must refer to what persons in the position of Plaintiff and its inhabitants would understand to be meant by the word "service." This view is strengthened by referring to the use of the word "service" later on in the same paragraph. "And the Company will free of charge to the customer make the necessary connections and install electric service to anyone requiring service. It is true that "service" as first used in this sentence cannot be given the meaning of "use or benefit to the consumer" unless the sentence be regarded as elliptical, but the objection is equally strong to making it mean "the effort to produce and distribute electric energy, such effort to be measured by the cost of production and distribution." Neither one thing nor the other can be installed. But the use of "service" the second time seems to make plain the sense in which it is being used. Here again a concession is being made. Why should language be strained to make the words "to anyone requiring service," which in their ordinary meaning in the context in which they are used would seem clearly to indicate the use to which the electric energy will be put by such person to some such meaning as "to anyone requiring the effort to produce and distribute such energy, such effort to be measured by the cost of production and distribution." This is emphasized I think by the use of the word "lighting and power service" in the provisos to said paragraph 11. Why then if the word "service" has been given a definite meaning in one part of the contract should it receive a different interpretation when it occurs elsewhere in the same document unaccompanied by any *indicia* that it is being used in a different sense. I hold that "similar service" refers to the use to which Plaintiff and its inhabitants put the electric energy supplied, *i.e.*, lighting, power, heating, etc. The evi-

dence is clear that Defendant is charging Plaintiff and its inhabitants more than Burnaby and its inhabitants pay and that Burnaby is a municipality other than a city. In my view Plaintiff is entitled to succeed.

On the other branch of the case, the breach to make the necessary connections and install electric service to persons within certain prescribed areas, such breach was proven. One defence is that the parties so applying are not shown to be customers. This connection is, I think, disposed of by the decision in *Maple Ridge v. Western Power Company* 37 B. C. R. 252. The other defence is estoppel with which I have already dealt. It follows Plaintiff succeeds on this branch also.

January, 1933.

D. MURPHY, J.

It will be noted at the outset that the learned Judge arrived at this very definite decision:

As it stands its meaning is clear, *i.e.*, that the Defendant will not make any charge greater than that paid for similar service by any rural Municipality or the inhabitants thereof. No evidence was given of the circumstances under which the contract was executed so that if the plain meaning of the language is to be cut down, the reason for so doing must be gathered from the contract itself. It is suggested that, taken as it reads, the resultant obligation on Defendant Company would be so onerous as to make it obvious such could not have been the intention since the limitation as to charges might be world-wide. Apart from the fact that the contract is made in British Columbia to be carried out in British Columbia, the Court, as Plaintiff's Counsel pointed out, has judicial knowledge through the Statutes of the Province that there are District Municipalities and City Municipalities in British Columbia, whereas it has no knowledge of the existence of such bodies beyond Provincial limits. If the Company, as the first recital in the contract shows, was desirous of furnishing the inhabitants with electric energy for the purposes therein expressed, why should it not agree to what the plain language used says it did agree to? There is no inherent difficulty in carrying out the contract according to its terms other than possible financial loss and no one would contend that such a possibility is a reason for a court to read into a contract that which the contract does not contain. I hold the contract must be given the interpretation contended for by Plaintiff.

It is a matter for remark though that the evidence does not establish at all that the Power Company (the Appellant) was or is now supplying electrical energy in breach of paragraph 11 of

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the Contract which in part reads as follows:

“11. The Company covenants and agrees with the Corporation that the Company will not make any charge for the supplying of electric energy to the Corporation or any of the inhabitants of the Municipality greater than that paid for similar service by any municipality or the inhabitants of the Municipality other than a City and will not in any way discriminate against the Corporation or residents of the Municipality . . .

This fact in itself, in my opinion, with the greatest respect for all contrary opinion, is sufficient to end the case and admit of the allowance of the appeal. The attempt though is to add in some way to the responsibility of the Power Company *dehors*—the precise terms of the Company. It is plain that the meaning of the contract is that there will be no discrimination as amongst *its customers* not that the power company is to be at the mercy of the policy of other power companies as to rates for services. The decision of the learned Judge which is here under appeal is devoid of the necessary foundation of fact that it has been proved that the power company is making any charge—as between its customers—greater than that paid for similar service by any rural Municipality or the inhabitants thereof. The attempt to so impose liability was based on arguments at this Bar that the power company was one of several companies that really were under the control of an alleged parent company—the British Columbia Electric Railway Company Limited—a Company incorporated in England under the Companies Act 1862 (25 and 26 Vict. c. 89 and of the many Acts amending and extending the provisions of that Act—now The Companies Act 1929, 19 and 20 Geo. 5 Cap. 23). The British Columbia Electric Railway has undoubtedly many subsidiary companies carrying out, through long years, large operations of various nature in the form of public utilities—and enjoy large statutory powers, but outside its traction systems there are other companies, and the present power company is one wholly distinct and under separate and distinct corporate powers in the utilization and use of water for power, light and heat—as well as industrial purposes—under the provisions of the Provincial Water Act—Chap. 271, R.S.B.C. 1924. It is futile argument in my opinion to attempt to in any way sweep one company into the affairs and business operations of another company—that could only be done by statute law or the exercise of general statutory powers providing for such being done. Here we have a company contracting with a Municipality and the rights and liabilities may only be determined in relation to the respective statutory powers of Company and Municipality and cannot be otherwise affected [*Salomon v. Salomon & Co.* (1897) A.C. 22], and what may be the situation with regard to any other Municipality with which there is no

contractual relationship cannot have place here. Further the attempt here to bring in the situation of the Municipality of Burnaby lying next the boundaries of the City of Vancouver—if nothing more is a most inequitable and I would say an unconscionable contention—that the power company here should be compelled to reduce its rates and charge for services to that obtaining for like services in the Municipality of Burnaby—and that in the result of things is the effect of the judgment here under appeal. The contract under consideration is not, in my opinion, in its terms
 10 nor was it executed with the intention to admit of any such construction as has been given to it. Dealing with the words “discriminate against” in paragraph 11 of the contract—that it would appear to me is the key to the ambit of the contract, *i.e.*, *Oxford Dictionary* (1897), Vol. III, p. 4363:

“(b) *To discriminate against*: to make an adverse
 “distinction with regard to; to distinguish unfavourably
 “to others.”

Now manifestly to discriminate is to distinguish unfavourably
 20 between the power company’s customers and I would think between its customers in the Municipality of Matsqui—the Corporation of Matsqui—and residents of the Municipality. The power company is not shewn to have done this—and in what way can it be conjured up that there has been a breach. I confess it passes my understanding. The installation of electric power systems is a matter of great cost and varies greatly in accordance with the configuration of the country and the territory to be supplied. In the neighborhood in question the physical condition of the country is rugged and mountainous at the source of the waters impounded and each development varies in cost and charges for services must
 30 be based upon initial cost and upkeep, by analogy to the construction of the great lines of railway in Canada—this is well known and accepted in the case of the railways, the Government of Canada has its Railway Board and the public interest is well conserved, and I have no doubt that in the Province if in the public interest it becomes necessary there will be a Water Board extended to the examination of charges made consequent upon the establishment of power plants utilizing the water of the country—which is the property of the Crown, but all such Boards will be required to give attention to the initial cost of installation the
 40 configuration of the country and maintenance and cost of upkeep and supply all of which matters enter into the consideration of what the rates should be. At the present time there is no popular complaint. We have here though the attempt to expand the words of contract into what appears to me not only in excess of the principles of the true construction of contract in law—but to a

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degree which in its nature is so expansive that it transcends reasonableness.

If it be necessary to view the contract in the wider sense that is as not confined to discrimination between customers—and that in my opinion of course is not the legal position—then we cannot overlook the words “greater than that paid for similar service by any Municipality or the inhabitants thereof other than a City.”

Now the onus to show and demonstrate this was upon the Municipality (the respondent) and it was not shewn. To merely point at the Municipality of Burnaby with its ideal position as against the position of the inhabitants of Matsqui and that it was and its inhabitants were supplied at less cost in my opinion proved nothing. The “similar service” must be read with attention given to the installation and supply available and its nature of supply and the total cost thereof with regard to distance, the contour of the land and the physical difficulties existent. 10

The question of “*similar service*” is something that the Court cannot be unmindful of—these words must be given some meaning and the power company (the Appellant) led evidence which I consider to be relevant evidence and well supports counsel in relying thereon—and I consider must be given full effect to. (*Brown v. Byrne*, 3 El. and El. 704, 118 E.R. 1305). In the supply of electric energy—power, light and heat—it is a public utility supply of recent times and in this connection I would refer to what Lord Shaw said in *Att.-Gen. of Southern Nigeria v. John Holt & Co.* (1915) A.C. 599 at p. 617 (P.C.): 20

“The Law must adapt itself to the conditions of modern society and trade”

But even as long ago as 1860 Cockburn, C.J., in *Myers v. Sarl* (1860) 3 El. and El. at p. 315, said: 30

“I am of opinion that the course pursued by the arbitrator was both proper and correct in point of law, and that the parol evidence was rightly received. The duty of the Court, or of an arbitrator who is in the place of the Court, is so to construe a contract as to give effect to the intention of the parties. Now, although parol evidence is not admissible to contradict a contract the terms of which have but one ordinary meaning and acceptance, yet if the parties have used terms which bear not only an ordinary meaning, but also one peculiar to the department of trade or business to which the contract relates, it is obvious that due effect would not be given to the intention, if the terms were interpreted 40

“according to their ordinary and not according to their
 “peculiar signification. Therefore, whenever such a
 “question has come before the Courts, it has always been
 “held that where the terms of the contract under con-
 “sideration have, besides their ordinary and popular
 “sense, also a peculiar and scientific meaning, the par-
 “ties who have drawn up the contract with reference to
 “some particular department of trade or business, must
 “have intended to use the words in the peculiar sense.
 10 “This is but an application of the well-known rule that
 “the interpretation of contracts must be governed by the
 “intention of the parties.”

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[Also see *Metro Elec. v. Ginder* (1901), 70 L.J. Ch. 862, and
Att.-Gen. v. Hackney (1918), 87 L.J. 122, and at p. 124.] I would
 also refer to pp. 318, 319 of Beal's Cardinal Rules of Legal Inter-
 pretation (1924), reading as follows:

20 “The tribunal that has to construe an Act of a
 “legislature, or indeed any other document, has to deter-
 “mine the intention as expressed by the words used. And
 “in order to understand those words it is material to
 “inquire what is the subject-matter with respect to which
 “they are used, and the object in view.” *Direct United
 States Cable Co. v. Anglo-American Telegraph Co.*
 (1877) 2 App. Cas. 394, at p. 412; 46 L.J.P.C. 71, at p. 74,
 Lord Blackburn, delivering the opinion of the Judicial
 Committee (cited by Lord Atkinson in *London and India
 Docks Co. v. Thames Steam Tug and Lighterage Co.*
Ltd. (1909) A.C. 15, at p. 23; 78 L.J.K.B. 90, at p. 94).

30 Here we have a contract entered into in regard to the supply
 of electric energy—it will not do for the Municipality (the re-
 spondent) to say that we did not know what “similar services”
 imported, and upon this point I would refer to what Bankes, L.J.,
 said in *Laurie v. Dudin* (95 L.J.K.B. 191, at 193), “so all-pervad-
 ing and so reasonable and so well known, that everybody doing
 business in this way must be assumed to know the custom, and be
 bound by it” that is to contract subject to it. See *Georgia Con-
 struction Company v. Pacific G. E. Ry. Co.* (1929) S. C. R. 630,
 631.

40 Although I am confident that the facts adduced in this case
 in no way call upon me to again refer to the relationship of other
 companies supplying electric energy in the neighborhood of the
 territory of the Matsqui Municipality (the Respondent) I would
 draw attention to what Robson J.A., when delivering the judg-
 ment of the Court of Appeal in Manitoba said in *Rur. Mun. of
 Assiniboia v. Suburban Rapid Transit Co.* (1931) 2 D.L.R. 862—

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there it was held "even though there is a community of interest between two corporations, by reason of shareholding or other relations, they are nevertheless distinct legal persons. Hence, though one public utility company holds all the shares in another company it cannot be said to own the latter, under a statute providing that "owner" includes every corporation which manages or controls any public utility." And in the judgment at page 864 Robson J.A. said:

In *Daimler Co. Ltd. v. Continental Tyre & Rubber Co. Ltd.* (1916) 2 A.C. 307, a war-time case as to who controlled a company, Lord Parker of Waddington was of the opinion that the enemy character of shareholders might be an element in deciding as to the motives of its executives but reaffirmed the well-known principle which he stated as follows (p. 338):

"No one can question that a corporation is a legal person distinct from its corporators; that the relation of a shareholder to a company, which is limited by shares, is not in itself the relation of principal and agent or the reverse; that the assets of the company belong to it and the acts of its servants and agents are its acts, while its shareholders, as such, have no property in the assets and no personal responsibility for those acts. The law on the subject is clearly laid down in a passage in Lord Halsbury's judgment in *Salomon v. Salomon & Co.* (1897) A.C. 22, 30: 'I am simply here,' he says, 'dealing with the provisions of the statute, and it seems to me to be essential to the artificial creation that the law should recognize only that artificial existence—quite apart from the motives or conduct of individual corporators. . . . Short of such proof, *i.e.*, proof in appropriate proceedings that the company had no real legal existence—it seems to me impossible to dispute that once the Company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the formation of the company are absolutely irrelevant in discussing what those rights and liabilities are.' "

It would require express statutory language to depart from this rule, and such has not been found or adduced in this case. Furthermore, the intent of the Act is against a holding that a public utility company can by indirect means absorb and control the franchises of another.

In the present case the franchise and the contract to build and operate are by statute recognized as those of the Suburban Rapid Transit Co., and there is nothing on which to base a holding that the Winnipeg Electric Co. has at law either rights or obligations in relation to them.

In my opinion and with the greatest respect to the learned trial Judge the action should have been dismissed. I would therefore and with great respect to my learned brothers who are of a contrary opinion—allow the appeal.

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(Sgd.) A. E. McPHILLIPS, J.A.

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v.		
WESTERN POWER COM- PANY OF CANADA, ET AL.	}	

Victoria, B. C., 6th June, 1933.

The respondent District Municipality granted a franchise to appellant's predecessors in title to sell electric energy for lighting, heating, power, industrial and other purposes, including the right to erect and maintain all necessary equipment incidental thereto within the district. A By-law, assented to by the electors, authorized the execution of an agreement between the parties, and we are concerned in this appeal principally with the interpretation of Clause 11, and particularly the words "similar service" found therein. It reads as follows: 10

11. The Company covenants and agrees with the Corporation that the Company will not make any charge for the supplying of electric energy to the Corporation or any of the inhabitants of the Municipality greater than that paid for similar service by any Municipality or the inhabitants thereof other than a city, and will not in any way discriminate against the Corporation or residents of the Municipality . . . 20

I agree with the conclusions arrived at by the trial Judge on all points. It may, however, throw some light on the controversy to independently state my views, at least on the main question.

It is conceded that appellant charged and still charges the inhabitants of respondent municipality a greater sum for the supply of electric energy than that paid by the inhabitants of another municipality in the Province, viz., Burnaby. The point arises—is this a breach of the agreement? The trial Judge so found. Briefly the covenant is not to "charge" more than that paid for "similar service" by, e.g., Burnaby. Conditions in Burnaby are materially different as compared with Matsqui. It is a more densely settled suburban community (although not a city) with more industrial plants; closer also to the centre of operations (thus lowering the unit maintenance cost) and generally without exhausting the distinctions greater cost is incurred in serving a customer in the less densely settled area of Matsqui. Appellant submits that the "service" contemplated means in itself, or at all events, by the usage of trade, the act of providing facilities and supplying energy (with all that implies) and the maintenance and operation thereof. It includes every activity and investment 40

in the business; all the physical factors such as the generation of power, transmission lines, sub-stations for transformers and the whole distribution system, reading of meters, bill collecting, etc., in other words, everything physical or otherwise expended in bringing electric energy to the customer. The word "service" it is submitted must be interpreted from the standpoint of the producer, not the consumer.

If "service," as used in the contract, relates to what the consumer receives, it is limited to the energy furnished, and he has only an academic interest in the plant producing it. If it means what the company furnishes it may include facilities, but it also includes (whether exclusively or not will be discussed) the electric energy flowing from the facilities provided and received by the consumer. The clause however cannot be properly interpreted by confining attention solely to the words "service" or "similar service." We must have regard to the context and particularly the words "will not make any charge . . . greater than that paid for" by others, and "will not discriminate" (not solely as between residents) but "against the corporation," *i.e.*, I think as compared to other corporations. If to take an example discussed in argument a dairyman agrees not to make a charge greater than that paid for "similar service" by others and not to discriminate, the customer would feel aggrieved if other dairies were selling *milk, equally good in quality* for a less amount per quart *and the grievance* would not be removed by proof that this *dairyman's costs of production* were unavoidably higher. He would look upon the "service" as supplying the milk; not the furnishing of effort or expense of operation. If the milk was good it would be regarded as good service; not so if bad, all without reference (subject to a limitation later discussed) to whether or not it was delivered in a costly car or a cheap truck. Service is an act—the act of serving another, in this case a commodity to a consumer—and to understand the act *solus* it is not necessary to determine its cost, although it may incidentally affect its value. Even if in doubt on this point, having regard to exactitude in defining terms, I would still conclude that fairly and reasonably it should be held that respondent contracted on the basis referred to. There are, of course, as intimated, some qualifications to this view. "Service" in the popular sense may include more than the thing physically delivered. In merchandising it may include conveniences and attractive or serviceable devices *in connection with* actual sale and delivery, but never I think the whole stock-in-trade of the merchant. A service is given to customers *in respect to* the disposal of stock. It is not strictly accurate to say that it is a "service" to customers to maintain the stock at a certain level or to make large expenditures in connection therewith. That is "self service" on the owner's part. The "service" which the customer receives on entering into busi-

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ness relationship with the merchant is in connection with the process of conversion and delivery by means animate or inanimate. If a customer compares services received in different stores he may regard them as "similar," although the value of the merchandise and overhead may vary greatly.

However, if it be granted that the word "service" may have a different meaning dependent upon whether it is viewed from the standpoint of the one who renders it or the one who receives it the clause in question should be regarded in the latter aspect. It is inserted for the benefit of the recipient. Clause 11 is concerned with what the respondent may or may not be charged for "*the act of serving*," helping or benefiting" him (Oxford Dictionary) and it must not be more than that charged for the *act* "of serving, helping and benefiting" residents in other municipalities. 10

The agreement is that the company will not charge more "for the supplying of electric energy" (it might as indicated be milk) than that paid for similar service elsewhere *for the supplying of electrical energy*. The last mentioned phrase should be inserted after the words "similar service" as an aid in interpretation, without the further additional phrase which must be suggested by appellant, viz., "having regard to the respective costs of production." Clause 11 of the contract, so far as the parties are concerned, *is confined to the product*, viz., *electric energy*. Facilities for producing it are the concern *only of one of the parties*. Other clauses in the agreement relate to erection of poles, steel towers, wires, etc., subject to certain terms. The only concern of respondent in respect to appellant's plant is to receive an annual rental of \$400.00; to give approval to the design and location of steel towers, etc., to see, among other things, that they are properly maintained and kept in repair. Clause 11 stands apart, having no reference to these features. Clearly I think the "service" is the *supply* of electricity and nothing else, and it is the same sort of service that is supplied to the residents of Burnaby. This is supplied, not like goods from a store, where other agencies may form part of the service—it is supplied mechanically. The "service" therefore is confined to the actual physical delivery and receipt. 20 30

We are obliged too where alternative interpretations are possible, or where the term is susceptible to more than one meaning to ascertain, if we can, what was contemplated by the parties when the agreement was executed. Effect is to be given to the intention of the parties collected, not from conjecture as to what they may have had in mind and would have inserted if better advised but from the expression of it in the agreement itself. The rule as to two alternatives arises only where there is real doubt, and without admitting it doubt may be assumed. Now the appellant was seek- 40

ing a franchise, and to procure it would naturally offer favourable terms. It might well consider that while in Matsqui at present the population was small and industrial activity light yet long before the termination of the franchise (40 years) *these conditions might be reversed and possible early losses recompensed by later gains*. The respondent on its part sought to procure electric energy for defined purposes at a reasonable cost, having regard to the whole period covered by the franchise. Prices might increase or diminish, but it would at least have the safeguard that it

10 would not suffer industrially or otherwise, so far as the cost of electric energy is concerned *in comparison with neighboring municipalities*. This at least would give that element of certainty which ought to be found in contracts. We may assume, I think, that they were contracting in reference to these known facts and not entering into a contract obscure in its terms and incapable of working out without an elaborate and costly inquiry. The clause favourable to the respondent in respect to cost was this reference to any municipality, other than a city. Cost of service elsewhere in the sense already suggested could be readily ascertained. I

20 do not think reading the whole contract fairly that it can be said that one of the parties placed "a joker" in the contract if I may use that word. How could respondent, if appellant's contention is correct, ascertain a breach? Only by an intricate and elaborate investigation, costly and of doubtful certainty into what may briefly be termed the total cost of production and all elements entering into it. Granted too that appellant's contention is right we do not know that the charge now made to residents in Matsqui accurately corresponds to charges made to consumers in Burnaby. It may cost more at present to supply John Doe in Matsqui with a

30 certain amount of electric energy than it costs to supply Richard Roe in Burnaby with the same amount, but each are receiving similar service. It is similar in amount and in the means of supply. Cost has relation only to providing or *getting ready to perform* the service, and is expended before the actual service commences or is rendered.

We were referred to *Metropolitan Electric Supply Co. v. Ginder* (1901) 70 L.J.C.D. 863 at 867-8. On the facts and the statute referred to it does not assist appellant. Consumers in a certain area were entitled to a supply of electric energy on the

40 same terms on which any other person in that area "is entitled under similar circumstances to a corresponding supply." It is clear why, as pointed out, there was "latitude to the company to make bargains with its customers, where circumstances differ or the supply does not correspond for different terms." That right was plainly reserved. Nor can assistance be obtained from the judgment in *Att.-Gen. v. Hackney Borough Council* (1914) 2 C.D. 251, where the sections of the same act were dealt with. The word

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“similar” of course may properly be regarded as meaning “corresponding” but when “service” is defined, the adjective will not carry all that is involved in the words “under similar circumstances.” It means service of a similar nature, *viz.*, the supply of energy.

It was submitted, however, that the term “service” in the electrical industry has a distinct trade and technical meaning and on the principle that although parol evidence may not be adduced to vary the terms of a contract, where the words used have only one ordinary meaning yet if a word is used which has not only an ordinary meaning but also one of a scientific nature peculiar to the trade to which the contract relates it must be interpreted in that sense. Even if this simple word in common use has a technical trade meaning we must be satisfied that it was intended that resort should be had to a mercantile dictionary. Does it appear from the context that the parties used the words except in the ordinary sense? I do not think—aided by reference to other parts of the contract where the word is used—that any such intention appears on the face of the document. Where a word bears a definite known meaning and may reasonably be applied in that sense one must be fully satisfied that the parties intended to use them in a more restricted or as here enlarged sense before admitting extrinsic evidence. Here it is said that it would be manifestly unjust to use the ordinary restrictive interpretation. It is suggested that power would be supplied at a loss. One has to keep in mind the *desire to enter the field and the long tenure secured before giving undue weight to this contention.* The word is free from ambiguity and these external circumstances do not necessarily raise serious doubts. The fact, too, that clause 11 was deleted in a later contract has some bearing on the point. This so-called scientific or technical meaning must be well known and understood by the parties concerned before extrinsic evidence can be received. It is difficult to say (unlike for example, mercantile documents) that the parties to this contract—the position of the respondent, corresponding to that of a layman, adopted language of a peculiarly restricted or enlarged character. The admission of external evidence in a proper case is only to assist in arriving at the true intention; hence the need of viewing it from the standpoint and knowledge of both parties. I do not suggest that the fact that one of the parties to the contract has a limited knowledge of a special trade is conclusive, yet weight must be given to the view that the respondent would not be accustomed to using this word in a technical sense.

However, the evidence adduced in any event was insufficient and falls short of the usual requirements. Mr. Gray who does not profess knowledge of the practice in this province said the word

“service” has “in the electrical industry a distinct trade and technical meaning” and in defining it testified that “in public utilities circles service means the *act* of supplying some general demand” enlarging upon the many factors involved in the act. This evidence does not establish “a *general* usage and practice prevailing in a particular trade” and “no instance of such construction was stated by any of the witnesses” [*Lewis v. Marshall* (1844) 13 L.J.C.P. 193 at 195]. Mr. Walker did not appear to have the true import of the inquiry clearly in mind. He simply

10 said (not what the usage is) but “I would define (*i.e.*, in my opinion) the meaning of service as the act of furnishing certain facilities” and “to the best of my knowledge” it always had that meaning. This is equally inconclusive. The evidence too is confined to the “electrical industry” not necessarily extending to the marketing of power. It fails to show established usage. It is not clear and convincing; nor does it indicate that it is certain and so generally acquiesced in that all in the trade either knew it or should have known of it. No cases were given of this alleged usage being acted upon nor that this special meaning was assigned

20 in the trade when this agreement was entered into twenty years ago. In *Georgia Construction Co. v. Pacific Great Eastern Ry.* (1929) S.C.R. 640 at 633, Duff J. (now Chief Justice) said:

Usage, of course, where it is established, may annex an unexpressed incident to a written contract but it must be reasonably certain and so notorious and so generally acquiesced in that it may be presumed to form an ingredient of the contract. *Juggomohun Chose v. Manickchund* (7 Moore’s Indian Appeals 263, at p. 282).

It was further submitted that in any event by the true inter-

30 pretation of clause 11 it is limited to amounts paid by the inhabitants of any other municipality for similar service to appellant, not to other companies. The appellant company it was alleged does not supply electric energy to Burnaby. As I view this point it is not necessary to discuss the relationship of the different companies concerned. I simply say that I cannot introduce words of limitation into the contract by adding the words “to us” after the phrase “greater than that paid.” True the clause providing against discrimination among residents in Matsqui means by the appellant company only but that is an *additional*

40 covenant. It was said because other companies might supply power cheaply or even at a loss that a hardship might be imposed. True where the language used is fairly open to two constructions the argument that one may lead to inconvenience, hardship or absurdity may be a guide. I think, however, the language is clear. The conclusion of the trial Judge is right, too, I think that it is Municipalities in this Province that was contemplated. It is a

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British Columbia contract to be performed in this Province. That is the sphere in which it operates.

A further point in reference to making necessary connections and installing electric service free from installation charges while not abandoned was not pressed before us. I would therefore dismiss the appeal.

The respondent claims an accounting for a period of six years prior to the date of the writ of all moneys paid by it and the inhabitants of Matsqui by way of rates in excess of rates paid for similar service in Burnaby. Without expressing any opinion on the right of appellant to sue on behalf of residents I think after perusal of the cases cited that the trial Judge was right in treating these as voluntary payments. The fact that the bills rendered contained the notice that "if this bill is not paid on due date service *may* be discontinued without further notice" does not indicate payment under pressure or compulsion. It is material to observe that the notice relates, not solely to the excess (in which event other considerations might arise) but to the whole sum claimed the greater part of which was rightly due. It is merely an intimation that one of two remedies may be taken in case of failure to pay; an intimation that certain proceedings *might* be taken. Similar notices, announcing the possible discontinuance of further supplies for failure to pay accounts monthly, might in the same way appear on the statements of dealers in all kinds of merchandise, and if it should transpire that, not by mistake of fact but by mistake of law, excess payments were made without protest such notices would not furnish evidence to destroy the voluntary nature of the payments.

(Sgd.) M. A. MACDONALD, J.A.

COURT OF APPEAL

BETWEEN:
 THE CORPORATION OF THE DISTRICT OF
 MATSQUI

Plaintiff
 (Respondent)

RECORD
 In the Court of
 Appeal for
 British Columbia.

Formal Judgment
 of the Court of
 Appeal.
 June 6th, 1933.

AND

WESTERN POWER COMPANY OF CANADA
 LIMITED

Defendant
 (Appellant)

10

CORAM:

THE HONOURABLE THE CHIEF JUSTICE,
 THE HONOURABLE MR. JUSTICE MARTIN,
 THE HONOURABLE MR. JUSTICE McPHILLIPS,
 THE HONOURABLE MR. JUSTICE M. A.
 MACDONALD.

TUESDAY, the Sixth Day of June, 1933.

20 THIS APPEAL having come on for hearing at Vancouver on the 4th, 5th and 6th days of April, 1933, in the presence of J. W. deB. Farris, K.C., and Mr. W. A. Riddell of Counsel for the Appellants and E. C. Mayers, K.C., and George E. Martin of Counsel for the Respondent, and Judgment having been reserved.

AND having come on for Judgment at Victoria this day.

THIS COURT DOTH ORDER AND ADJUDGE that the appeal of Western Power Company of Canada, Limited, Appellants, herein against the Judgment of the Honourable Mr. Justice Murphy dated the 5th day of January, 1933, be dismissed, and that the Appellant pay the Respondent's costs of this appeal.

30 AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Cross-appeal of the Corporation of the District of Matsqui, Respondents herein, against the said Judgment be dismissed and that the Respondents pay the Appellant's costs of the cross-appeal.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Appellant's costs of the cross-appeal be set off as against the costs of the appeal and that the Appellant pay to the Respondent the net amount owing the Respondent forthwith after taxation.

40 "JFM" R

H. BROWN,
 Dept. Registrar.

"JAM" CJ
 Approved
 "WAR"

Entered
 June 18, 1933
 Order Book Vol. 9, Fol. 214
 per "ALR"

RECORD

*In the Court of
Appeal for
British Columbia.*

Final Order
Granting Leave to
Appeal to
Defendant
Company.

COURT OF APPEAL

THE CORPORATION OF THE DISTRICT
OF MATSQUI

Plaintiff (Respondent)

—AND—

WESTERN POWER COMPANY OF CANADA,
LIMITED

Defendant (Appellant)

B. C. L. S.
\$1.10

Vancouver,
July 8, 1933. 10
Registry.

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF
BRITISH COLUMBIA
THE HONOURABLE MR. JUSTICE McPHILLIPS
THE HONOURABLE MR. JUSTICE MACDONALD

Victoria, B. C., Wednesday, the 28th day of June, A.D. 1933.

UPON MOTION of the Defendant (Appellant) made unto this Court this day for an order approving the security provided herein by the Defendant (Appellant) pursuant to the Conditional Order of this Court made herein the 20th day of June, A.D. 1933, and for an order granting final leave to the Defendant (Appellant) to appeal to His Majesty in His Privy Council from the Judgment herein of this Court AND UPON reading the said Conditional Order made herein the 20th day of June, A.D. 1933, and the Certificate of the Registrar of this Court at the City of Vancouver, dated the 26th day of June, A.D. 1933, certifying that the Defendant (Appellant) has made due compliance with the conditions imposed upon the Defendant (Appellant) by the said Conditional Order; and UPON HEARING J. W. deB. Farris, Esq., K.C., of Counsel for the Defendant (Appellant) and no one appearing on behalf of the Plaintiff (Respondent) although duly served with notice of this application, 20 30

THIS COURT DOTH ORDER AND DECLARE that the sum of £500:0:0 (Five Hundred Pounds Sterling) provided by the Defendant (Appellant) as security pursuant to the terms of

the said Conditional Order be and the same is hereby approved as good and sufficient security to the Plaintiff (Respondent);

AND THIS COURT DOTH FURTHER ORDER AND DECLARE that final leave to appeal to His Majesty in His Privy Council from the Judgment of this Court pronounced herein the 6th day of June, A.D. 1933, be and is hereby granted to the Defendant (Appellant).

BY THE COURT:

H. BROWN,
Dep. Registrar.

10

“O. B.”
“D. R.”
“J. A. M.”
“C. J.”

Entered July 8, 1933.
Order Book, Vol. 9, Fol. 222.
Per “A. L. R.”

(SEAL)
Court of Appeal

RECORD
—
*In the Court of
Appeal for
British Columbia.*
—
Final Order
Granting Leave to
Appeal to
Defendant
Company.
(Contd.)

EXHIBIT No. 1

MUNICIPALITY OF MATSQUI

POWER AND LIGHT BY-LAW, 1912

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 1

A By-law to enable the Western Canada Power Company, Limited, to sell electric light and power within the limits of the Municipality of Matsqui and to grant certain privileges and rights to the said Company.

By-law.
28th Sept., 1912.

10 WHEREAS it is desirable that the residents of the Municipality of Matsqui should be able to avail themselves of the use of electric energy and that opportunity should be given for the spread of industrial enterprise within the municipality by the introduction of electrical power for industrial, heating, lighting and other purposes:

AND WHEREAS the Western Canada Power Company, Limited, hereinafter called the "Company," has expressed its willingness to extend its light and power service to this Municipality:

20 THEREFORE the Municipal Council of the Corporation of the District of Matsqui, with the assent of the electors of said Municipality, enacts as follows:

1. It shall be lawful for the Corporation of the District of Matsqui to enter into an agreement with the Western Canada Power Company, Limited, which said agreement shall be in form and effect set forth in Schedule "A" to this By-law.

30 2. The agreement shall be executed and shall bear date on a day subsequent to the passing of this By-law with the assent of the electors and the Reeve and Clerk of the Municipality are hereby authorized and directed to sign the same on behalf of the Corporation, to affix the Corporate Seal to such agreement after the passing of this By-law and execution and delivery of the said agreement by the said Western Canada Power Company, Limited.

3. This By-law shall before the final passage thereof receive the assent of the electors of the Municipality in manner provided by the "Municipal Act." The agreement, Schedule "A" hereto shall be deemed to be incorporated with and form a part of this By-law.

4. This By-law may be cited as

"THE WESTERN CANADA POWER COMPANY, LIMITED, LIGHT AND POWER BY-LAW, 1912".

40 DONE AND PASSED in Open Council the 28th day of September, A.D. 1912.

RECEIVED THE ASSENT of the electors of the Municipality of Matsqui the 19th day of October, A.D. 1912.

RECORD
In the Supreme
Court of British
Columbia.
Exhibit No. 1
By-law.
28th Sept., 1912.
(Contd.)

RECONSIDERED and finally passed, and the Seal of the Corporation attached under the hand of the Reeve and Clerk the 29th day of March, A.D. 1913.

ARTICLES OF AGREEMENT made in duplicate the 29th day of March, A.D., in the year of Our Lord One Thousand Nine Hundred and Thirteen.

Between

THE CORPORATION OF THE MUNICIPALITY OF MATSQUI, hereinafter called the "Corporation" of the first part, and

WESTERN CANADA POWER COMPANY, LIMITED, a body corporate having its office at the City of Vancouver in the Province of British Columbia, hereinafter called the "Company" of the second part.

WHEREAS the Company is desirous of erecting its steel towers and poles with standards, brackets and attachments, and to string wires thereon, through, along and over the highways of the Municipality for carrying its transmission and distribution wires in, through and beyond the Municipality, and to supply the inhabitants of the Municipality with electric energy for lighting, heating, power and industrial purposes.

AND WHEREAS the Corporation has agreed with the Company to grant the privileges herein specified in terms of this agreement, and the Company has agreed to the terms hereof.

NOW THIS AGREEMENT WITNESSETH that the Corporation and the Company mutually COVENANT AND AGREE each with the other, its successors and assigns as follows:—

1. The Corporation hereby gives and grants to the Company, its successors and assigns the right and privileges to sell electrical energy for lighting, heating, power, industrial and other purposes incidental thereto within the limits of the Municipality in terms hereof.

2. The Company may construct and maintain and there is hereby granted to the said Company in terms hereof the right, power and privilege to construct, erect and maintain steel towers with standard brackets, cross-arms and their several attachments and to string and operate a line or lines of wire along and across the Glenmore Road, Township Line Road, the Riverside Road between the Township Line Road and Clayburn Station, the Huntingdon, Abbotsford and Riverside Road, and on such other highways within the Municipality as may from time to time be determined by the Municipal Council for the purpose of carrying its transmission wires in, through and beyond the said Municipality.

3. The Company shall pay an annual sum of Four Hundred Dollars (\$400.00) to the Municipality for the privilege of erecting

and operating steel towers or poles and all equipment necessary for the operation of a 60,000 volt transmission line on the Glenmore Road, south of the Fraser River to the Township Line Road, thence eastward along the Township Line Road to the Riverside Road, thence southerly along the Riverside Road and the Huntingdon, Abbotsford and Riverside Road to Abbotsford, and such sum shall be expended by the Municipality for the maintenance of the above-mentioned roads, the said annual payment to be made on the First day of March in each and every year, and to be continued as long as such steel tower or pole transmission line is in operation upon such roads. For such other roads as the Company may require from time to time for a steel tower or wooden pole transmission line of 60,000, more or less volts the Company will pay an annual sum to be agreed upon by the Municipal Council of Matsqui and the Company, such sum or sums to be spent by the Municipal Council of Matsqui for the maintenance of the roads upon which the Company shall have secured such privileges.

4. The Company may construct, erect and maintain and there is hereby granted to the said Company in terms hereof, the right, power and privilege to construct, erect and maintain poles, standards, brackets, cross-arms and their several attachments, and to string and operate a line or lines of wire along all streets and across or under any public highway or bridge within the limits of the Municipality of Matsqui and to do all things which may be necessary in the supplying of electrical energy for lighting, industrial, power, heating or other purposes.

5. The design and location of all steel towers and the location of the poles erected within the Municipality of Matsqui shall first be approved by the Board of Works of the Municipality, which approval shall not be unreasonably withheld, and all works of the Company shall be performed to the reasonable satisfaction of the said Board of Works.

6. If the location of any steel towers or other poles or the wires thereon be found, owing to the construction of any new road or the widening or extension of any existing road, to be, in the opinion of the Board of Works, an obstruction to public traffic, the Company shall alter the position thereof in such manner as the Board of Works shall direct.

7. The Company shall properly maintain and keep in good order and repair to the reasonable satisfaction of the said Board of Works all steel towers or other poles with standards, brackets, cross-arms, attachments and wires thereon.

8. The Corporation shall, upon giving not less than one month's notice, have the right, free of charge, to use any wooden poles, standards, cross-arms or brackets erected in the streets within the limits of the Municipality for the support of any electric

RECORD
In the Supreme
Court of British
Columbia.
Exhibit No. 1
By-law.
26th Sept., 1912.
(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 1

By-law.
28th Sept., 1912.
(Contd.)

wires or lamps belonging to the Corporation or to give permission to any person or contractor entering into a contract with the Corporation to use the same for the lighting of street lamps within the Municipality; PROVIDED, HOWEVER, that plans to the reasonable satisfaction of the Company shall be furnished, showing the position in which such wires or lamps are to be supported; AND PROVIDED that in placing, maintaining or altering such wires or lamps no damage shall be caused to the Company's poles, standards, cross-arms, brackets and attachments and that there shall be no obstruction to or interference with the Company's operations; AND PROVIDED ALSO that the Company shall not be liable for any damages which the Corporation or its servants or contractors or other Company or person may cause or sustain in connection with such use of said wooden poles, standards, cross-arms or attachments belonging to the Company or with the maintenance and operation of such wires or lamps. 10

9. During the erection of any steel towers or poles with attachments or laying or stringing of any wires or during repairs to, or alterations of the same, the Company shall take due care and proper precautions for the protection of foot and other passengers, horses, carriages and vehicles lawfully passing along the highways of the Municipality, and shall not unnecessarily interfere with or impede the public use of the highways, and all steel towers and poles erected by the Company shall be placed at a distance of at least ten (10) feet away from the travelled road unless otherwise directed by the Board of Works. 20

10. The Company shall and will from time to time and at all times indemnify and save harmless the Corporation from any accident to any person or property by reason of any neglect or omission to keep the towers and poles with attachments and wires of the Company in a safe condition and from all claims against the Corporation for damages caused by said works, alterations, repairs or improvements made by the Company in connection with the work herein contemplated or incidental to or arising out of the use by the Company of the highways of the Municipality. 30

11. The Company covenants and agrees with the Corporation that the Company will not make any charge for the supplying of electric energy to the Corporation or any of the inhabitants of the Municipality greater than that paid for similar service by any Municipality or the inhabitants thereof other than a city, and will not in any way discriminate against the Corporation or residents of the Municipality; AND the Company will, free of charge to the customer, make the necessary connections and instal electric service to anyone requiring service, PROVIDED that such installation be located within one-quarter of a mile of the following roads:— 40

Glenmore Road between the Township Line Road and the Fraser River.

The Township Line Road between the Glenmore Road and the Canadian Pacific Railway Right-of-way (Mission Branch).
The Matsqui-Mt. Lehman Road from the Glenmore Road eastward for about two miles east of the aforesaid right-of-way.
The Page Road for about two miles east of the aforesaid right-of-way.
The Fore Road.
The Bell Road.
10 The Sim Road.

RECORD
—
In the Supreme Court of British Columbia.
—
Exhibit No. 1
—
By-law.
28th Sept., 1912.
(Contd.)

ALSO PROVIDED that when fifteen or more proposed customers resident within a radius of one mile of the Company's main distribution line petition for service in portions of the Municipality not served by the Company's main distribution lines, the Company shall supply such lighting and power service upon such customers entering into a contract with the Company to pay the cost of supplying standard poles and erecting the same for such service; PROVIDED that roads are accessible for pole lines to instal such service, or right-of-way will be furnished by such customers to the Company, the poles and right-of-way thus provided to become the property of the Company; PROVIDED also that when thirty customers are connected up with such distribution line and are being furnished with light and power service from the Company, the initial cost of supplying and erecting the poles will be refunded by the Company to the party or parties who paid for the cost of the same.

For connections and installation located elsewhere than above-described the Company may require the applicant or customer to pay all or part of the cost of the installation or connection in addition to the kilowatt hour rate, but this provision shall not preclude the Company from making any agreement with any customer although the installation of such customer may be located more than the distance mentioned in this paragraph from the Company's main or distributing lines.

12. When by reason of the erection or repairing of any poles, or the construction, extension or repairing of any pole line, it may be necessary for the Company to dig under or in any manner interfere with any highway, street or lane or a portion thereof, the Company shall after the completion of such work without delay not in any case to exceed thirty (30) days or such further time as shall be allowed by the Board of Works remove all earth, sand, dirt or other material and put the street or lane in as good condition as it was before it was broken, dug or disturbed.

13. The Company shall not, except so far as by By-law and this agreement or any Act of Parliament is permitted, by any of its works interfere with the public right of travelling on or using the public highways, streets, bridges, water-courses or navigable

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 1

By-law.
28th Sept., 1912.
(Contd.)

waters. The Company shall not fix wires less than twenty (20) feet above the surface of the street, and all poles shall be as nearly as possible straight and perpendicular; AND the Company shall not place or permit any advertising signs to be placed thereon; PROVIDED that in the opening up of streets for the construction or building of the works of the Company and the erection of poles, or for carrying the wires underground, the surface of the street shall in all cases be restored to the satisfaction of the Corporation by and at the expense of the Company; and provided further that whenever in case of fire it becomes necessary for its extinction or the preservation of property, that the poles or wires should be cut, the cutting under such circumstances of poles or any of the wires of the Company under the direction of the Chief Engineer or other officer in charge of the Fire Brigade shall not entitle the Company to demand or claim compensation for any damage that may be so incurred. 10

14. The Company shall be liable for and shall pay all lawful claims for damages and lawful compensation for losses arising in respect of property which may be injured through any negligence or default of the Company accruing during the construction or by reason of the operation of the works of the Company herein contemplated within the Municipality for which the Company may be liable. 20

15. The Corporation shall not be liable in the event of any right or privilege granted or intended to be granted under this agreement infringing on any privilege or any person or Company now lawfully operating upon or now lawfully in possession of any portion of the streets or roads in the Municipality, and the Company will indemnify and save harmless the Corporation from and against all actions, costs, damages, claims and demands whatsoever in respect thereof. 30

16. The Company shall not cut down or mutilate any shade or ornamental trees on the streets or roads of the Municipality without having first obtained permission from the Council.

17. Whenever it shall be necessary in grading any street or in building any sidewalk or making any other improvement thereon, to move any pole or poles belonging to the Company or on which any line or lines of wire belonging to the Company shall be stretched or fastened, the Company shall, upon receiving two weeks' notice from the Corporation, move such pole or poles to such place or places designated in such notice, and if the Company on receiving such notice, shall neglect or refuse to move such pole or poles, then such pole or poles shall be moved by the Board of Works of the said Corporation at the expense of the Company. 40

18. The Corporation in consideration of the premises and of the Company agreeing to perform and observe the covenants hereinbefore contained, doth grant to the Company the rights, powers and privileges herein expressed for a period of Forty (40) years from the date of this agreement.

19. Nothing in this By-law contained shall be deemed to confer or be construed as conferring any exclusive right or power on or to the Company, and the rights and powers and privileges granted to the Company shall be subject to any regulations which are or may be enacted under the provisions of any Act of Parliament affecting the rights and safety of the public.

RECORD
In the Supreme
Court of British
Columbia.

Exhibit No. 1

By-law.
28th Sept., 1912.
(Contd.)

20. The Company hereby covenants and agrees to and with the Corporation that they will pay the costs, charges and expenses of and incidental to the preparation and execution of this agreement and the preparation of this By-law to authorize the Council of the Corporation to execute the same and the costs, charges and expenses incurred by reason of the submission of the said By-law to the electors for their assent.

21. The Company hereby covenants and agrees to and with the Corporation that they will commence the work of erecting poles and stringing wires on the roads mentioned in Section Eleven (11) within Thirty (30) days of the date upon which the By-law shall have received the assent of the electors and is finally passed by the Council of the Municipality of Matsqui and have the work completed upon such roads within Nine (9) months from such date, provided that definite locations are given to the Company by the Board of Works.

22. It is further covenanted and agreed between the parties hereto that this agreement is to enure to the benefit of and be binding upon the successors and assigns of the Corporation and the Company respectively.

IN WITNESS WHEREOF the said parties hereto have hereunto caused their hands to be ascribed and their Corporate Seals to be affixed the day and year above written.

30 The Corporation of the Municipality of Matsqui.
Corporation of WILLIAM MERRYFIELD,
the District of Reeve.
Matsqui, B. C. JAMES GIBSON,
Seal Clerk.

Western Canada Power Company Limited.

R. F. HAYWARD, (Seal)
Attorney.

Witness: W. McNEILL, (Seal)
A. R. Butcher. Attorney.

40 N. W. 80/31
SUPREME COURT OF B. C.
Vancouver Registry
EXHIBIT No. 1
Corp. of Matsqui vs. Western Power
Put in by P, Date 19/12/32
W. H. A., Registrar

RECORD
—
*In the Supreme
Court of British
Columbia.*

Exhibit No. 4
—
Memorandum
of Agreement.
27th June, 1921.

EXHIBIT No. 4

JUNE 27th, 1921

MEMORANDUM

WESTERN POWER COMPANY OF CANADA, LTD.

—and—

BRITISH COLUMBIA ELECTRIC RAILWAY
COMPANY, LTD.

Arrangement covering operation and maintenance
of Light and Power Distribution System of the
Western Power Company of Canada, Ltd., and
paying a fixed rental therefor; the Railway Com-
pany to receive all revenue derived from the
Distribution System.

10

WESTERN POWER COMPANY

In order to put the transactions between the Western Power
Company and the B. C. Electric on a proper basis, the following
suggestions are made:—

(1) That the Distribution System of the Western Power
Company be leased to the British Columbia Electric Railway
Company at a fixed rental, and that the B. C. Electric should
take over the entire maintenance and operation of such Distribu- 20
tion System, having perfect freedom of action to supply the
customers on that system either by electric energy from B. C.
Electric lines, or, on the other hand, to use the energy passing
through the Western Power Company's lines to supply customers
on the present B. C. Electric System.

(2) The present Agreement for the supply of power to be
continued, and all power received by the B. C. Electric to be paid
for under the terms of that contract.

(3) The penalty clauses in the existing Agreement not to 30
be enforced.

(4) The limitation in the Agreement in regard to area of
supply—Section 11, not to be enforced. The terms of Sections
11 and 12 which limit the Western Power Company to taking
customers having a connected load for power purposes of at least
112 kilowatts, and which limit the B. C. Electric to take power
customers having a connected load of less than 150 kilowatts,
to be ignored.

(5) An inventory to be made of the property and plant to
be included in the lease, together with plans showing the location 40

of such property and plant, and such inventory and plans to be attached to the lease.

(6) All future capital expenditure on new connections to the present Western Power Company's System to be provided by the B. C. Electric, except in those municipalities where the B. C. Electric has no franchise, and such extensions will not form part of the Western Power Company's Distribution System.

Future capital expenditures directly related to the Western Power Company's present Distribution System, such as the putting in of an improved cable, or better transformer equipment, to be provided by the Western Power Company, the B. C. Electric to pay 8 per cent on such additional expenditure by way of an addition to the rent payable under the lease.

In the case of extensions and connections to the present Western Canada Distribution System, it will be necessary to provide that in case the lease should be terminated capital expenditure on such connections should be refunded to the B. C. Electric by the Western Power Company.

RENT PAYABLE UNDER LEASE

It is proposed that the rent payable under the lease shall be \$140,000.00 per annum.

The capital expenditure charged to the Distribution System is approximately \$2,054,922.00, showing that the rent represents a return of 7 per cent on this Distribution System.

The rent has been arrived at as follows:—

	Income of the W. P. Co. from the customers on its Distribution System in 1920.....	\$200,386.00
	Less expenses of transformation at Ardley, distribution, billing and collecting, salaries and office expenses, engineering salaries, rentals, insurance, injuries and damages.....	130,000.00
	Net Income	\$ 70,386.00
	Add to this economies which will be effected by the Companies being combined:—	
	Reduction in Pay Roll—Electrical Maintenance..	15,000.00
	Reduction of Expenses—Ardley	12,000.00
	Saving of 5th Avenue Substation.....	1,000.00
	Saving in Salaries and Office Expenses.....	20,000.00
		<hr/>
		\$118,386.00

In addition to the above there are savings which will be effected by the reduction of line losses and in the greater convenience of operation, which savings cannot be readily put into

RECORD

In the Supreme Court of British Columbia.

Exhibit No. 4

Memorandum of Agreement. 27th June, 1921.

(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 4

Memorandum
of Agreement.
27th June, 1921.
(Contd.)

figures, but which are none the less real, and will become of more and more value as the demand for power increases.

FRASER VALLEY: The Western Power Company has a high tension line crossing the B. C. Electric Fraser Valley Line at Matsqui, and at comparatively little cost it can be arranged for the whole of the Fraser Valley District to receive its power from the Stave Falls instead of from Lake Buntzen and thus save the line losses on the extra 50 miles of transmission line as well as giving much more reliable service. This connection at Matsqui will be of greater value when additional power is developed on the Stave River. 10

IOCO AND COQUITLAM: The Western Power Company has some large customers in these Districts, which will be more conveniently served by power from Lake Buntzen and will save current which is now supplied from Stave Falls, as well as giving a better service.

POWELL STREET SUBSTATION: This Substation of the Western Power Company will be a valuable adjunct to the B. C. Electric System in the City in the Powell street district, and will save the expenditure of additional capital which would have been necessary in the near future to take care of the load which is continually increasing on the B. C. Electric plant. 20

HARO STREET: The Western Power Company's customers in the vicinity of Haro Street who are now supplied by current from Powell Street will in course of time be supplied from the B. C. Electric Station at Haro Street, thus releasing power for use by customers on the B. C. Electric System in the neighborhood of the Powell Street Station.

The Distribution System, on which the \$2,000,000.00 referred to above were expended, was designed for and is capable of taking care of from two to three times the business which it is doing now. 30

Having the above in mind, we consider that an amount of \$20,000.00 a year would fairly represent the value to the B. C. Electric of the elimination of line losses, better service to customers and saving in interests on future capital expenditure.

This \$20,000.00 added to the \$118,386.00 referred to above brings the rent which the B. C. Electric might reasonably pay for the benefits to be derived from the lease to \$138,386.00 or say \$140,000.00.

PRESENT AGREEMENT FOR SUPPLY OF POWER 40

Under the present Agreement the B. C. Electric contracts to take a minimum of 15,000 kilowatts per month at 70 per cent load factor, and to pay a minimum charge which works out to about \$240,000 per annum. The actual income for 1920 of the Western Power Company from this contract was \$244,032.00.

It has been the practice for the B. C. Electric to take the minimum quantity under this Agreement even when such power,

or a portion of it, might have been taken from Lake Buntzen without decreasing the storage reserves or adding materially to the cost of operation.

The Operating Department will now ignore the Agreement and will use the two plants so as to get the greatest value out of the water storage in both of them.

During some months of the year, it may be economical to use the Stave Falls plant to its full capacity and to relieve Lake Buntzen. Under such conditions, the minimum named in the contract will be exceeded and it is possible that Stave Falls may be supplying 20,000 or even 25,000 kilowatts of energy. It is proposed that this shall be paid for under the terms of the contract so that the income from the B. C. Electric under the present contract will probably be increased from \$240,000 a year to about \$270,000.

RECORD
In the Supreme Court of British Columbia.
Exhibit No. 4
Memorandum of Agreement. 27th June, 1921. (Contd.)

FINAL RESULT

The surplus for 1920 of the Western Power Company after paying depreciation and interest on bonds is. \$ 31,172.00

Under the new contract this should be increased as under:	
Annual Rental of Distribution System.....	140,000.00
Additional income expected to be derived under the B. C. E. Contract for the supply of power.....	30,000.00
	\$201,172.00
Less the present net income from the Distribution System	70,000.00
	\$131,172.00

This will be sufficient to cover interest on the B. C. Electric Railway Company's investment, namely \$2,500,000 at 5 per cent, \$125,000.

Approved:	(Signed) W. SAVILLE,
GEORGE KIDD,	(Signed) E. H. ADAMS,
July 6th, 1921.	(Signed) J. I. NEWELL.

N. W. 80/31
SUPREME COURT OF B. C.
Vancouver Registry

40
EXHIBIT No. 4
CORPN. OF MATSQUI vs. WESTERN POWER
PUT IN BY P, DATE 19/12/32
W. H. A., Registrar
Ex. "4"
M. S. B.

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 16

Agreement.
23rd Sept., 1921.

EXHIBIT No. 16

The following is a true copy of an agreement between the District of Matsqui, and the Western Power Company of Canada, Limited, executed the 23rd day of September 1921, but which was not submitted for approval of the Lieut. Governor in Council as required by the provisions of the Municipal Act. (See letter from Inspector of Municipalities under date of February 17th 1931.)

THIS AGREEMENT made in duplicate this 23rd day of September 1921

BETWEEN:

10

The Corporation of the Municipality of Matsqui, in the Province of British Columbia, hereinafter called the "Corporation"

OF THE FIRST PART:

AND

Western Power Company of Canada, Limited, a body corporate having its principal place of business in the City of Vancouver, in said Province, hereinafter called the "Company"

OF THE SECOND PART: 20

WHEREAS the Corporation and the Company did on the 29th day of March 1913, enter into an agreement whereby the Corporation granted unto the Company its successors and assigns the right and privilege to construct and maintain steel towers and standard brackets, cross arms and their several attachments and to string and operate a line or lines of wire along and across certain highways in the Municipality of Matsqui and to sell electrical energy for lighting, heating, power, industrial and other purposes incidental thereto within the limits of the said Municipality.

30

AND WHEREAS the parties hereto have agreed with each other to make certain alterations in the said agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH:

1. Clause 11 of the said agreement of the 29th day of March 1913, shall be deleted from the said agreement and in lieu thereof the following shall be substituted as Clauses 11 and 11a:

11. The Company shall free of charge to the Municipality and every customer forthwith erect the necessary poles and equipment and string wires with all necessary connections sufficient to supply any electric service which may be required by the residents upon and along the following roads, namely: from the intersection of Riverside Road and Page Road eastbound along Page Road to the intersection of Page Road and Beharrell Road, and from the intersection of Page Road and Bell Road extending South along said Bell Road to the intersection of Bell Road and Fore Road and will at the cost of any applicant string wires from the said line with necessary equipment upon poles erected under the direction of the Company by any applicant residing in the vicinity of such line and will also erect such poles if so required by such resident but at such resident's expense.

11a. The Company shall extend its main distribution line to any part of the Municipality at the cost of any resident or group of residents petitioning the Company for service in any portions of the District now served by any of the Company's main distribution lines provided that roads are accessible for such extension or private rights of way be furnished by such residents to the Company in lieu of any roads which may be inaccessible, the right of way thus provided and the poles with the wires erected thereon to be the property of the Company. Provided however that before any such extensions are made the Company shall estimate the cost of such extension as well as four years' gross annual revenue to be derived from said resident or group of residents so petitioning for service and should the cost of such extension be less or equal to said four years' estimated revenue then and in that event the cost of such extension shall be borne by the Company, but should the cost of such extension be greater than said estimated four years' revenue then said petitioner or group of petitioners for service shall before the Company commences work on such extension pay to the Company the amount by which said estimated cost of such extension exceeds said four years' estimated revenue, provided further that if at any time during ten years from the date of giving service to the original petitioner or group of petitioners for service any new customer shall use said extension the Company shall estimate the amount of four years' gross revenue to be derived from said new customer and refund to the original petitioner or group of petitioners the whole or so much of said four years' estimated revenue to be derived from said new customer to the ultimate extent of refunding the whole of the amount if any paid by the original petitioner or group of petitioners for service.

RECORD
In the Supreme
Court of British
Columbia.
Exhibit No. 16
Agreement.
23rd Sept., 1921.
(Contd.)

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 16

Agreement.
28rd Sept., 1921.
(Contd.)

2. Subject to the foregoing alteration the said Agreement of March 29th 1913, shall continue in force and effect.

IN WITNESS WHEREOF the said parties hereto have hereunto caused their hands to be ascribed and their Corporate Seals to be affixed the day and year first above written.

(Signed) ALEXANDER McCALLUM, Reeve.

(Signed) JOHN LeFEUVRE, Clerk.

Approved

B

Solicitor.

SEAL.

10

WESTERN POWER COMPANY OF CANADA, LIMITED.

(Signed) GEORGE KIDD,

(Signed) W. MURRIN,

Directors.

(Signed) E. H. ADAMS,

Secretary.

SEAL.

Certified a true copy of original on file in Municipal Hall, Mt. Lehman, B. C.

ERNST A. WOODS, C.M.C. 20

March 4th, 1931.

N. W. 80/31

SUPREME COURT OF B. C.

Vancouver Registry

EXHIBIT No. 16

CORPN. OF MATSQUI vs. WESTERN POWER

PUT IN BY D, DATE 19/12/32

W. H. A., Registrar

EXHIBIT 10

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 10

**Eight Burnaby
Bills of Account.
Jan., 1931, to
Nov., 1931.**

Eight Bills similar in form to

Exhibit 6

Rendered to

S. DIXIE,
4036 Imperial Street,
New Westminster,

and to

C. M. RICHARDS,
1052 Fourteenth Avenue,
New Westminster,

for various months from

January, 1931, to November, 1931.

Omitted by consent.

RECORD

EXHIBIT No. 3

*In the Supreme
Court of British
Columbia.*

Exhibit No. 3

Demand for
Service.
15th May, 1931.

TO:

Western Canada Power Company, Limited.
British Columbia Electric Railway Company Limited.
British Columbia Electric Power & Gas Company Limited.

I, LLOYD TRUMAN BEHARRELL, of Matsqui, B. C., am the owner of part 90.068 acres of Lots 66 and 384A, Group 2, described in Certificate of Title No. 70008E, and situate on the Sim Road in the Municipality of Matsqui, and require you free of charge to me to make the necessary connections and instal electric service for my residence and buildings situate on the lands aforesaid less than one quarter of a mile from the Sim Road. 10

I DEMAND this service and the Corporation of the District of Matsqui acquiesces in such demand under the terms of section 11 of the Agreement dated 29th March, 1913, and Power and Light By-law, 1912, passed by the Municipal Council of the Corporation of the District of Matsqui.

AND TAKE NOTICE that in default of compliance forthwith with this demand action will be taken to enforce specific performance of the said agreement. 20

DATED at Matsqui, B. C., this 15th day of May, 1931.

L. T. BEHARRELL.
Corporation of the District of
Matsqui.

E. A. CRUICKSHANK,
Reeve.

N. W. 80/31
SUPREME COURT OF B. C.
Vancouver Registry

EXHIBIT No. 3

Corpn. of Matsqui vs. Western Power 30

PUT IN BY P, DATE 19/12/32

W. H. A., Registrar

EXHIBIT No. 11

RECORD
—
*In the Supreme
Court of British
Columbia.*
—
Exhibit No. 11
—
Demand for
Service.
15th May, 1981.

TO:

Western Canada Power Company, Limited.
British Columbia Electric Railway Company Limited.
British Columbia Electric Power & Gas Company Limited.

I, LLOYD TRUMAN BEHARRELL, of Matsqui, B. C.,
am the owner of part 90.068 acres of Lots 66 and 384A, Group 2,
described in Certificate of Title No. 70008E, and situate on the
Sim Road in the Municipality of Matsqui, and require you free
10 of charge to me to make the necessary connections and instal elec-
tric service for my residence and buildings situate on the lands
aforesaid less than one quarter of a mile from the Sim Road.

I DEMAND this service and the Corporation of the District
of Matsqui acquiesces in such demand under the terms of section
11 of the Agreement dated 29th March, 1913, and Power and Light
By-law, 1912, passed by the Municipal Council of the Corporation
of the District of Matsqui.

AND TAKE NOTICE that in default of compliance forth-
with with this demand action will be taken to enforce specific per-
20 formance of the said agreement.

DATED at Matsqui, B. C., this 15th day of May, 1931.

L. T. BEHARRELL.
Corporation of the District of
Matsqui.

E. A. CRUICKSHANK,
Reeve.

N. W. 80/31
SUPREME COURT OF B. C.
Vancouver Registry

EXHIBIT No. 11

Corpn. of Matsqui vs. Western Power

PUT IN BY P. DATE 19/12/32

W. H. A., Registrar

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 9

**Annual Report of
B. C. Power Co.
June, 1981.**

EXHIBIT No. 9

(See Inside Back Cover)

EXHIBIT No. 5

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 5

Schedule of Rates.
1st July, 1981.

(See Inside Back Cover)

EXHIBIT 14

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 14

Bills of Account
and Cheques,
Matsqui,
July, 1931.

Accounts Rendered

to

Plaintiff Municipality

in form of

Exhibit 6,

and cheques in payment thereof.

Sample cheque shown on following page.

Balance omitted by consent.

RECORD

In the Supreme Court of British Columbia.

Exhibit No. 14

Cheque, Matsqui, July, 1931. (Contd.)

STAMBS C.B. 1234

"Help Us to Get Electric Light"

1001 Municipal Hall, Mt. Lehman, B.C. July 15 1931

CORPORATION of the DISTRICT of MATSQUI

Pay to Order of Electric Light \$5.02

To The Canadian Bank of Commerce 100 Dollars

MATSQUI, B.C.

Negotiable without charge to the Canadian Bank of Commerce, Matsqui, B.C. or at Abbotsford, New Westminster, Victoria, and all other Valley branches.

Reeve Treasurer

June 16 1931
 1931 Light Co.
 1931 Light Co.
 1931 Light Co.

100 Dollars

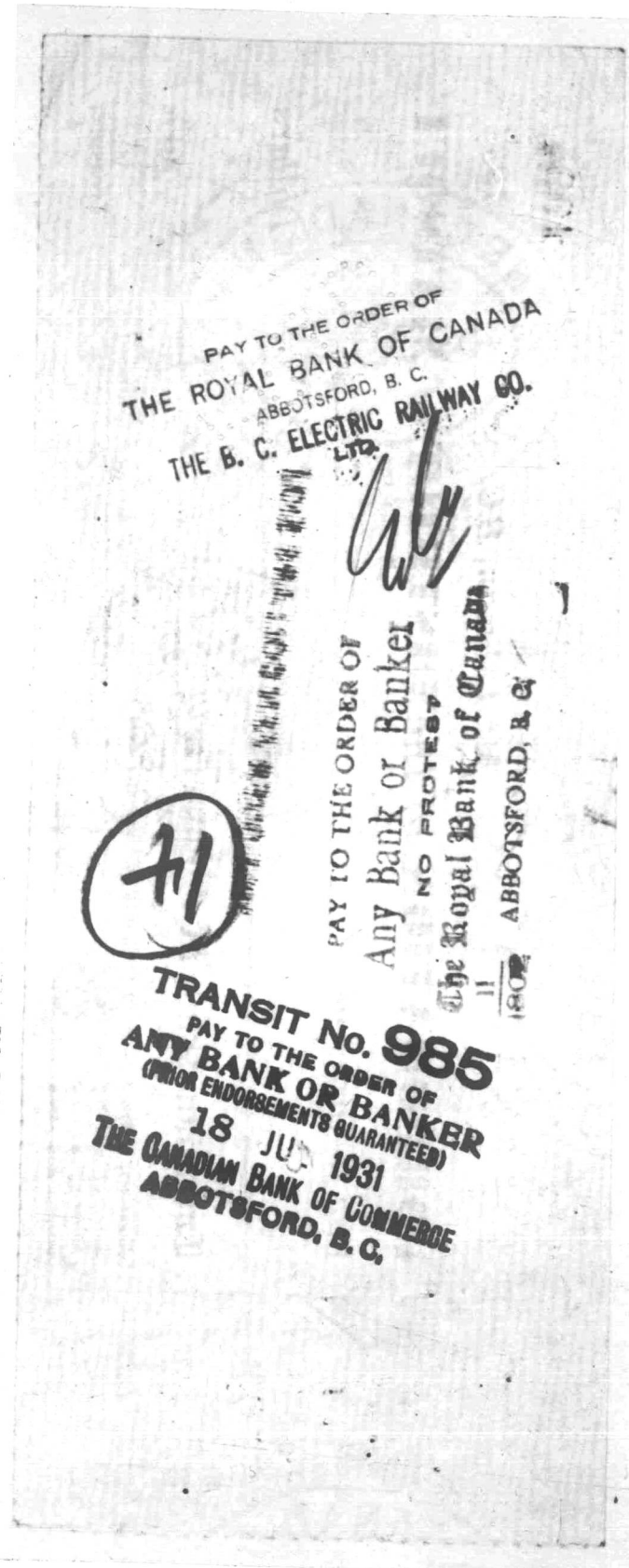
100 Dollars

RECORD

In the Supreme Court of British Columbia.

Exhibit No. 14

Endorsement
on Cheque,
Matsqui,
July, 1931.
(Contd.)



RECORD

In the Supreme Court of British Columbia.

Exhibit No. 2

Letter, Laursen to Manson, November, 1931.

BRITISH COLUMBIA ELECTRIC RAILWAY CO., LTD.

NW 80/31

21

HASTINGS AND CARRALL STREETS

SUPREME COURT OF B.C.
VANCOUVER REGISTRY

VANCOUVER, B.C.

LEGAL, CLAIMS AND LAND DEPARTMENT
V. LAURSEN

Re Matsqui vs Western Power November 19th, 1931.

D. IN BY *W.H.* DATE *19/12/32*

*E-2
msb*

Messrs. Williams, Manson, Gonzales & Taylor,
Barristers,
716 Hall Bldg.,
Vancouver, B. C.

Dear Sirs:-

re Matsqui vs Western Power Co.

I received your letter of the 10th herein.

There are no copies of the Agreement between the Western Canada Power Co. and the Western Power Company of Canada of November 1st., 1916, available, but I am having some made and will forward a copy to you in the course of a few days.

The B. C. Electric Power & Gas Co. Ltd. has not exercised its powers under either Subsection 3 or 4 of Chapter 79 but it has acquired all the common shares of the Vancouver Power Co., Ltd., and the latter Company has in turn acquired all but a small fraction of the common shares of the Western Power Company of Canada, Ltd.

Yours truly,

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 13

Bills of Account
and One Cheque
B. C. Electric Rail-
way and Burnaby.
December, 1931.

EXHIBIT 13

Various accounts rendered to

Municipality of Burnaby

by

British Columbia Electric Railway Company Limited

for

Street Lighting, Repairs to Culverts, Materials Supplied,

and

Bundle of Accounts in form of Exhibit 6,

totalling in all

10

\$2729.46,

for which cheque on following page was given in payment.

Balance omitted by consent.

NEGOTIABLE WITHOUT CHARGE AT ANY BRANCH OF THE ROYAL BANK OF CANADA IN BRITISH COLUMBIA.

N.O. E. 5681 *New Westminster, B.C.* DEC 23 1931 *193* \$ 2729.46 *26*



Corporation of the District of Burnaby

The B.C. Electric Railway Co. or Order

EXACTLY \$ 2729.46 CTS. *100 Dollars*

The Royal Bank of Canada,
NEW WESTMINSTER, B.C.

W. A. Ritchie
C.M.C.
REEVE

COUNTERSIGNED TREASURER. CH. FINANCE

RECORD
In the Supreme Court of British Columbia.
Exhibit No. 13
Cheque, Burnaby, December, 1931.
(Contd.)

RECORD

In the Supreme Court of British Columbia.

Exhibit No. 18

Endorsement on Cheque, Burnaby, December, 1931. (Contd.)

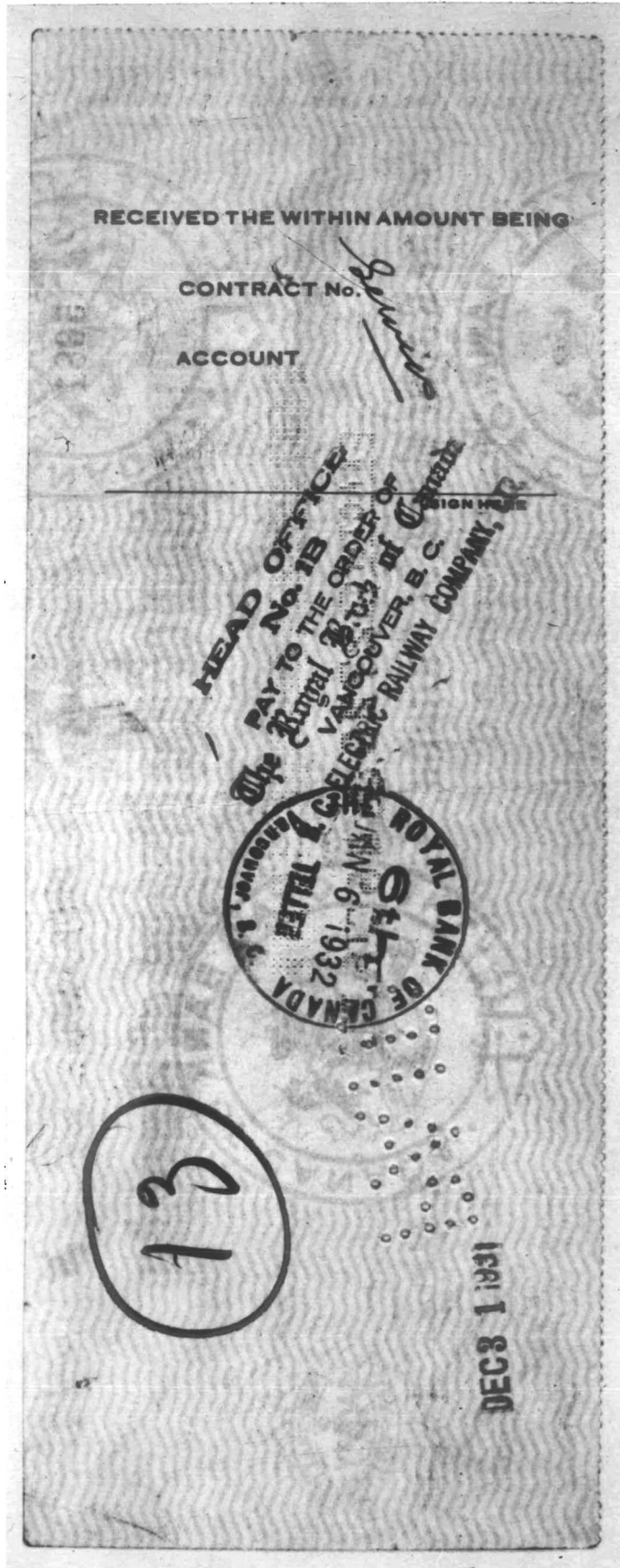


EXHIBIT 12

RECORD

*In the Supreme
Court of British
Columbia.*

Exhibit No. 12

Bolton's Bill of
Account.
January, 1932.

Account rendered to

R. BOLTON,

New Westminster, B. C.,

in form of Exhibit 6,

January 29 to February 27, 1932.

Omitted by consent.

TOTAL OF SUNDRY CHARGES DETAILED BELOW		197
Balance Forward		
Appliance Charge <i>Lamps.</i>		197
Transfer from old a/c		
Water Heater Charge		
Plugs and Time		
Connection Charge—Electric		
" " Gas		
Repairs to		

Ex 6 m&P

Dr. to B.C. ELECTRIC RAILWAY CO. LTD. AND B.C. ELECTRIC POWER & GAS CO. LTD.
or WESTERN POWER CO. OF CANADA, LTD. METER READING

CORP. OF DIST. MATSQUI 27 793
% MUNICIPAL HALL 85 23
MT. LEHMAN M.D. 1 K.W.

From DEC. 24
To JAN. 25 1932
Due Date FEB. 12
Bill No. 1422

6

This space is provided for your record when forwarding payment by cheque

Bill in

19 By Cheque No.

METER READING		ELECTRICITY		GAS		GAS METER RENT	SUNDRIES	NET TOTAL
PREVIOUS	PRESENT	K.W.H.	AMOUNT	HUNDRED CU. FEET	AMOUNT			
3423	3555	132	5.91	<i>5290</i>	<i>0.13</i>		1.97	7.88 *

OFFICE HOURS—425 Carrall and 602 Granville Streets. Wednesday, 9.00 a.m. to 1.00 p.m. Daily 9.00 a.m. to 5.30 p.m.
IMPORTANT—If this bill is not paid on due date, service may be discontinued without further notice.
For Schedule of Charges see back of this bill. Phone Seymour 5151

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EXHIBIT No. 6

RECORD
In the Supreme Court of British Columbia.
Exhibit No. 6
Bill of Account of Plaintiff, Dec. and Jan., 1932.

N.W. 89/31 Exhibit 6 Corpⁿ of Malaga & Western Power
 19/12/32 AVAILABILITY—Residence lighting, heating and cooking. ELECTRICITY—DOMESTIC LIGHTING RATES per K. W. H. Based on Monthly Consumption.

ONLY ONE METER ALLOWED FOR DOMESTIC PURPOSES	Vancouver City	Burnaby North Vancouver City and District	West Vancouver	Fraser Valley East to Rosedale	Kent
Primary Rate	4c	5c	6c	6c	6c
Secondary Rate	2c	2c	2c	2c	2c
The Primary Rate is applied according to the floor area of consumer's house, as follows: First 1000 sq. ft. or less first 30 K.W.H. Next 1000 sq. ft. of floor area add 2 K.W.H. for each 100 sq. ft. of floor area in excess of 1000 sq. ft. For the next 1000 sq. ft. add 1 K.W.H. per 100 sq. ft. in excess of 2000 sq. ft., but not exceeding 3000 sq. ft.					
Minimum charge per month for lighting service only	50c	50c	50c	\$1.00	\$2.50
Minimum charge per month for lighting and electric range service	\$2.00	\$2.00	\$2.00	\$2.50	\$8.00
Service Charge—Kent Municipality					\$1.25
COMMERCIAL LIGHTING RATES—PER K.W.H.					
AVAILABILITY—Current used for all purposes supplied from the Company's lighting mains in stores, offices, warehouses, workshops, hotels and all other commercial and industrial premises.					
Primary Rate:					
First 65 K.W.Hrs. per K.W. of max. demand per month are charged at	4c	5c	6c	6c	6c
Secondary Rate:					
Excess of 65 K.W.Hrs. per K.W. of max. demand per month are charged at	2c	2c	2c	3c	3c
Service Charge—Kent Municipality					\$1.25

MINIMUM CHARGE per month (all districts except Kent)—\$1.00 for the first K.W. of demand or fraction thereof and 50c for each additional 1/2 K.W. of demand or fraction thereof. In the event of a meter not registering, the consumption will be averaged.
 MINIMUM CHARGE per month (Kent District), \$2.50 for the first 2 1/2 K.W. of demand or fraction thereof and 50c for each additional 1/2 K.W. of demand or fraction thereof. In the event of a meter not registering, the consumption will be averaged.

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RECORD
 In the Supreme Court of British Columbia.
 Exhibit No. 6
 Reverse Side.
 Bill of Account of Plaintiff.
 Dec. and Jan., 1932.
 (Contd.)

EXHIBIT No. 5A

5A

BRITISH COLUMBIA ELECTRIC RAILWAY CO. LTD.
Hastings and Carrall Streets
VANCOUVER, B.C.

December 9th, 1932.

N W 80/31

J.W.deB.Farris, Esq., K.C.,
Messrs. Farris, Farris, Stultz & Sloan,
510 W. Hastings St.,
Vancouver, B.C.

SUPREME COURT OF B.C.
VANCOUVER REGISTRY

EXHIBIT No. 5A

Corp of Matsqui vs Western Power Co

PUT IN BY P

DATE 19/12/32

Dear Sir:-

re Matsqui vs. Western Power Co.

REGISTRAR

Referring to the attached letter from Mr. Mayers in which he asks for the rate schedule in effect 1st July 1930, I am assuming that he means by this the rate schedule in effect at the time of the issue of the writ in this action.

RECORD

In the Supreme Court of British Columbia.

Exhibit No. 5a.
Letter, Laursen to Farris.
9th Dec., 1932.

You can advise Mr. Mayers that notwithstanding the endorsement (in effect July 1, 1931) on the schedule already furnished that the rates set out in the schedule were in effect at the time of the commencement of the action as from the 1st May 1931.

Yours truly,

"V. Laursen"

EXHIBIT No. 15

RECORD

In the Supreme Court of British Columbia.

Exhibit No. 15

Diagram.

SUPREME COURT OF B.C. *N 14 80/31*
 VANCOUVER REGISTRY
 EXHIBIT No. 15 *19/12/32*
 VS
 THE B. C. ELECTRIC EMPLOYEES' MAGAZINE
 PUT IN BY _____ DATE _____

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