In the Privy Council.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, FOR THE PROVINCE OF QUEBEC (APPEAL SIDE.)

BETWEEN

EDWARD MOORE AND AUGUSTUS R. WRIGHT,
(Defendants,) Appellants,

AND

SIMON PETERS, ... *Plaintiff;* (deceased)

AND

ELIZA JANE LAMOUREUX, Henry Joseph Peters, Albert Hyacinth Peters, Joseph Bernard Peters and Martial Chevalier,
(Plaintiffs in continuance of suit) Respondents.

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

Canada,
Province of Quebec,
District of Quebec. } In the Superior Court.

No. 2453.

Simon Peters, - - - - - - - - - Plaintiff.

vs.

Edward Moore *et al.*, - - - - - - - Defendants.

and

Dame E. J. Lamoureux, *et al.*, - Plffs. en rep. d'instce.

No. 68 Admission of facts signed by both parties, 7th Dec. 1895.

The Parties admit :

1. That Plaintiff's Exhibit No. 1, is a true copy of the Notarial Contract between the parties Plaintiff and Defendants and the Quebec Harbour Commissmissioners passed before Angers N. P., on the 2nd May 1877.

2. That Plaintiff's Exhibit No. 4, is a true copy of the judgment of the Supreme Court of Canada alleged in the declaration.

3. That Plaintiff's Exhibit No. 5, is the agreement executed between the parties Plaintiff and Defendants and the Quebec Harbour Commissioners made on 29th August, 1892.

4. That Defendants' Exhibit No. 1, annexed to the Commission, is the detail of the final certificate alleged by the Plaintiff in his declaration.

5. That the said Plaintiff and the said Moore & Wright brought suit before this Court against the Quebec Harbour Commissioners for the balance claimed by them, which suit was finally decided in Appeal by the Supreme Court of Canada by the judgment of which Court, pronounced on the seventeenth day of January eighteen hundred and ninety-two, the Quebec Harbour Commissioners were condemned to pay unto the said Plaintiff and Moore & Wright the sum of eighty-seven thousand four hundred and sixty-eight dollars and seventy one cents ($87,468.71), with interest thereon at six per centum per annum, from the fourth day of February eighteen hundred and eighty-six, a copy of which judgment is herewith produced, which said sum comprises the amount of the final certificate, viz : fifty two thousand and eleven dollars and twenty-one cents ($52011.21) with addition thereto of the sum of thirty-one thousand and fifty dollars which has been wrongfully deducted for a supposed clerical error in the dredging and with the addition also of the further sum of four thousand four hundred and seven dollars and fifty cents ($4407.50) on the last mentioned item respecting the removal of sand left on the Louise Embankment making the total amount of the said judgment as above stated.

6. The parties admit that the deposit referred to in the agreement Plaintiff's Exhibit No. 5, was duly made.

7. That Plaintiff's Exhibit 24, was one on the working plans used on the works.

Quebec 7 December, 1895.

Caron, Pentland & Stuart for Deft.
Gibsone & Aylwin for Plff.

RECORD.

In the Superior Court.

No. 69 Plaintiff's List of Exhibits filed at the Trial.

Canada,
Province of Quebec,
District of Quebec.

In the Superior Court.

No. 2453.

Peters, - - - - - - - - - - Plaintiff.

vs.

Moore *et al.*, - - - - - - - - - Defendants.

and

Dame E. J. Lamoureux *et al*, - - - - Plaintiffs *en rep. d'inst.*

PLAINTIFFS' LIST OF EXHIBITS.

A 1. 36 Certificates of Payment.
A 2. 4 Receipts by Contractors to Harbour Commissioners.
not printed ✕A 3. Bundle of Cheques.
A 4. Report by Pilkington to Quebec Harbour Commissioners, dated 11th January, 1882.
A 5. Letter dated 19th December, 1881, signed by W. Pilkington.
A 6. Letter enclosing statement by Pilkington, statement is missing.
A 7. Letter and statement, 10th December, 1879.
A 8. Letter asking advance of $5,000 by Mr. Peters.
A 9. Letter *re* advance of $5,000 from Peters, Moore & Wright, dated 30th June, 1880.
A10. Letter from Kinipple, dated 20th April, 1887, in reply to letter of 18th March last *re* final estimate of $55,011.
A11. Letter 6th December, 1881.
A12. Letter from Peters, Moore & Wright to Quebec Harbour Commissioners, 9th November, 1881.
A13. Letter 29th April, 1886 from Kinipple & Morris to Quebec Harbour Commissioners.
A14. Report by Woodford Pilkington, 11th January, 1882 to A. H. Verret.
A15. Report by Woodford Pilkington, 12th October, 1880.
A17 not printed same as Exhibit 28 A16. Notes on Statements of Arbitration, 26th, 1882.
× A17. Copy Engineers' Calculations of cost of stone-wall, same as Exhibit No. 28 attached to Commission.
A18 not printed same as part of Exhibit 29 ✕ A18. Report Woodford Pilkington to Harbour Commissioners, 18th July, 1878.
A19. Copy letter of Engineers Kinipple & Morris to Verret, 15th April, 1885.
A20. Letter dated 12th December, 1878, from Kinipple & Morris to Peters, Moore & Wright *re* clerical error in dredging.
A21. Letter Kinipple & Morris to Verret, 4th February, 1886.
A22. Letter Verret to Kinipple & Morris, 18th March, 1887.
A23. Progress Estimates.
A24. Progress Estimates.

A25. Statement of Jacobs.
A26. Letter Ed. Moore to S. Peters, January 16th, 1885.
A27. Letter Ed. Moore to S. Peters, June 2nd, 1885.
A28. Letter Ed. Moore to S. Peters, August 6th, 1885.
A29. Letter Peters, Moore & Wright to W. R. Kinipple, April 22nd, 1893.
A30. Letter Kinipple & Jaffrey to Peters, Moore & Wright, May 15th, 1893.
A31. Letter W. R. Kinipple to Peters, Moore & Wright, May 15th, 1893.
A32. Letter Moore & Wright to S. Peters, July 18th, 1878.
A33. Letter Moore & Wright to S. Peters, September 2nd, 1878.
A34. Deductions from Main Contract.
A35. Letter Kinipple & Morris to Moore & Wright, April 19th, 1886.
A36. Statement (calculation) made by Col. Moore.
A37. Calculation made by Col. Moore.
A38. Calculation by A. H. Peters.
A39. Estimates made by Navarre, contractors' engineer.
A40. Balance sheet Harbour Improvements.
A40½ Certificate signed by W. R. Kinipple, 15th January, 1895.
A41. Certificate signed by Kinipple & Jaffrey, 8th January, 1895.
A41. Progress Estimates.
A42. Calculation.
A43. Statement of account between S. Peters, Ed. Moore, A. R. Wright and the Quebec Harbour Commissioners.
A44. Impounded letter.
A45. Letter S. Peters to Ed. Moore, 28th February, 1885.
A46. Letter S. Peters to Mr. Bossé, 2nd March, 1885.
A47. Letter S. Peters to Ed. Moore, 26th March, 1887.
A48. Final Estimate including all Progress Estimates.
A49. Statements: Wood and Iron Work in Bills Nos. 1, 4 and 7 not done. Wood and Iron Work done by S. Peters as a set off for deductions in Bills No. 1, 4 and 7. Account of S. Peters against Moore & Wright.
A50. Masonry face (stone in the walls) 4177.
A51. Peters to Quebec Harbour Commissioners, 8th August, 1887.
A52. Peters to Moore, 24th May, 1887.
A53. Peters to Moore, 4th March, 1886.
A54. Factum in Appeal, Peters & Paquet.
A55. Moore to Peters, January 9th, 1885.
A56. Moore to Peters, September 24th, 1883.

GIBSONE & AYLWIN,
Attys. for Plaintiffs.

(Endorsed).—Plaintiff's list of Exhibits, filed Feb. 11th, 1896. P. M., D. P. S. C.

These are to be read in connt with intg p 177 to 190; & they show that each contractor paid a basis of stone wall 60 ft, to P & Moore concrete backing wall.

RECORD.

Certificate in Book No. 1.

In the Superior Court.

No. 70. Plaintiff's Exhibit at trial A1.

ENGINEER'S CERTIFICATE.

No. 1 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount	529,296	31
Deductions from Contract Amount to this date—approximate value of.	6,873	44
Balance	522,422	87
Additions to Contract Amount to this date—approximate value of..	13,813	68
Approximate total cost of Works	536,236	55

p 265 et seq. Ply ex No 10 not printed same as A1

Kinipple Ev P 254 l. 12
Wood Ev. P 262 l. 3
Venet Ev. P. 275 l. 15 P. 276 l. 2
Moore Ev. P. 294 l. 31
Albert Peters Ev. P. 372 l. 47 P. 375 l. 20

Date of Commencement under Contract, 28th day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates	.....	×	.....	=	.....
Present Certificate	$ 20,766 67	×	$ 2,307 40	=	$ 23,074 07
Totals	20,766 67	×	2,307 40	=	23,074 07

Quebec, Westminster and Greenock.

November 29th, 1877.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment Twenty thousand seven hundred and sixty-six dollars and sixty-seven cents, on account of Works executed between the 28th of May and the 29th of November inst., under a Contract dated 2nd day of May, 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.
per WOODFORD PILKINGTON,
Resident Engineer.

$20,766.67.

REMARKS.—Mr. S. Peters is entitled to receive the sum of..... $ 12,300 19
And Messrs. Moore & Wright are entitled to receive out of the above the sum of..... 8,466 48

$ 20,766 67

WOODFORD PILKINGTON, Resident Engineer.

Certificate in Book No. 1.

RECORD.

In the Superior Court.

No. 70 Plaintiff's Exhibit at trial A1. *continued—*

ENGINEER'S CERTIFICATE.

No. 2 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount	529,296	31
Deduction from Contract Amount to this date—approximate value of.	6,873	44
Balance	522,422	17
Additions to Contract Amount to this date—approximate value of..	15,206	07
Approximate total cost of Works	537,628	24

Date of Commencement under Contract, 1st May, 1877.
Date of Completion under Contract, 2nd of October 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates	$ 20,766 67	×	$ 2,307 40	=	$ 23,074 07
Present Certificate	27,561 84	×	3,062 42	=	30,624 26
Totals	48,328 51	×	5,369 82	=	53,698 33

Quebec, Westminster and Greenock.
July 10th, 1878.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Twenty-seven thousand five hundred and sixty-one dollars and eighty-four cents, on account of Works executed between the 29th of November, 1877, and July 10th, 1878, under a Contract dated the first day of May, 1877.

We remain, Gentlemen,
Your obedient Servants,

$27,561.84.

KINIPPLE & MORRIS, M. I. C. E.,
Engineers.
per WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

REMARKS.—Mr. Peters is entitled to receive	$ 6,822	01
Messrs. Moore & Wright, $20,739.83 less advance $6,000	14,739	83
	$ 21,561	84

WOODFORD PILKINGTON,
Resident Engineer.

RECORD.

In the Superior Court.

No. 70. Plaintiff's Exhibit at trial A1. *continued*—

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 3 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount	529,296	31
Deduction from Contract Amount to this date—approximate value of.	6,873	44
Balance	522,422	17
Additions to Contract Amount to this date—approximate value of..	15,206	07
Approximate total cost of Works, minus the cost of certain materials required to be supplied at schedule rates	537,628	24

Date of Commencement under Contract, 1st day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.	
	$	c.	$	c.	$	c.
Former Certificates.....	48,328	51	× 5,369	82	= 53,698	33
Present Certificate.....	9,000	00	× 1,000	00	= 10,000	00
Totals.....	57,328	51	× 6,369	82	= 63,698	33

Quebec, Westminster and Greenock.
August 14th, 1878.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Nine thousand dollars, on account of Works executed between July 10th, 1878, and August 14th, 1878, under a Contract dated 2nd May, 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
per WOODFORD PILKINGTON,
Resident Engineer.

$9,000.00

REMARKS.—Mr. Peters is entitled to receive the full amount of this certificate.

WOODFORD PILKINGTON,
Resident Engineer.

August 14th, 1878.

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 4 UNDER THIS CONTRACT.

Works : Harbour Improvements Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount	529,296	31
Deduction from Contract Amount to this date—approximate value of.	6,873	44
Balance	522,422	97
Additions to Contract Amount to this date—approximate value of..	15,206	07
Approximate total cost of Works, exclusive of the cost of certain materials required to be supplied at schedule rates	537,628	04

Date of Commencement under Contract, 1st day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates	$ 57,328 51	×	$ 6,369 82	=	$ 63,698 33
Present Certificate	9,000 00	×	1,000 00	=	10,000 00
Totals	66,328 51	×	7,369 82	=	73,698 33

Quebec, Westminster and Greenock.
August 28th, 1878.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Nine thousand dollars, on account of Works executed between July 10th, 1878, and August 28th, 1878, under a Contract dated 2nd May, 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.
per WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

$9,000.00

REMARKS.—Messrs. Moore & Wright are entitled to receive the full amount of certificate, viz., $9,000.00.

WOODFORD PILKINGTON,
Resident Engineer.

August 28th, 1878.

RECORD.

In the Superior Court.

No. 70 Plaintiff's Exhibit at trial A1. *continued*—

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 5 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount	529,296	31
Deductions from Contract Amount to this date—approximate value of.	6,873	44
Balance	522,422	97
Additions to Contract Amount to this date—approximate value of..	15,206	07
Approximate total cost of Works, exclusive of the cost of certain materials required to be supplied at schedule rates	537,628	04

Date of Commencement under Contract, May 1st, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates	$ 66,328 57	×	$ 7,369 82	=	$ 73,698 39
Present Certificate	10,648 91	×	1,183 21	=	11,832 12
Totals	$ 76,977 48	×	$ 8,553 03	=	$ 85,530 51

Quebec, Westminster and Greenock.

September 18th, 1878.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment Ten thousand six hundred and forty-eight dollars and ninety-one cents, on account of Works executed between the 28th of August and the 18th of September, under a Contract dated 2nd day of May, 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.
per WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

$10,648.91.

REMARKS.—Mr. S. Peters is entitled to receive the full amount of this certificate.
WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

September 18th, 1878.

Certificate in Book No. 1. RECORD.

In the Superior Court.

No. 70 Plaintiff's Exhibit at trial A1. *continued—*

ENGINEER'S CERTIFICATE.

No. 6 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount	529,296	31
Deduction from Contract Amount to this date—approximate value of.	6,873	44
Balance	522,422	97
Additions to Contract Amount to this date—approximate value of..	15,206	07
Approximate total cost of Works, exclusive of the cost of certain materials required to be supplied at schedule rates	537,628	05

Date of Commencement under Contract, May 1st, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.	
	$	c.	$	c.	$	c.
Former Certificates.....	76,977	48	8,553	03	85,530	51
Present Certificate.....	14,839	20	1,648	80	16,488	00
Totals.....	$ 91,816	68	$ 10,201	83	$102,018	51

Quebec, Westminster and Greenock.
September 18th, 1878.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Fourteen thousand eight hundred and thirty-nine dollars and twenty cents, on account of Works executed between the 28th day of August and the 18th of September under a Contract dated 2nd day of May.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.
per WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

$14,839.20

REMARKS.—Messrs. Moore & Wright are entitled to receive the full amount of this certificate.

WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

September 18th, 1878.

RECORD.

In the Superior Court.

No. 70.
Plaintiff's Exhibit at trial A1.
continued—

Certificate in Book No 1.

ENGINEER'S CERTIFICATE.

No. 7 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount	529,296	31
Deduction from Contract Amount to this date—approximate value of.	6,873	44
Balance	522,422	87
Additions to Contract Amount to this date—approximate value of..	15,306	07
Approximate total cost of Works exclusive of the cost of certain materials required to be supplied at schedule rates	537,728	94

Date of Commencement under Contract, 1st day of May, 1877.
Date of Completion under Contract, 2nd day of October 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates	$ 91,816 68	×	$ 10,201 83	=	$102,018 51
Present Certificate	18,486 00	×	2,054 00	=	20,540 00
Totals	$110,302 68	×	$ 12,255 83	=	$122,558 51

Quebec, Westminster and Greenock.
October 2nd, 1878.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Eighteen thousand four hundred and eighty-six dollars, on account of Works executed between the 18th day of September, and 2nd day of October, 1878, under a Contract dated May 1st, 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.
per WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

$18,486.00.

REMARKS.—Messrs. Moore & Wright are entitled to receive the full amount of this certificate.

WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

October 2nd, 1878.

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 8 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount	529,296	31
Deductions from Contract Amount to this date—approximate value of.	6,873	44
Balance	522,422	87
Additions to Contract Amount to this date—approximate value of..	15,306	07
Approximate total cost of Works, exclusive of the cost of certain materials required to be supplied at schedule rates	537,728	94

Date of Commencement under Contract, 1st day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$110,302 68	×	$ 12,255 83	=	$122,558 51
Present Certificate.....	9,000 00	×	1,000 00	=	10,000 00
Totals.....	$119,302 68	×	$ 13,255 83	=	$132,558 51

Quebec, Westminster and Greenock.

October 16th, 1878.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Nine thousand dollars, on account of Works executed between October 2nd and October 16th, 1878, under a Contract dated

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.
per WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

$9,000.00.

REMARKS.—Mr. S. Peters is entitled to receive the full amount of this certificate.
WOODFORD PILKINGTON,
Resident Engineer.

RECORD.

In the Superior Court.

No. 70
Plaintiff's Exhibit at trial A1. *continued*—

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 9 UNDER THIS CONTRACT.

Works : Harbour Improvements Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount	529,296	31
Deduction from Contract Amount to this date—approximate value of.	6,873	44
Balance	522,422	87
Additions to Contract Amount to this date—approximate value of..	15,306	07
Approximate total cost of Works, exclusive of the cost of certain materials required to be suppliated schedule rates	537,728	94

Date of Commencement under Contract, 1st day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates	$119,302 68	×	$ 13,255 83	=	$132,558 51
Present Certificate	10,098 00	×	1,122 00	=	11,220 00
Totals	$129,400 68	×	$14,377 83	=	$143,778 51

Quebec, Westminster and Greenock.
October 23rd, 1878.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Ten thousand and ninety-eight dollars, on account of Works executed between October 2nd and October 23rd, 1878, under a Contract dated May 1st, 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.
per WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

$10,098.00

REMARKS.—Messrs. Moore & Wright are entitled to receive the full amount of certificate.

WOODFORD PILKINGTON,
Resident Engineer.

Quebec, October 23rd, 1878.

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 10 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount	529,296	31
Deduction from Contract Amount to this date—approximate value of.	6,873	44
Balance	522,422	87
Additions to Contract Amount to this date—approximate value of..	15,306	07
Approximate total cost of Works, exclusive of the cost of certain materials required to be supplied at schedule rates	537,728	94

Date of Commencement under Contract, 2nd day of May 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.			Percentages Retained up to this date.			Approximate Value of Contract and Extra Works Executed up to this date.	
	$	c.		$	c.		$	c.
Former Certificates	129,400	68	×	14,377	83	=	143,778	51
Present Certificate	13,500	00	×	1,500	00	=	15,000	00
Totals	$ 142,900	68	×	$ 15,877	83	=	$158,778	51

Quebec, Westminster and Greenock.
~~September~~ 6th, 1878.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Thirteen thousand five hundred dollars, on account of Works executed between October 2nd and November 6th 1878 under a Contract dated 2nd day of May, 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.
per WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

$13,500.00

REMARKS.—Messrs. Moore & Wright are entitled to receive the full amount of this certificate.

WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

November 6th, 1878.

RECORD.

In the Superior Court.

No. 70. Plaintiff's Exhibit at trial A1. *continued*—

Certificate in Book No 1.

ENGINEER'S CERTIFICATE.

No. 11 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount	529,296	31
Deduction from Contract Amount to this date—approximate value of.	6,873	44
Balance	522,422	87
Additions to Contract Amount to this date—approximate value of..	15,306	07
Approximate total cost of Works exclusive of the cost of certain materials required to be supplied at schedule rates	537,728	94

Date of Commencement under Contract, 2nd May, 1877.
Date of Completion under Contract, 2nd October 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates	$142,900 68	×	$ 15,877 83	=	$158,778 51
Present Certificate	15,041 30	×	1,671 25	=	16,712 55
Totals	$157,941 98	×	$ 17,549 08	=	$175,491 06

Quebec, Westminster and Greenock.
November 20th, 1878.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Fifteen thousand and forty-one dollars, and thirty cents on account of Works executed between November 6th and November 20th 1878, under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.
per WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

$15,041.30.

REMARKS.—Mr. S. Peters is entitled to receive $5,139 50
Messrs. Moore & Wright to receive 9,901 80

Out of the above sum of $15,041 30

WOODFORD PILKINGTON,
Resident Engineer.

November 20th, 1878.

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 12 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deductions from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works, ...		

Date of Commencement under Contract,
Date of Completion under Contract,
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....		×		=	
Present Certificate.....		×		=	
Totals.....		×		=	

Quebec, Westminster and Greenock.

December 5th, 1878.

To the Harbour Commissioners Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Nineteen thousand nine hundred and fifty-five dollars, eight cents on account of Works executed between November 6th and 26th 1878, under a Contract dated the 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,

$19,955.08.

per WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

REMARKS.—Messrs. Moore & Wright are entitled to receive the full amount of this certificate.

WOODFORD PILKINGTON,
Resident Engineer.

Quebec, December 5th, 1878.

RECORD.

Certificate in Book No. 1.

In the Superior Court.

No. 70
Plaintiff's Exhibit at trial A1. *continued*—

ENGINEER'S CERTIFICATE.

No. 13 UNDER THIS CONTRACT.

Works : Harbour Improvements Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works, exclusive of the cost of certain materials required to be suppliated schedule rates.....		

Date of Commencement under Contract,
Date of Completion under Contract,
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$177,897 06	×	$ 19,766 31	=	$197,663 37
Present Certificate.....	9,000 00	×	1,000 00	=	10,000 00
Totals.....	$186,897 06	×	$20,766 31	=	$207,663 37

Quebec, Westminster and Greenock.
June 11th, 1879.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Nine thousand dollars, on account of Works executed between May 1st and June 10th 1879 under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,

$9,000.00

per WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

REMARKS.—Mr. S. Peters is entitled to the full amount of this certificate.

WOODFORD PILKINGTON,
Resident Engineer.

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 14 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright. $ c.
Contract Amount.....
Deduction from Contract Amount to this date—approximate value of.
Balance.....
Additions to Contract Amount to this date—approximate value of..
Approximate total cost of Works, ...

Date of Commencement under Contract,
Date of Completion under Contract,
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$186,897 06	×	$20,766 31	=	$207,663 37
Present Certificate.....	11,431 74	×	1,270 19	=	12,701 93
Totals.....	$198,328 80	×	$22,036 50	=	$220,365 30

Quebec, Westminster and Greenock.

July 9th, 1879.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Eleven thousand four hundred and thirty-one dollars, and 74 cents on account of Works executed between June 10th and July 1st 1879, under a Contract dated the 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,

$11,431.74.

per WOODFORD PILKINGTON,
Resident Engineer.

REMARKS.—Mr. Simon Peters is entitled to receive the full amount of this certificate.

WOODFORD PILKINGTON,
Resident Engineer.

Quebec, July 9th, 1879.

RECORD.

In the Superior Court.

No. 70
Plaintiff's Exhibits at trial A1.
continued—

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 15 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deductions from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract,
Date of Completion under Contract,
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$198,328 80	×	$ 22,036 50	=	$220,365 30
Present Certificate.....	18,000 00	×	2,000 00	=	20,000 00
Totals.....	$216,328 80	×	$24,036 50	=	$240,365 30

Quebec, Westminster and Greenock.
July 31st, 1879.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Eighteen thousand dollars, on account of Works executed between May 1st and July 30th 1879 under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,

$18,000.00

per WOODFORD PILKINGTON,
Resident Engineer.

REMARKS.—Messrs. Moore & Wright are entitled to the full amount of this certificate.

WOODFORD PILKINGTON,
Resident Engineer.

Quebec, July 31st 1879.

Certificate in Book No. 1.

RECORD.

In the Superior Court.

No. 70 Plaintiff's Exhibits at trial A1. *continued—*

ENGINEER'S CERTIFICATE.

No. 16 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract,
Date of Completion under Contract,
Extended Date of Completion,

	Certified Amounts.			Percentages Retained up to this date.			Approximate Value of Contract and Extra Works Executed up to this date.	
	$	c.		$	c.		$	c.
Former Certificates.....	216,328	80	×	24,036	50	=	240,365	30
Present Certificate.....	20,301	32	×	2,255	70	=	22,557	02
Totals.....	$ 236,630	12	×	$ 26,292	20	=	$262,922	32

Quebec, Westminster and Greenock.
August 7th, 1879.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Twenty thousand three hundred and one dollars, and thirty-two cents on account of Works executed between July 1st and August 1st 1879, under a Contract dated

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.
per WOODFORD PILKINGTON,
Resident Engineer.

$20,301.32

REMARKS.—Mr. S. Peters is entitled to receive the full amount of this certificate.

WOODFORD PILKINGTON,
Resident Engineer.

August 7th, 1879.

RECORD.

In the Superior Court.

No. 70
Plaintiff's Exhibits at trial A1.
continued—

Certificate in Book No 1.

ENGINEER'S CERTIFICATE.

No. 17 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 1st May, 1877.
Date of Completion under Contract, 2nd October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$236,630 12	×	$ 26,292 20	=	$262,922 32
Present Certificate.....	18,000 00	×	2,000 00	=	20,000 00
Totals.....	$254,630 12	×	$ 28,292 20	=	$282,922 32

Quebec, Westminster and Greenock.

September 9th, 1879.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Eighteen thousand dollars on account of Works executed between August 4th and September 9th 1879, under a Contract dated 1st day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,

$18,000.00.

per WOODFORD PILKINGTON,
Resident Engineer.

REMARKS.—Mr. S. Peters is entitled to receive the full amount of this certificate.

WOODFORD PILKINGTON,
Resident Engineer.

September 9th, 1879.

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 18 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deductions from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 1st day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$254,630 12	×	$ 28,292 20	=	$282,922 32
Present Certificate.....	26,048 61	×	2,894 29	=	28,942 90
Totals.....	$280,678 73	×	$31,186 49	=	$311,865 22

Quebec, Westminster and Greenock.
October 1st, 1879.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Twenty-six thousand and forty-eight dollars and sixty-one cents on account of Works executed between Augt. 1st and September 30th 1879, under a Contract dated 1st day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,

$26,048.61

per WOODFORD PILKINGTON, M. I. C. E.
Resident Engineer.

REMARKS.—Messrs. Moore & Wright are entitled to received the full amount of this certificate, it being for concreting in back of walls and foundations exclusively.

WOODFORD PILKINGTON,
Resident Engineer.

October 31st 1879.

RECORD.

In the Superior Court.

No. 70
Plaintiff's Exhibits at trial A1.
continued—

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 19 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works, ...		

Date of Commencement under Contract, 1st day of May 1877.
Date of Completion under Contract, 2nd day Oct. 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$280,678 73	×	$31,186 49	=	$311,865 22
Present Certificate.....	12,241 82	×	1,360 20	=	13,602 02
Totals.....	$292,920 55	×	$32,546 69	=	$325,467 24

Quebec, Westminster and Greenock.

October 1st, 1879.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Twelve thousand two hundred and forty-one dollars, and 82 cents on account of Works executed between September 9th and October 1st 1879, under a Contract dated 1st day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,

$12,241.82.

per WOODFORD PILKINGTON,
Resident Engineer.

REMARKS.—Mr. Simon Peters is entitled to receive the full amount of this certificate.

WOODFORD PILKINGTON,
Resident Engineer.

Oct. 1st, 1879.

Certificate in Book No. 1. RECORD.

In the Superior Court.

No. 70 Plaintiff's Exhibits at trial A1. *continued—*

ENGINEER'S CERTIFICATE.

No. 20 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 1st day of May 1877.
Date of Completion under Contract, 2nd day of May 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$292,920 55	×	$32,546 69	=	$325,467 24
Present Certificate.....	13,143 10	×	1,460 34	=	14,603 44
Totals.....	$ 306,063 65	×	$ 34,007 03	=	$340,070 68

Quebec, Westminster and Greenock.
October 22nd, 1879.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Thirteen thousand one hundred and forty-three dollars, and ten cents on account of Works executed between October 1st to 22nd 1879, under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.

$13,143.10

per WOODFORD PILKINGTON,
Resident Engineer.

REMARKS.—Mr. S. Peters is entitled to receive the full amount of this certificate.

WOODFORD PILKINGTON,
Resident Engineer.

October 22nd, 1879.

RECORD.

In the Superior Court.

No. 70 Plaintiff's Exhibits at trial A1. *continued*—

Certificate in Book No 1.

ENGINEER'S CERTIFICATE.

No. 21 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 1st day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$306,063 65	×	$ 34,007 03	=	$340,070 68
Present Certificate.....	19,843 94	×	2,204 88	=	22,048 82
Totals.....	$325,907 59	×	$ 36,211 91	=	$362,119 50

Quebec, Westminster and Greenock.

November 5th, 1879.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Nineteen thousand eight hundred and forty-three dollars and ninety-four cents on account of Works executed between September 30th and November 1st 1879, under a Contract dated 1st day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
Engineers.

$19,843.94.

per WOODFORD PILKINGTON, M. I. C. E.
Resident Engineer.

REMARKS.—Messrs. Moore & Wright are entitled to received the full amount of this certificate.

WOODFORD PILKINGTON,
Resident Engineer.

Certificate in Book No. 1.

RECORD

In the Superior Court.

No. 70 Plaintiff's Exhibits at trial A1. *continued—*

ENGINEER'S CERTIFICATE.

No. 22 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 1st day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$325,907 59	×	$ 36,211 91	=	$362,119 50
Present Certificate.....	45,444 38	×	5,049 37	=	50,493 75
Totals.....	$371,351 97	×	$41,261 28	=	$412,613 25

Quebec, Westminster and Greenock.
December 3rd, 1879.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Forty-five thousand four hundred and forty-four dollars and thirty-eight cents on account of Works executed between the 9th of May and 1st day of December 1879, under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS,
Engineers.
per WOODFORD PILKINGTON,
Resident Engineer.

$45,444.38

REMARKS.—Messrs. Moore & Wright are entitled to received the full amount of this certificate. The certificate includes total balances to date on actual work done in dredging, concreting and aggregates, viz. broken stone, clay and stone, piling, &c., from the 9th of May to close of season December 1st 1879.

WOODFORD PILKINGTON,
Resident Engineer.

Dec. 3rd 1879.

RECORD.

In the Superior Court.

No. 70 Plaintiff's Exhibits at trial A1. *continued*—

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 23 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works, ...		

Date of Commencement under Contract, 2nd day of May 1877.
Date of Completion under Contract, 2nd day Oct. 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$371,351 97	×	$41,261 28	=	$412,613 25
Present Certificate.....	8,624 88	×	958 31	=	9,583 19
Totals.....	$379,976 85	×	$42,219 59	=	$422,196 44

Quebec, Westminster and Greenock.

December 3rd, 1879.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Eight thousand six hundred and twenty-four dollars, and eighty-eight cents on account of Works executed between the 1st of November and the 1st December 1879, under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS,
Engineers.

$8,624.88

per WOODFORD PILKINGTON,
Resident Engineer.

REMARKS.—Mr. Simon Peters is entitled to receive the full amount of this certificate.

WOODFORD PILKINGTON,
Resident Engineer.

Quebec, December 3rd, 1879.

Certificate in Book No. 1.

RECORD.

In the Superior Court.

No. 70. Plaintiff's Exhibit at trial A1. *continued—*

ENGINEER'S CERTIFICATE.

No. 24 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 2nd day of May 1877.
Date of Completion under Contract, 2nd day of Oct. 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$379,976 85	×	$42,219 59	=	$422,196 44
Present Certificate.....	5,361 78	×	595 75	=	5,957 53
Totals.....	$ 385,338 63	×	$ 42,815 34	=	$428,153 97

Quebec, Westminster and Greenock.
December 17th, 1879.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Five thousand three hundred and sixty-one dollars, and seventy-eight cents on account of Works executed between the 1st of November and 1st of December 1879, under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
per WOODFORD PILKINGTON,
Resident Engineer.

$5,361.78

REMARKS.—This certificate refers to the balance to date on outside crib work and completed to coping level by authority the Board—and to be banked in.

WOODFORD PILKINGTON,
Resident Engineer.

Quebec, December 17th, 1879.

This shows from Alexander Peters

RECORD.

In the Superior Court.

No. 70. Plaintiff's Exhibit at trial A1. *continued*—

Certificate in Book No 1.

ENGINEER'S CERTIFICATE.

No. 25 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 1st day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$385,338 63	×	$ 42,815 34	=	$428,153 97
Present Certificate.....	10,800 00	×	1,200 00	=	12,000 00
Totals.....	$396,138 63	×	$ 44,015 34	=	$440,153 97

Quebec, Westminster and Greenock.

June 16th, 1880.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Ten thousand eight hundred dollars on account of Works executed between the 10th and 16th of June under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,

$10,800.00.

KINIPPLE & MORRIS,
Engineers.

per WOODFORD PILKINGTON,
Resident Engineer.

REMARKS.—This certificate is on account of dredging.

WOODFORD PILKINGTON,

Certificate in Book No. 1.

RECORD.

In the Superior Court.

No. 70.
Plaintiff's Exhibit at trial A1.
continued—

ENGINEER'S CERTIFICATE.

No. 26 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 1st day of May 1877.
Date of Completion under Contract, 2nd day of Oct. 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$396,138 63	×	$44,015 34	=	$440,153 97
Present Certificate.....	9,102 03	×	1,011 33	=	10,113 36
Totals.....	$405,240 66	×	$45,026 67	=	$450,267 33

Quebec, Westminster and Greenock.
July 14th, 1880.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Nine thousand one hundred and two dollars, three cents, on account of Works executed between June and July inclusive under a Contract dated 2nd day of May, 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
per WOODFORD PILKINGTON,
Resident Engineer.

$9,102.03

REMARKS :—

This is the only one in the Book
so no indication ; & it should
by progress estr whose work is
Mark : below to over &

RECORD.

In the Superior Court.

No. 70.
Plaintiff's Exhibit at trial A1.
continued—

Certificate in Book No 1.

ENGINEER'S CERTIFICATE.

No. 27 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 2nd day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$405,240 66	×	$ 45,026 67	=	$450,267 33
Present Certificate.....	12,197 49	×	1,355 27	=	13,552 76
Totals.....	$417,438 09	×	$ 46,381 94	=	$463,802 09

Quebec, Westminster and Greenock.

August 11th, 1880.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Twelve thousand one hundred and ninety-seven dollars, forty-nine cents, on account of Works executed between July and August inclnsive under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.
Engineers.

$12,197.49.

per WOODFORD PILKINGTON,
Resident Engineer.

REMARKS.—Mr. S. Peters, for timber work in cribs and piling, bollards, &c.

WOODFORD PILKINGTON,
Resident Engineer.

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 28 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 2nd day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$417,438 09	×	$ 46,381 94	=	$463,820 09
Present Certificate.....	12,600 00	×	1,400 00	=	14,000 00
Totals.....	$430,038 09	×	$47,781 94	=	$477,820 09

Quebec, Westminster and Greenock.
August 18th, 1880.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Twelve thousand six hundred dollars, on account of Works executed between July and August inclusive under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.
Engineers.

$12,600.00

per WOODFORD PILKINGTON,
Resident Engineer.

REMARKS.—Messrs. Moore & Wright dredging and concrete.

RECORD.

In the Superior Court.

No. 70 Plaintiff's Exhibits at trial A1. *continued*—

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 29 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works,.....		

Date of Commencement under Contract, 2nd day of May 1877.
Date of Completion under Contract, 2nd day Oct. 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$430,038 15	×	$47,781 94	=	$477,820 09
Present Certificate.....	10,673 84	×	1,185 98	=	11,859 82
Totals.....	$440,711 99	×	$48,967 92	=	$489,679 91

Quebec, Westminster and Greenock.

September 2nd, 1880.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Ten thousand six hundred and seventy-three dollars, and eighty-four cents on account of Works executed August and September under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.
per WOODFORD PILKINGTON,
Resident Engineer.

REMARKS.—Mr. S. Peters, masonry, cribs and piling.

Certificate in Book No. 1.

RECORD.

In the Superior Court.

No. 70 Plaintiff's Exhibit at trial A1. *continued—*

ENGINEER'S CERTIFICATE.

No. 30 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 2nd day of May 1877.
Date of Completion under Contract, 2nd day of Oct. 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$440,711 99	×	$48,967 92	=	$489,679 91
Present Certificate.....	20,101 23	×	2,233 47	=	22,334 70
Totals.....	$ 460,813 22	×	$ 51,201 39	=	$512,014 61

Quebec, Westminster and Greenock.
September 15th, 1880.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Twenty thousand one hundred and one dollars, and twenty-three cents, on account of Works executed between May and September under a Contract dated 2nd day of May, 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.,
per WOODFORD PILKINGTON,
Resident Engineer.

$20,101.23

REMARKS :—Messrs. Moore & Wright, concrete, dredging and aggregates.

RECORD.

In the Superior Court.

No. 70 Plaintiff's Exhibit at trial A1. *continued*—

Certificate in Book No 1.

ENGINEER'S CERTIFICATE.

No. 31 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract,
Date.of Completion under Contract,
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$460,813 22	×	$ 51,201 39	=	$512,014 61
Present Certificate.....	9,111 57	×	1,012 39	=	10,123 96
Totals.....	$469,924 79	×	$ 52,213 78	=	$522,138 57

Quebec, Westminster and Greenock.

October 6th, 1880.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Nine thousand one hundred and eleven dollars and fifty-seven cents, on account of Works executed between 1st September and October under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS,

$9,111.57.

per WOODFORD PILKINGTON, M. I. C. E.
Resident Engineer.

REMARKS.—Mr. S. Peters, for crib work, return timber work and masonry.

WOODFORD PILKINGTON.

Certificate in Book No. 1.

RECORD

In the Superior Court.

No. 70. Plaintiff's Exhibit at trial A1, *continued*—

ENGINEER'S CERTIFICATE.

No. 32 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 2nd day of May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$469,924 79	×	$ 52,213 78	=	$522,138 57
Present Certificate.....	11,240 73	×	1,248 97	=	12,489 70
Totals.....	$481,165 52	×	$53,462 75	=	$534,628 27

Quebec, Westminster and Greenock.
October 20th, 1880.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Eleven thousand two hundred and forty dollars, seventy-three cents on account of Works executed between the 15th September and 15th October instant under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.
per WOODFORD PILKINGTON, M. I. C. E.
Resident Engineer.

$11,240.73

REMARKS.—Messrs. Moore & Wright, for concrete, masonry backing and dredging.

WOODFORD PILKINGTON,
Resident Engineer.

RECORD.

In the Superior Court.

No. 70. Plaintiff's Exhibit at trial A1, *continued*—

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 33 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works, ...		

Date of Commencement under Contract, 2nd day of May 1877.
Date of Completion under Contract, 2nd day of Oct. 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$481,165 52	×	$53,462 75	=	$534,628 27
Present Certificate.....	33,164 70	×	3,684 96	=	36,849 66
Totals.....	$514,330 22	×	$57,147 71	=	$571,477 93

Quebec, Westminster and Greenock.
November 23rd, 1880.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Thirty-three thousand one hundred and sixty-four dollars and seventy cents on account of Works executed between the months of June and November under a Contract dated 2nd day of May 1877.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS, M. I. C. E.
Engineers.
per WOODFORD PILKINGTON, M. I. C. E.
Resident Engineer.

$33,164.70

Dredging
work
P
M & W

REMARKS.—Masonry and carpenter work..... $ 6,318 75
Dredging and concrete with aggregates, &c..... 26,845 95

Total final certificate, 1880..... $33,164 70

WOODFORD PILKINGTON,
Resident Engineer.

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 34 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, dated 2nd May, 1877.
Date of Completion under Contract, 2nd day of October, 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$514,330 22	×	$ 57,147 71	=	$571,477 93
Present Certificate.....	14,771 25	×	1,641 25	=	16,412 50
Totals.....	$529,101 47	×	$58,788 96	=	$587,890 43

Quebec, Westminster and Greenock.
August 3rd, 1881.

To the Harbour Commissioners, Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Fourteen thousand seven hundred and seventy-one dollars, and twenty-five cents on account of Works executed between June and July 1881, under a Contract dated 2nd day of May 1877, and without prejudice to any claim the Commissioners may have under clause 53, page 14 of specification.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS,
Engineers.

per WOODFORD PILKINGTON,
Resident Engineer.

$14,771.25

REMARKS.—For concrete work at back of masonry and dredging in upper channel and supplementary tender.

Mow by work

RECORD.

In the Superior Court.

No. 70. Plaintiff's Exhibit at trial A1, *continued*—

Certificate in Book No. 1.

ENGINEER'S CERTIFICATE.

No. 35 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works, ...		

Date of Commencement under Contract, 2nd day of May 1877.
Date of Completion under Contract, 2nd day of Oct. 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$529,101 47	×	$58,788 96	=	$587,890 43
Present Certificate.....	10,021 04	×	1,113 44	=	11,134 48
Totals.....	$539,122 51	×	$59,902 40	=	$599,024 91

Quebec, Westminster and Greenock.
August 3rd, 1881.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright of Quebec, may receive (subject to Conditions of Contract) a payment of Ten thousand and twenty-one dollars and 4 cents on account of Works executed between June and July inclusive under a Contract dated 2nd day of May 1877, and without prejudice to any claim the Commissioners may have under clause 53, page 14, of specification.

We remain, Gentlemen,
Your obedient Servants,
KINIPPLE & MORRIS,
Engineers.
per WOODFORD PILKINGTON,
Resident Engineer.

$10,021.04

REMARKS.—For stone facing work, mooring posts and boxes.

Certificate in Book No. 1.

RECORD.

In the Superior Court.

No. 70 Plaintiff's Exhibit at trial A1. *continued—*

ENGINEER'S CERTIFICATE.

No. 36 UNDER THIS CONTRACT.

Works : Harbour Improvement Works, Quebec.
Contractors : Messrs. Peters, Moore & Wright.

	$	c.
Contract Amount.....		
Deduction from Contract Amount to this date—approximate value of.		
Balance.....		
Additions to Contract Amount to this date—approximate value of..		
Approximate total cost of Works.....		

Date of Commencement under Contract, 2nd day of May 1877.
Date of Completion under Contract, 2nd day of Oct. 1880.
Extended Date of Completion,

	Certified Amounts.		Percentages Retained up to this date.		Approximate Value of Contract and Extra Works Executed up to this date.
Former Certificates.....	$539,122 51	×	$59,902 40	=	$599,024 91
Present Certificate.....	17,100 00	×	1,900 00	=	19,000 00
Totals.....	$ 556,222 51	×	$ 61,802 40	=	$618,024 91

Quebec, Westminster and Greenock.
October 5th, 1881.

To the Harbour Commissioners of Quebec.

We hereby certify that Messrs. Peters, Moore & Wright, of Quebec, may receive (subject to Conditions of Contract) a payment of Seventeen thousand one hundred dollars, on account of Works executed between July and October under a Contract dated 2nd day of May, 1877, and without prejudice to any claim the Commissioners may have under clause 53, page 14, of the specification.

We remain, Gentlemen,
Your obedient Servants,

$17,100.00

KINIPPLE & MORRIS,
Engineers.

per WOODFORD, PILKINGTON,
Resident Engineer.

REMARKS :—For dredging and concrete.

RECORD.

In the Superior Court.

No. 71
Plaintiff's Exhibit at trial A2.
12 Sept. 1879. to 15 June 1882.

$12,000.00 Quebec, 12th September, 1879.

Received from the Quebec Harbour Commissioners, the sum of Twelve Thousand Dollars on account of an advance made to us on account of our Contract for the Harbour Improvements, as per Resolution adopted by said Commissioners at their meeting, held yesterday.

SIMON PETERS,
EDWARD MOORE,
AUGUSTUS R. WRIGHT.

HARBOUR COMMISSIONERS' QUEBEC.

$13,000.00 Quebec, 13th September, 1879.

Received from the Secretary Treasurer of the "Quebec Harbour Commission" Thirteen Thousand Dollars, on account of an advance made to us on account of our Contract for the Harbour Improvements, as per Resolution adopted by said Commissioners at their meeting held the 11th instant.

Wood's Ed. P. 262 l. 6

SIMON PETERS,
EDWARD MOORE,
AUGUSTUS R. WRIGHT.

HARBOUR COMMISSIONERS' OFFICE.

$5,000.00 Quebec, 21st February, 1880.

Received from the Secretary Treasurer of the "Quebec Harbour Commission" Five Thousand Dollars, amount advanced to us by the Quebec Harbour Commissioners on account of works.

SIMON PETERS,
EDWARD MOORE,
AUGUSTUS R. WRIGHT.

(Voted at the meeting held the 21st June, 1882.—A. H. V.)

HARBOUR COMMISSIONERS' OFFICE.

$20,000.00 Quebec, 4th July, 1882.

Received from the Secretary Treasurer of the "Quebec Harbour Commission" Twenty Thousand Dollars, on account of our claim against the Commission for works executed under our contract for the construction of the Harbour Improvements, pending the final settlement of said contract, and without prejudice to the questions remaining undetermined between the Commissioners and ourselves.

SIMON PETERS,
EDWARD MOORE,
AUGUSTUS R. WRIGHT,
by A. H. JACOBS,
Attorney.

RECORD.

In the Superior Court.

No. 71. Plaintiff's Exhibit at trial A2. 12 Sept. 1879. to 15 June 1882. *continued—*

HARBOUR COMMISSIONERS' OFFICE.

$10,000.00 Quebec, 15th June, 1882.

Received from the Secretary Treasurer of the "Quebec Harbour Commission" Ten Thousand Dollars, on account of works executed by us under our Contract for the construction of the Harbour Improvements and without prejudice to the questions remaining undetermined between the Commissioners and ourselves.

SIMON PETERS,
EDWARD MOORE,
AUGUSTUS R. WRIGHT,

by A. H. JACOBS,
Attorney.

(Endorsed) Plaintiff's Exhibit A2. Filed 11th February, 1896.
P. M., D. P. S. C.

No. 72 Plaintiff's Exhibit at trial A4. 11th Jan. 1882.

REPORT on Contractors Peters, Moore & Wright's Statement of Account for the Harbour Improvements River St. Charles, in connection with the closing of their contract.

RESIDENT ENGINEER'S OFFICE.

Harbour Improvement Works, Quebec.
January 11th, 1882.

A. H. VERRET, ESQ.,
Secretary-Treasurer.

SIR,

I have the honor to acknowledge the receipt of your letter of the 5th inst., conveying to me the statement of claims of details of summary carried to abstract as submitted by the Contractors Messrs. Peters, Moore & Wright on account of works executed by them, as above, under title of the Quebec Harbour Improvements.

This statement has been divided by the Contractors into two parts : Sheets Nos. 1 and 2, (returned herewith). Sheet No. 1 being for wood, iron work and cut stone wall and sheet No. 2 for dredging, concrete and other works.

In the counter statement and remarks accompanying this Report, the form previously adopted as a whole has been retained as being in accordance with contract and as being of easier reference to and comparison with the contract itself.

This counter statement is divided into four columns of reference.

Column No. 1 represents the different amounts as claimed by the Contractors, placed *seriatim* in the order of the Bills of Quantities 1 to 14, the total sum of $760,512.11, being the same as that given by the Contractors.

Column No. 2 shews the different amounts representing the same services and work line for line, as given in the official statement previously made the total sum $658,885.84, being the same as the total claim shewn in the balance sheet of the said official statement.

Column No. 3, shews the differences in amount between these items of work as contained in the Bills of Quantities, deductions made and modifications agreed upon—line for line—in excess of those allowed in the official statement. The total being in amount $112,448.80.

Column No. 4, shews certain items of difference apparently in excess of those claimed by the Contractors but, these are no doubt charged in unexplainable items in the sums of other differences the precise place of which cannot *ex facie* be determined, this total amounts to $10,822.53.

The column for Remarks on each item follows condensed, but, as definite as the space will permit.

Finally a foot note statement at the bottom of folio 2, shewing the contract method of determining the cost of the front face or quay wall, plus the masonry extra of $21,974.90, which deducting the amount for fenders and bollards, not put in, and not included in former official statement, leaves a balance in excess, unexplainable and unaccounted for, of $2,635.78.

The Contractors' statement sheets Nos. 1 and 2 now under consideration and report, shew jointly a total of $760,512.11 as the amount claimed and a total payment of $586,222.46 as the amount received including in the latter the $30,000 advanced by the Board apart from my certificates and a total balance of $174,-289.49 as the sum now due, making a gross difference of $101,626.27, in the amount claimed in excess of the official statement from this office.

The reasons for this are :

1st. That many of the deductions for incomplete work and works omitted are included such as the agreed deduction in wet dock substructure concrete, the fenders and the clerical error amounting in itself to $31,150.

2nd. That large additions are made, not previously claimed, viz. : Concrete claimed to be undermeasured in the Bills of Quantities, for dredging over and above the gross quantities said to measure 48,810 c. yds., amounting to $14,643, together with a number of other extras under wood and iron work, absolutely included to be done under certain other fixed sums or in alterations allowed to be made at the suggestion of the contractors themselves and by consent only and not under order of the engineers.

Seven of these items alone, viz. :

1. Clerical error	$ 31,150	00
2. Concrete deductions in wet dock crib	12,017	50
3. Deductions dredging in trench under deep crib.	3,422	10
4. Extra measure claimed in concrete	11,207	35
5. Extra measure over dredging	14,643	00
6. Unexplained measure, substructure wet dock..	7,366	33
7. Amount of law expenses	850	00
Total	$ 80,656	28

RECORD.

In the Superior Court.

No. 72 Plaintiff's Exhibit at trial A4. 11th Jan. 1882. *continued*—

None of which items it was possible for me to take cognizance of under the contract without special direction of the Commissioners and Engineers.

Deducting the amount of the larger claims, thus found, from the gross difference $101,626 27
80,656 28

leaves a round sum of ..... $ 20,969 99 still to be disposed of.

The subordinate items of difference are explained, line for line, in the general remarks.

Of these, the first five on sheet No. 1 are due to the Contractors, in accuracy, in constructing the cribs or for work unexecuted or incomplete amounting to $4,743.32.

The two following $1,492.82 for extra piling at the Ballast Wharf and $500 for concrete not included in former statement should be allowed in my opinion, amounting to $1,992.82.

Then follow six items under Bill No. 4 for various claims arising from a change in width and positions of the crib work in the wet dock made on the suggestion of the Contractors, all of which are untenable, these last amount to $7,787.81.

These together form a total thus :

No. 1.—	$ 4,743 32		
2.—	1,992 80	$ 20,969 99	
3.—	7,787 81	14,523 93	
Total	$ 14,523 93	leaving $	6,446 06

as a balance in certain smaller items dealt with in column of remarks.

The total difference between the statements as pointed out of $101,626.27 gross is thus disposed of.

I have the honor to be,
Sir,
Your most obedient servant,
WOODFORD PILKINGTON,
Resident Engineer.

(Endorsed) Quebec Harbour Commission. Letter from W. Pilkington, Resident Engineer, Harbour Commission, Quebec. Dated 11th January 1882. Received 11th January 1882. Laid before the Commissioners the 18th January 1882. Subject: His report on the statement of account furnished by Messrs. Peters, Moore & Wright in connection with the closing of their contract for the Harbour Improvements.

(Endorsed) Plaintiff's Exhibit No. A4. Filed 11th February, 1896.
P. M., D. P. S. D.

GENERAL STATEMENT of account in Schedule No. 2 to accompany former statement No. 1 as a preface, *de novo* Harbour Improvement Works River St. Charles.

RESIDENT ENGINEER'S OFFICE.

Quebec, December 19th 1881.

A. H. VERRET, ESQ.,
Secretary-Treasurer.

SIR,

In compliance with the instructions of the Board of Commissioners I forward herewith a second statement as to form and method of preparation, but shewing the same balance of account as in statement No. 1, amounting to $40,861.22 gross, in favor of Messrs. Peters, Moore & Wright. Since my last certificate against which may be laid the sums paid by the Board, as referred to in my former letter, and now due for penalties, defect in wall and unfilled crib work on the Northern face of the Embankment.

Woods Ev. P. 262 l. 30

Moore Ev. P 311 l. 26

This statement has by the instructions, a copy of the Bills of Quantities carried to abstract page 99 of the contract amounting to $529,296.31, for its first column. Setting aside for the moment the $25,000 for extras as a sum to be gradually absorbed.

By a resolution of the Board dated April 11th 1877, the second entrance and 84 foot bridge was abandoned, and an alternative plan only, in substitution, put in, No. 21A, but the items in all their relations and money values for the abandoned works were still left in the contract, Bills of Quantities and amounts carried to abstract, thus leaving me to deal with the altered drawing 21A and to calculate from the prices given for the former what should be the cost of the latter.

Consequently, in any financial statement I have to pass from drawing No. 1 with its figures which are given in the contract to drawing 21A finding by equation of prices *pro rata* for the difference in quantities the new total cost for the main contract, and adding to this the several amounts of the supplementary contracts of which there are 4 to find, subject to deduction for works in complete, the total cost to this date.

Had the one single contract, plan No. 1, been carried out the amount found on page 99 of the printed portion of the contract, namely: $554,296.31 would have completed the works. Had the commissioners also, on their part, adhered to their previous resolution to supply the ballast, broken stone, and clay, from ships coming into Port, or made arrangements to supply by other means, the value of which in any case must have been from 40,000 to 50,000 dollars.

But the changes made stand thus:

No. 1.	Main contract	$ 554,296 31
2.	Ballast, stone and clay	33,626 75
3.	Supplementary dredging	62,500 00
4.	Stone face, quay wall, (extra)	21,974 90
5.	Northern crib work, (extra)	58,285 36
	Contingent extras, (16 to 1 concrete under cribs wet dock, &c)	16,000 00
		$ 746,683.32

RECORD.

In the Superior Court.

No. 73. Plaintiff's Exhibit at trial A5. 19th Dec. 1881. *continued*—

By deductions and omissions this sum is now reduced to $658,885.85, for the gross total cost to date as shewn on the balance sheet accompanying the now double statement arriving at the same result, by a different arrangement of the figures.

I have the honor to be,
Sir,
Your obedient servant,
WOODFORD PILKINGTON, M. I. C. E.
Resident Engineer.

(Endorsed).—Quebec Harbour Commission. Letter from W. Pilkington, Resident Engineer, Harbour Commission, Quebec. Dated 19th December 1881. Received 21st Dec. 1881. Laid before the Commissioners the 21st Dec. 1881. Subject: Transmits a second statement as to form and method of preparation but showing the same balance of account as in the statement accompanying his letter, read meeting held the 14th instant.

(Endorsed).—Plaintiff's Exhibit No. A5, filed Feb. 11, 1896. P. M., D. P. S. C.

No. 74 Plaintiff's Exhibit at trial A6. 14th Dec. 1881.

GENERAL STATEMENT of account in Schedule and Balance Sheet, Harbour Improvement Works. River St. Charles, Quebec.

RESIDENT ENGINEERS OFFICE.

Harbour Improvement Works.

Quebec, December, 14th, 1881.

A. H. VERRET, Esq.,
Secretary-Treasurer,

"Refer to A 40 pages 574-76."

Sir,

I have the honour to forward herewith a complete analysis and statement of the result of all the changes made in relation to the Works connected with the contract of the Harbour Commissioners with Messrs. Peters, Moore & Wright, for the construction, as therein described, of an Embankment and Quay Wall with dredged channelways and Basin, forming part of a proposed scheme, for a Tidal Harbour and Wet Dock together with the cost of all modifications, omissions and deductions to this stage of its development.

Woods Ev. P 262 P. 34
Moore Ev. P 311 P. 23

This statement shews in column No. 1, the entire works as included in the original contract with the second entrance and 80 foot Bridge, with all extras, additions and modifications amounting to $743,120.31.

In column No. 2, the payments made on the entire works with details of cost, at contract rates as actually completed, with all extras, deductions, additions and modifications, consequent upon the abandonment of the second entrance and 80 foot bridge, etc., amounting to $599,024.62.

In column No. 3, the total balances due to contractors supposing all works connected with column No. 2 complete, with all extras, deductions and modifications amounting $113,911.09.

In Column No. 4, deductions due to works not undertaken at all and on which no advances have therefore been made amounting to $30,874.80.

Finally in Column No. 5, the deductions arising from discrepancies, ordered omissions or failure to complete, amounting $54,049.87. To which the last certificate of $19,000 not having been included in the distribution of previous payments making together $73,049.87.

This latter amount taken from the total balance of $113,911.09, of Column No. 3, gives the true total balance amounting to $40,861.22.

Secondly a synopsis of the results shewing a complete balance sheet in two forms of statement :

No. 1. Shewing the sums in gross that is including the 10 per cent retained ;

No. 2. Shewing the sums, net, that is deducting the 10 per cent.

The statement in two folios and the balance sheet, shew a gross balance due to the contractors Messrs. Peters, Moore & Wright, amounting $40,861.22.

The total balance less 10 per cent being.....	$ 40,861.22
Less.....	4,086.12
	$ 36,775.10

But this does not take notice of any payments made by the Board without certificate, viz., $5,000 and $25,000, to Peters, Moore & Wright on account, nor, deduction of fine for delay if levied, $6,000 nor deduction for the unfilled portion of the Northern Cribwork $8,000, nor deduction for defect in wall $6,000.

The total amount retained for 12 months under the head of maintenance in the hands of the Commissioners will be the sum of $65,888.25.

I have the honour to be,

Sir,

Your most obedient servant,

WOODFORD PILKINGTON, M. I. C. E.

Resident-Engineer.

(Endorsed).—Quebec Harbour Commission. Letter from W. Pilkington, Resident Engineer, Harbour Commission, Quebec, dated 14th December, 1881, Received 14th December, 1881. Laid before the Commissioners the 14th December, 1881. Subject : Transmits a complete analysis and Statement of the result of all the changes made in relation to the works connected with the contract for the Harbour Improvements and also the cost of all modifications, omissions and deductions.

(Endorsed).—Plaintiffs Exhibit No. A6. Filed, February 11th, 1896,
P. M., D. P. S. C.

See letter on opposite Page.

RECORD.

In the Superior Court.

No. 75 Plaintiff's Exhibit at trial A7. 10th Dec. 1879.

Statement with letter book 2, folio 20.

COST OF 30 FEET RUN OF NORTHERN CRIB WORK SUPERSTRUCTURE.

No. 10—Longitudinals	12"x12"x30'=300		
No. 3—Fenders	12"x12"x20'= 60		
No. 14—Cross ties	12"x12"x24'=336		
No. 7— do	12"x12"x 9'= 63		
No. 21—Entremise	9.'5x 8"x12"=133		
Total cub. feet of Pine	892	at 25	$ 223 00
No. 9—Longitudinals	30'x12"x12"=270		
No. 14— do	12 x12 x12 =168		
Total cub. ft. of Hemlock	438	at 15	65 70

Woods E. P 262 l. 38
Moore Ex. P 311 l. 12

PLATFORMS.

10'x11'=110			
8 x11 = 88			
9 x30 =270			
468	sup. feet at	10c.	46 80

BOLTS.

No. 161—$\frac{7}{8}$"x20"—692.30 lbs.			
No. 42—$\frac{3}{4}$"x18"—119.70 lbs.			
No. 63—$\frac{3}{4}$ x16 —159.39 lbs.			
971.39 lbs.	at .05		48 56

Total cost for 30 feet of crib work exclusive of Bollards and Ladders.. $ 384 06

$\frac{384\ 06}{30}$ = 12.80 per foot run.

4292x12.80	$ 54,937 60
108 Bollards at 31.94	3,449 52
12 Ladders at 20.53	246 36
Total cost of 4292 feet	$ 58,633 48

WOODFORD PILKINGTON,
Resident Engineer.

Quebec, October 10th, 1879.

RECORD.

In the Superior Court.

No. 75 Plaintiff's Exhibit at trial A7. 10th Dec. 1879. *continued—*

RESIDENT ENGINEER'S OFFICE.

Letter Book No. 2, Folio 20.

Harbour Improvement Works.

Quebec, December 10th, 1879.

A. H. VERRET, ESQ.,
Sec. Treasurer,

SIR,

The enclosed statement of the value of the work done in the outer cribwork at schedule rates, amounts to $58,633.48, the deductions being what will not now be required in the shape of stone pitching and material required for it.

$5,180.50 included in the bulk sum, for labor only, being part of it, these savings inevitably accrue to the Board.

When this matter came for decision before the Commissioners, the gentlemen then present will remember that I was asked whether the Contractors should not, owing to the low price of suitable timber, be required to reduce their rates from the schedule, to something lower ; that I stated that as the matter of filling was to be undertaken free of other charge than that for timber, viz. : the extra would be fairly awarded at schedule rates.

In my letter forwarding the authority of the Commissioners, I distinctly informed Messrs. Peters, Moore & Wright that the work was awarded as an extra on the understanding that it was to be banked in without charge for extra distance, &c. My letter was so accepted by the Contractors, until therefore I know from Messrs. Peters, Moore & Wright how the portion of amount as against the filling is to be dealt with on their side, it will be difficult for me to sign a further certificate, and, I therefore advise the Commissioners to reserve the balance in this item for a week for the precise information for which I have asked the Contractors.

I have the honor to be,
Sir,
Your most obedient servant,
WOODFORD PILKINGTON, M. I. C. E.,
Resident Engineer.

(Endorsed).—Quebec Harbour Commission. Letter from W. Pilkington, Resident Engineer, Harbour Commission, Quebec. Dated 10th December, 1879. Received 10th December, 1879. Laid before the Commissioners the 10th December, 1879. Subject : Transmits a statement, with explanatory remarks of the value of the work done on the outer crib work at schedule rates.

(Endorsed).—Plaintiff's Exhibit No. A7, filed Feb. 11th, 1896. P. M., D. P. S. C.

RECORD.

In the Superior Court.

No. 76. Plaintiff's Exhibit at trial A8. 31st Dec. 1879.

Quebec, 31st December, 1879.

To the Chairman,

QUEBEC HARBOUR COMMISSION

Sir,

We the Contractors for the Quebec Harbour Improvements respectfully request, that your Honorable Board will make us an advance of the sum of five thousand dollars on account. This advance to go to our Mr. Simon Peters.

We are, Sir,

Your Obedient Servants,

PETERS, MOORE & WRIGHT,
per Simon Peters.

Words Ev. P. 262 l. 41
Moore Ev. P. 310 l. 2

(Endorsed) Quebec Harbour Commission. Letter from Peters, Moore & Wright per Simon Peters, contractor, Quebec. Dated 31st, December 1879. Received 31st December, 1879. Laid before the Commissioners the 31st December, 1879. Subject: Ask for an advance of $5000 to be paid to Mr. Peters.

(Endorsed) Plaintiff's Exhibit A8. Filed Feb. 11th 1896. P. M., D. P. S. C.

No. 77 Plaintiff's Exhibit at trial A9. 30th June 1880.

Quebec, 30th June, ~~1889~~ 1880.

To the Chairman,

QUEBEC HARBOUR COMMISSION, QUEBEC.

Sir,

Referring to our letter of the 8th January last asking your Honorable Board for an advance of five thousand dollars, we beg to inform you that this application was based upon works actually performed, and for which no estimate has been given us, and which may have to remain over until the completion of our contract as in the case of the advance already made last season. We therefore respectfully request that your Honorable Board will not deduct the advance of five thousand dollars from our work this season and place it on the same footing as the advance made last season, viz to be settled on the completion of the contract.

Words Ev. P. 262 l. 44
Moore Ev. P. 310 l. 9

We are Sir,

Your Obedient Servants,

SIMON PETERS.
EDWARD MOORE.
AUGUSTUS R. WRIGHT.

(Endorsed).—Quebec Harbour Commission. Letter from Peters, Moore & Wright, Contractors Harbour Improvements, Quebec. Dated 30th June 1880. Received 30th June 1880. Laid before the Commissioners the 30th June 1880. Subject: Respecting the advance ot $5,000 made to them last winter and deducted from last certificate.

(Endorsed).—Plaintiff's Exhibit No. A9, filed Feb. 11th 1896. P. M., D. P. S C.

RECORD

In the Superior Court.

No. 78
Plaintiff's Exhibit at trial A10.
20th April, 1887.

CABLE ADDRESS: "KAHORT LONDON."

2, Westminster Chambers, London, S. W.
& Greenock, N. B.
20th April, 1887.

A. H. VERRET, ESQ.,
Secretary-Treasurer.
To the Harbour Commissioners,
Quebec.

SIR,

I have the honour to acknowledge the receipt of your favour of the 18th ultimo requesting the late firm of Kinipple & Morris to furnish the Commissioners with the data on which the sum of $55,011 was allowed in the final certificate in connection with Messrs. Peters, Moore & Wright's contract for the Harbour Improvements.

I regret that owing to my absence from my Westminster and Greenock offices during the last few weeks, I have not been able to reply to your letter earlier, in fact, I only returned to Westminster this morning.

In consequence of the death of my partner Mr. Morris last year, and the recent death of my son Mr. James H. Kinipple, it is extremely difficult for me to trace all the details upon which the final certificate was founded, as this matter was principally attended to by the late Mr. Morris.

I shall, however, be glad to do all in my power towards preparing a statement, and as Mr. Pilkington who was familiar with all the details of the case is at present in London, I would suggest that your Commissioners request him to go into the matter. Mr. Pilkington's address is No. 50, The Grove, Ealing, London.

I leave to-morrow for Jersey, where I will be engaged for a week or so, but on my return to Westminster, I will give the matter my immediate attention.

A 10 is a duplicate of part of No 41 folio 230-1

I have the honour to remain,
Sir,
Your obedient servant,
WALTER ROBERT KINIPPLE.

(Endorsed).—Quebec Harbour Commission. W. R. Kinipple, Engineer, London, England. Dated 20th April 1887. Received 3rd May 1887. Laid before the Commissioners the 3rd May 1887. Subject: His reply to letter of the 18th March last requesting the late firm Kinipple & Morris to furnish the data on which they have allowed the $52,011 in their final certificate in connection with Messrs. Peters, Moore & Wright's contract for the Harbour Improvements.

(Endorsed).—Plaintiff's Exhibit No. A10, filed Feb. 11, 1896. P. M., D. P. S. C.

RECORD.

In the Superior Court.

Quebec, December 6th 1881.

P. V. VALIN, Esq.,

Chairman Quebec Harbour Commission,

Sir,

No. 79 Plaintiff's Exhibit at trial A11. 6th Dec. 1881.

On a previous occasion we informed your Board that the stone work of the quay-wall had been finished on the 17th of October last; since then the concreting and fixing of Bollards etc., has been completed; the cold spell that occurred during the latter part of November, obliged us to lay up our dredges and other plant for the season; we are now prepared to meet your Board with the view of having all matters, connected with our contract, closed as soon as possible; as this will take some time, we beg to request that you will have the goodness to pay us the balance due on stone work as per our letter of the 9th November last, and also advance the sum of fifteen thousand dollars ($15,000) on account of concreting, dredging etc., until our estimates are made up, and thus enable us to settle with our sub-contractors and others who have supplied stock and labor for the works.

see No 6 where it is

see partly p. 4

Woods Ev. P 263 l. 3
Moore Ev. P 311 l. 18

We are Sir,

Your Obedient Servants,

SIMON PETERS,
EDWARD MOORE,
A. R. WRIGHT.
By A. H. Jacobs, Atty.

(Endorsed).—Quebec Harbour Commission. Letter from Peters, Moore & Wright, Contractors, Harbour Improvements, Quebec. Dated 6th December, 1881. Received 7th December, 1881. Laid before the Commissioners the 7th December 1881. Subject: State that they are prepared to meet the Board with the view of having all matters connected with their contract closed as soon as possible and request, as this will take some time, that they be paid the balance due them on stone work as per their letter of the 9th November last, and also that the sum of $15,000 be advanced them on account of concreting, dredging etc., until their estimates are made up.

(Endorsed). Plaintiff's Exhibit No. A11, filed Feb. 11, 1896. P. M. D. P. S. C.

No. 80 Plaintiff's Exhibit at trial A12. 9th Nov. 1881.

Quebec, 9th November, 1881.

To the Chairman,

QUEBEC HARBOUR COMMISSION.

Sir,

We beg to inform you that the works under our contract for erecting a Stone Quay Wall were completed on the 17th October last, and a statement of the same has been in the hands of your engineer for the past two weeks;

where is the statement?

Woods Ev. p. 263 l. 4
Moore Ev. p. 311 l. 18
H. J. Peters Ev. p. 332 l. 21
Albert Peters Ev. p. 377 l. 13

No. 80
Plaintiff's Exhibit at trial A12.
9th Nov. 1881.
continued—

We now have to request that your board, will have the goodness to pay us the balance due on this Stone Quay Wall per our contract; the net amount being after deducting 10 %, the sum of $13,134.44.

We are Sir,

Your Obedient Servants,

SIMON PETERS.
EDWARD MOORE.
A. R. WRIGHT.
by E. M.

(Endorsed).—Quebec Harbour Commission. Letter from Peters, Moore & Wright, Contractors Harbour Improvements Quebec. Date 9th Nov. 1881. Received 9th Nov. 1881. Laid before the Commissioners the 9th Nov. 1881. Subject: Inform that their contract for erecting a Stone Quay Wall was completed on the 17th October last and request that balance due on same be paid to them.

(Endorsed).—Plaintiffs Exhibit No. A12, filed Feb. 11th 1896.
P. M., D. P. S. C.

No. 81
Plaintiff's Exhibit at trial A13.
29th April, 1886.

Cable Address: "KINMORRIS, LONDON."

2 Westminster Chambers, London, S. W.
& Greenock, N. B.

29th April, 1886.

A. H. VERRET, ESQ.,
Harbour Commissioners, Quebec.

Sir,

We shall feel obliged if you will lay this letter before the Commissioners.

As the Final Certificate has now been given by us in connection with the Harbour Works (Louise Embankment Contract) we beg respectfully to bring to the notice of the Commissioners, that owing to the Final Certificate not having been given at the time of the settlement with us, we have been placed at a disadvantage in the amount of Commission paid to us: the Commission was based on the sum of $679,596, whereas the total amount of the works now arrived at, amounts to $711,136, or a difference of $31,540, on this sum we consider we are entitled to be paid our Commission.

We should mention, that we have not deducted the $13,000 odd, (for the purpose of arriving at the above difference) for the removal of sand from the Louise Embankment, as this is a matter of contractor's omission, but we have deducted the clerical error.

We trust the Commissioners will see that, at the time: we had done our work in the preparation of plans, specifications, quantities, and superintendance of the works; and hence we feel we are fairly, and honorably entitled to be paid our commission on the difference, viz: $31,540.

Woods Ed. P 263 l. 9
albert-Peters E. P 379 ll. 11 & 24 397 l. 16

RECORD.

In the Superior Court.

We would observe that, as the delay in giving the Final Certificate was not caused by us ; we respectfully submit that we should not suffer in consequence.

We have the honour to be, Sir,
Your obedient servants,
KINIPPLE & MORRIS.

No. 81 Plaintiff's Exhibit at trial A13. 29th April, 1886. *continued—*

(Endorsed).—Quebec Harbour Commission, Kinipple & Morris, Engineers, London, England, dated 29th April, 1886, received 10th May, 1886, laid before the Commissioners the 15th May, 1886. Subject : Their claim for commission on $31,540 being the difference between the amount upon which they have been paid on Peters, Moore & Wright's contract, for the Harbour Improvements and the amount actually awarded them by the Final Certificate.

(Endorsed).—Plaintiffs Exhibit No. A. 13. Filed February 11th 1896.
P. M., D. P. S. C.

No. 82. Plaintiff's Exhibit at trial A14. 11th Jan. 1882.

REPORT on Contractors Peters, Moore & Wright's statement of accounts for the Harbour Improvements, River St. Charles, in connection with the closing of their contract.

RESIDENT ENGINEER'S OFFICE.
Harbour Improvement Works,
Quebec, 11th January, 1882.

A. H. VERRET, ESQ.,
Secretary Treasurer.

Sir,

I have the honour to acknowledge the receipt of your letter of the 5th inst., conveying to me the statement of claims in details of summary carried to abstract as submitted by the contractors, Messrs. Peters, Moore & Wright on account of work executed by them as above, under title of the Quebec Harbour Improvements.

This statement has been divided by the contractors into two parts—sheet No. 1 and 2 (returned herewith) sheet No. 1 being for wood, iron work and cut stone wall and sheet No. 2, for dredging, concrete and other works.

In the counter statement and remarks accompanying this report—the form previously adopted as a whole has been retained as being in accordance with contract and as being of easier reference to and comparison with the contract itself.

This counter statement is divided into four columns of reference.

Column No. 1 represents the different amounts as claimed by the contractors placed *seriatim* in order of the Bills of quantities 1 to 14 the total sum of $760,512.11, being the same as that given by the contractors.

Column No. 2, shews the different amounts representing the same services and work, line for line, as given in the official statement previously made, the total sum $658,885.84 being the same as the total claim shewn on the balance sheet of the said official statement.

Column No. 3, shows the difference in amount between these items of work as contained in the Bills of Quantities, deductions made and modifications agreed upon, line for line in excess of those allowed in the official statement the total being in amount $112,448.80.

RECORD

In the Superior Court.

No. 82. Plaintiff's Exhibit at trial A14. 11th Jan. 1882. *continued—*

Column No. 4 shews certain items of difference apparently in excess of those claimed by the contractors but these are no doubt charged in unexplainable items in the sums of other differences the precise place of which cannot "*ex facie*" be determined, this total amounts to $108,22.53.

The column for remarks on each item follows, condensed, but as definite as the space will permit.

Finally a foot note statement at the bottom of folio 2 shewing the contract method of determining the cost of the front face or Quay Wall plus the Masonry extra of $21,974.90 which deducting the amount for fender and bollards not put in and not included in former official statement leaves a balance in excess unexplainable and unaccounted for of $2,635.78.

The contractor's statement sheets No. 1 and 2 now under consideration and report, shew jointly a total of $760,512.11 as the amount claimed and a total payment of $586,222.46 as the amount received including in the latter the $30.000 advanced by the Board apart from my certificates, and a total balance of $174,289.49 as the sum now due making a gross difference of $101,626.27 in the amount claimed in excess of the official statement from this office.

The reasons for these are:

1st That many of the deductions for uncomplete work and works omitted are included, such as agreed deductions in Wet Dock substructure concrete, the fenders and clerical error amounting in itself to $31,150.

2nd That large additions are made not previously claimed viz: concrete, claimed to be under measure in the Bills of Quantities, for dredging over and above the gross quantities said to measure 48810 c. yds, amounting to $146,43, together with a number of other extras under wood and iron work absolutely included to be done under certain other fixed sums, or in alterations allowed to made at the suggestion of the contractors themselves and by consent only and not under order of the engineers.

Seven of these items alone viz:

1. Clerical error	31,150.00
2. Concrete deductions in Wet dock Cribs	12,017.50
3. Deductions dredging in trench under deep cribs	3,422.10
4. Extra measure claimed in concrete	11,207.35
5. Extra measure, over dredging	14,643.00
6. Unexplained measure. substructure Wet Dock	7,366,33
7. Amount of Law Expenses	850.00
Total	$80,656.28

None of which items it was possible for me to take cognizance of, under the contract without special direction of the Commissioners or Engineers.

Deducting the amounts of the larger claims thus found from the gross difference $101,626.27
80,656.28

leaves a round sum of ..... $ 20,969.99
still to be disposed of.

RECORD.

In the Superior Court.

No. 82 Plaintiff's Exhibit at trial A14. 11th Jan. 1882. *continued*—

The subordinate items of difference are explained line for line in the general remarks, of these, the first five on sheet No. 1 are due to the contractors, in accuracy, in constructing the cribs, or for work unexecuted or uncomplete amounting to $4,743.32.

The two following $1,492.82 for extra piling at the Ballast Wharf and $500 for concrete not included in former statement should be allowed in my opinion amounting to $1,992.82.

Then following six items under Bill No. 4, for various claims arising from a change in width and position of Crib Work in the Wet Dock made on the suggestion of the contractors all of which are untenable, these last amounting to $7,787.81.

These together form a total thus :

No. 1	$ 4,743.32		
No. 2	1,992.80		$ 20,969.99
No. 3	7,787.81		14,523.93
Total....	$ 14,523.93	leaving	$ 6,446.06

as a balance in certain smaller items dealt with in column of remarks.

The total difference between the statements as pointed out of $101,626.27 gross is thus disposed of.

I have the honor to be,
Sir,
Your most obedient servant,
(Signed) WOODFORD PILKINGTON,
Resident Engineer.

Certified a true copy from pages 409, 410, 411, 412, of letter press copy book used by Woodford Pilkington, between November 18th, 1879 and November 13th, 1883.

ST. GEORGE BOSWELL,
Quebec, December 12th, 1895.

(Endorsed).—Report on Contractors Peters, Moore & Wright, statement of accounts for the Harbour Improvements, River St. Charles, in connection with the closing of their contract, Quebec, 11th January, 1882.

(Endorsed).—Plaintiff's Exhibit No. A. 14. Filed February 11th, 1896.
P. M., D. P. S. C.

REPORT : On the Harbour Extension and Dock Works in the river St. Charles, Quebec, now named " The Princess Louise Embankment and Dock."

RECORD.

In the Superior Court.

No. 83 Plaintiff's Exhibit at trial A15. 12th Oct., 1880.

RESIDENT ENGINEER'S OFFICE.

Quebec Harbour Improvements.

October 12th 1880.

To A. H. VERRET, ESQ.,

Secretary-Treasurer,

Sir,

Following the instructions conveyed to me by abstract from the letter of the Hon. the Minister of Public Works, dated Ottawa, September 16th 1880. I have to report as follows, in statement of the progress made from commencement of these works viz: from the 2nd May 1877 to June 30th 1879 and from July 1st 1879 to June 30th 1880 the end of the last fiscal year, together with a statement of work yet required to be done to complete this contract and lastly a statement of the proximate cost of the works in the section now in progress.

Boswell Ev p 264 l. 22

Two schedules of explanatory synopsis shewing the details of expenditure under the contract for each of the above named periods, with details of proximate cost from two annexures to this Report.

These works were twice tendered for, the tenders first received not having been considered satisfactory for several reasons, and it appears to me needful briefly to revert to this and the circumstances therewith connected in order to explain fully the nature of this contract in relation to the work done, the amount of expenditure to date and the proximate estimate of cost of works now constructed when complete.

The tenders first received were for a lump sum subject to deductions or additions for work not done, or for extra work that might be imposed *pro rata*, to the extent of 10 per cent.

But the Harbour Commissioners were to find the Ballast and stone filling—a sufficiency of which for these purposes having been supposed to arrive and be wasted yearly in the "Ballast Ground," as it is termed, of the St. Lawrence. This was considered a dangerous binding condition and for one reason necessitated the calling for fresh tenders—The second reason was that the quantity of dredging proposed was unsufficient to enable the works themselves to be banked up and further to enable large sized vessels "to reeve" into the channel space alloted for these purposes along the Quay Wall.

For these purposes 250,000 yards of extra dredging were called for, to form part of the supplementary tender at a price per cubic yard for excavating and depositing in the work—and a schedule of prices at which the contractors would engage to supply ballast and stone filling for concrete and backing in the event of the Commissioners being unable to supply these materials as aforesaid.

These two items alone made increase in the work to be done by the contractors under the final tender of $62,500 dollars for dredging and a contingent open amount of $40,000 approximately for materials to be supplied as aggregates for concrete, clay and stone filling, backing etc.—Thus the contract became subject to increase on these two items alone by a sum of $102.500.00.

RECORD.

In the Superior Court.

No. 83 Plaintiff's Exhibit at trial A15. 12th Oct., 1880. *continued*—

Besides this during the progress of the work, it was deemed advisable in order to accommodate the trade of the port, and in the interest of smaller craft not so free to use the inside works and also for the improvement of the work itself, to construct the Northern face of the proposed embankment in closed faced cribwork to coping level.—This addition was accepted by the contractors as an independent extra contract, subject in all respects to the conditions of the original, subject to deductions on the stone pitching for labor only, imposed a total outside extra of $50,995.68.

The ultimate proximate cost of works became thus increased by a total sum of $153,495.68.

The construction of this latter work was an exceedingly wise addition to the permanent works and was undertaken at a time when the market price of materials was so low that a profit might be now realized if an order for sale on the materials alone thus employed.

It becomes there properly noticeable at this point that the amount of expenditure at this time is not in the ratio of the bulk sum of 529,296.31 dollars of the tender, originally received for certain work, labor and materials particularly mentioned in the Bills of Quantities but of a sum greater than that by reason of the aforesaid addition of 682,996.97 dollars.

The expenditure to date appearing thus in the former case *pro rata* excessive —in the latter just and legitimate.

During the first year, the contractors Messrs. Peters, Moore & Wright were able to sink the crib work specified on the outer face as far as the east and west salient angles to cut off at low water the south channel of the River St. Charles from the main stream, the ebb tide still passing from the upper reaches of the river across the site of the works and further commence the construction of suitable plant a sum of $52,698.13 having been certified to and paid, and the contractors less 10 per cent, retained.

In the second season and to the end of the fiscal year ending 30th June 1879 a further sum of 166,626.90 dollars was certified to and paid less 10 per cent making a total of $220,325.03 less 10 per cent.

During the fiscal year from July 1st 1879 to June 30th 1880 a sum of 229,902.03 dollars was paid on certificate less 10 per cent making a total of $450,267.33 less 10 per cent or $405,240.66.

For the quarter just ended of the current fiscal year *i. e.* for the months of July, August and September a sum of $61,747.28 less 10 per cent retained has been paid to the contractors making a total to date of $512,014.61 less 10 per cent or a nett sum of $460,813.22.

The balance of work then still to be done according to the proximate estimate from the contract rates of the lump sum, and supplementary schedules—is in amount the difference between $682,791 99

and 511,974 34

$170,817 65

this approximate cost of works are shewn in column No. 4 in the synopsis annexure A as forming a possible total of $673,459.16 and the quantity of work still to be done in this latter case would be $161,485.82.

Where is Peters Ex No 32 page 219

The contract time for completion of this section of the works expired on the 2nd October 1880, no extension of time has as yet been granted but the contractors have put in a request for an extension of time shewing cause. This point has been referred to the engineers as the works stand. It is in my view impossible to complete them before the end of the fiscal year ending June 30th 1881 at earlist.

I have the honor to be, Sir,
Your most obedient servant,
WOODFORD PILKINGTON, M. I. C. E.
Resident Engineer.

No. 83 Plaintiff's Exhibit at trial A15. 12th Oct., 1880. *continued—*

(Endorsed) Plaintiff's Exhibit No. A15. Filed 11th Feb. 1896.
P. M., D. P. S. C.

Pilkington

NOTES on Statements in Arbitration *re* Quebec Harbour Works, Peters, Moore & Wright *vs.* Harbour Commissioners.

No. 84. Plaintiff's Exhibit at trial A16. Filed 11th Feb. 1896.

1. Nett quantities of cut stone in wall, 130,230.48 cub. feet on which $2.75 per rough bouchard has to be allowed over and above the $18,393.58 making $21,974.90 total extra as per supplementary contract not including the return extra at ballast wharf as allowed in schedule.

2. The amount claimed for screens $612 disallowed in official statement appears to have been expended before Northern Crib work was authorized and should be therefore allowed.

3. The sum claimed for extra piling at ballast wharf $1,492 is in excess of previous account rendered in copy original duplicate amounting to $1,143.

The concrete extra has not appeared before $500.

4. In dredging 24 foot channel 150,000 cub. yds. was allowed as estimated by me according to drawings the quantity given in bill No. 5, item 3, is 274,600 and supposed amount of clerical error, 124,600 cub. yds. at 25 cts., $31,150, a letter from Moore & Wright, about that time, (copy herewith) admits deductions under the cribs now reclaimed—Engineers have contractors letters *re* error in main trench.

5. Wet Dock : Extra width of cribs is based on offer of contractors originally made to do this without a charge in your letter forwarding tracing 29th May. 1879, see also letters herewith in copy although they afterwards wanted to mix up the long bolts shewn in drawing 22, with it as set off, which I would not allow,—both are now claimed as extras (see statement).

6. The concrete between the counter forts is not put in the Wet Dock substructure, but is charged as if it were ! the deduction in value was agreed upon as stated in official synopsis, (see draft agreement, modifications of deep cribs), copy herewith.

7. Concrete extra at back of masonry arose out of an alteration made by tracing sent from London—to make levels of benching and width of walls agree throughout in line and level (see copy of contractors' letters herewith and mine) these expressly only include measurements of extra between the lines in excess shewn on said drawing—we have taken extra dimensions right through of this addition, solely, contractors have assumed a right to measure Wet Dock Wall *de*

RECORD.

In the Superior Court.

No. 84 Plaintiff's Exhibit at trial A16. Filed 11th Feb. 1896. *continued*—

novo on their own dimensions, their claim to do this has never been asserted until filing statement this season.

8. There being no dispute regarding the 16 to 1 concrete in place of the clay and stone filling below the Wet Dock cribs. Copy of agreement by letter not sent.

9. There is no document beyond those already in your hands on the part of the contractors claiming release from the time penalties.

10. The Northern Crib work is not filled in by from 25 to 30,000 cub. yds. this it was distinctly agreed should be by S. Peters and my letter ordering the work expressly specifies it. The contractors have never refused to fill, but have not done so the balance of dredging yet to be completed would about do it,—but if the contract be closed—there is no material except by second handling out of the present bank.

11. The defect in the wall may be valued at from 3,000 to 6,000 depending on the trouble involved and if valued as a defect might stand over for correction until the wall to Junction with gas wharf is finished.

12. The claim for capping and bolts drawing No. 22 set up by Mr. Peters as an extra disappears when the 21,974.90 is added to the face work, it gives an amount of $5,000 nearly over and above the value of the stone and lower substructure had his claim as an extra been allowed,—he would here claimed both,—this he actually now does. (See contractors' statement of accounts, sheet No. 1.)

Certified a true copy of matter on pages Nos. 424 and 425 of letter press copy book used by Woodford Pilkington between the 18th November, 1879, and the 13th November, 1883, remaining of record in the Harbour Engineer's office, Quebec.

ST. GEORGE BOSWELL.

Quebec, December 12th, 1895.

(Endorsed).—Notes on Statement in Arbitration *re* Quebec Harbour Works. Sent 26th January, 1882. Attach to letter W. P. to K. & M., 26th January, 1882.

(Endorsed).—Plaintiff's Exhibit No. A16, filed Feb. 11th, 1896. P.M., D.P.S.C.

No. 85 Plaintiff's Exhibit at trial A19. Dated 15th April, 1885.

2 Westminster Chambers, London, S. W,
and Greenock, N. B.
April 15th 1885.

A. H. VERRET, ESQ.
Secretary Treasurer.
Harbour Commissioners, Quebec.

Boswell Ex. P 264 P. 41

Sir,

We have the honor to acknowledge the receipt of your letter of the 30th ultimo enclosing particulars of money advanced to Messrs Peters Moore & Wright on account of the River St. Charles Improvement Works. We have not received

any statement from these gentlemen as yet, therefore we are not in a position to make out the Final Certificate.

We have the honor to be,
Your obedient servants,
(Signed) KINIPPLE & MORRIS.

Certified true copy
A. H. VERRET, Sec.-Treas.

(Endorsed).—Plaintiffs Exhibit No. A19. filed Feb. 11th 1896. P. M., D. P. S.C.

RECORD.

In the Superior Court.

No. 85 Plaintiff's Exhibit at trial A19. Dated 15th April, 1885.

continued—

2, Westminster Chambers, London, S. W.,
& Greenock, N. B.,
Dec., 12th 1878.

No. 86. Plaintiff's Exhibit at trial A20. Dated 12th Dec. 1878.

MESSRS. PETERS, MOORE & WRIGHT,
Contractors,
Quebec.

GENTLEMEN,

On looking through the Bills of Quantities of the amount of dredging to be done under the above contract, we find a clerical error has occured in the quantity of dredging put down in item 3, page 75 of specifications for the forming of 150 feet in width of channelway for the length of the tidal wall, the amount put down being considerably in excess of that necessary to form said channelway. The error appears to have arisen at the last moment through the proper quantities in some way having been doubled. We have instructed Mr. Pilkington to make the deduction for the clerical error and to pay you on the amount of work done. We are glad to hear that No. 9 Block is concreted and hope that you will take every precaution to secure the works from damage from ice during the winter.

We are Gentlemen,
Yours truly,
(Signed) KINIPPLE & MORRIS.

(Endorsed).—Plaintiff's Exhibit No. A20, filed Feb. 11 1896. P. M. D. P. S. C.

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2 Westminster Chambers, London, S. W.,
& Greenock, N. B.
4th ~~January~~ February, 1886.

No. 87 Plaintiff's Exhibit at trial A21. Dated 4th Feb. 1886.

A. H. VERRET, ESQ.,
Secretary Treasurer,
Harbour Commissioners, Quebec.

Sir,

We have the honour to inform you that we have gone very carefully into the accounts relating to the contract for the Harbour Improvement Works (Louise Embankment), and herewith enclose our final certificate as requested,

Verret Ex.
P 178 A 24

RECORD.

In the Superior Court.

No. 87 Plaintiff's Exhibit at trial A21. Dated 4th Feb. 1886. *continued*—

we regret the delay in not sending it sooner, but has been unavoidable, and caused by the absence from business of one member of the firm.

We beg to offer some remarks on the certificate for the information of the Commissioners.

We have allowed payment for all works actually constructed, and further we have made no deductions on account of " time penalty ".

We have deducted the amount of clerical error also the sum for the removal or levelling of the sand on the Louise Embankment in accordance with your letter of the 14th November, 1885.

The amount of certificate is based on the assumption that the contractors have received on account of works the sum of $645,799 as per statement forwarded to us.

We have made no allowance for interest.

We have the honour to be, Sir,

Your obedient servants

(Signed), KINIPPLE & MORRIS.

Certified true copy,

A. H. VERRET,

Secretary Treasurer.

(Endorsed) Plaintiff's Exhibit No. A. 21. Filed, February 11th, 1896.

P. M., D. P. S. C.

No. 88 Plaintiff's Exhibit at trial A22. Dated 18 March, 1887.

HARBOUR COMMISSIONERS OFFICE.

Quebec, 18th March, 1887.

MESSRS. KINNIPPLE & MORRIS,

Engineers,

2 Westminster Chambers,

London, S. W., England.

Verret Ex. P 278 l. 27

Gentlemen,

I am directed to request you to furnish the Commisssoners with the data on which you have allowed $52,011 in your final certificate in connection with Messrs. Peters, Moore & Wright's contract for the Harbour Improvements as the Commissioners concluded that the final award rendered included all the work done by the contractors, and, as the case is still before the Court, it will be necessary for the Commissioners to account for the apparent discrepency.

I am gentlemen,

Your most obedient servant,

(Signed) A. H. VERRET,

Sec. Treasurer.

Certified true copy,

A. H. VERRET,

Sec. Treas., Q. H. C.

(Endorsed).—Plaintiff's Exhibit No. A22, filed Feb. 11th, 1896. P. M., D. P. S. C.

Browns estimates
535 f. total est '77 480

These sheets
to show the
between Contractor

TOTAL ESTIMATE—Moore & Wright from 1877, up to and including Nov. 23rd 1880, on the Quebec Harbour Improvements. Quebec Canada.

RECORD

In the Superior Court.

No. 89.
Plaintiff's Exhibit at trial A23.
Filed 11th Feb. 1896.

Moore & W p. 250, l. 18 et seq.

	Total Estimate.	Previous Estimate.	Amount Due.
Dredging 24 foot Trench 90,280 cubic yards at 33c.	$29,792 40	$29,792 40	
" 24 foot Channel 201,045 " at 25c.	50,261 25	50,261 25	
" 10 foot Channel 137,900 " at 20c.	27,580 00	25,801 20	$1,778 80
" 15 foot trench 93,450 " at 25c.	23,362 50	23,313 75	48 75
" extra 178,828 " at 25c.	44,707 00	31,643 25	13,063 75
" for 120 and 80 ft. cubic blocks 2925 c. yds.	731 25	731 25	
Concrete in 31 deep cribs Tidal Basin	54,250 00	54,250 00	
" ~~Behind~~ Quay Wall	19,593 75	19,593 75	
" Increase " "	4,032 75	2,797 75	1,235 00
" Behind " S. W. Dock	16,805 50	16,150 00	655 50
" 16 to 1 for foundations S. W. Dock	11,485 80	10,847 70	638 10
" 55 shoal cribs S. W. Dock	50,998 75	46,826 12	4,172 63
" In step from deep to shoal trench	1,068 75	1,068 75	
" In return pocket crib No. 55	713 50		713 50
Levelling bottom deep trench	1,360 80	1,360 80	
" " shoal "	1,989 00	1,000 00	989 00
Stone aggregates 5,811 tons at 33½c	1,888 57	1,888 57	
" " 54,460 tons at 40c	21,784 14	17,075 34	4,708 80
Clay 4,061 tons at 25c	1,015 25	441 25	574 00
Handling 28,152 cub. yds. stone at 10c	2,815 20	2,092 30	722 90
" 7,511 " clay at 10c	751 10	598 00	153 10
Moving boulders	375 00		375 00
Error in estimate 1877-78	21	21	
	$367,362 47	$337,533 64	$29,828 83
Deduct $13,500 returned 1879	13,500 00	13,500 00	
	$353,862 47	$324,033 64	
Less 10%	35,386 24	32,403 36	2,982 88
	$318,476 23	$291,630 28	$26,845 95
Add advance by commissioners	25,000 00		
Total advances to date	$343,476 23		

behind wall

J. V. BROWNE, Agent.

(Endorsed).—Final Estimate 1880 shewing all previous estimates from 1877 to 1880, also total amount received by Moore & Wright Nov. 23rd 1880.

RECORD.

In the Superior Court.

No. 89. Plaintiff's Exhibit at trial A23. Filed 11th Feb. 1896. *continued*—

PROGRESS No. 1.—Estimate Quebec Harbour Improvements, of work done by Peters, Moore & Wright from May 2nd 1877 up to and including the 29th day of November 1877.

(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
1535 tons stone toeing at Gas and Ballast Wharf cribs..... at 40c.			$ 614 00
Labour handling 1377 cubic yards..... at 10c.			137 70
2925 cubic yards dredging 120 and 80 foot crib work block..... at 25c.			731 25
9573 cubic yards dredging Com. Wharf..... at 25c.			2,393 25
16760 cubic yards dredging Main Trench at Ballast Wharf..... at 33c.			5,530 80
			$9,407 00
Less 10 p. c.....			940 70
			$8,466 30

NOTE.—An error of 18c. in the total makes ~~Moore~~ & Wright, instead of $8,466.30—$8,466.48 Mr. Peters' total remains as it is making No. 1 certificate after deducting 10 p. c. form a grand total of $23,074.07.

(Endorsed).—No. 1 Estimate, Moore & Wright Nov. 29th 1877.

PROGRESS No. 2.—Estimate Quebec Harbour Improvements, of work done by Peters, Moore & Wright from up to and including the 10th day of July 1878.

(Copy) J. V. B.

RECORD.

In the Superior Court.

No. 89
Plaintiff's Exhibit at trial A23.
Filed 11th Feb. 1896.
continued—

	Total Estimate.	Previous Estimate.	Amount Due.
45000 cubic yards in Trench..... at 33c.			$14,850 00
32777 " " Channel..... at 25c.			8,194 25
			$23,044 25
Less 10 p. c.....			2,304 42
			$20,739 83
Less advance by letter.....			6,000 08
			$14,739 30

NOTE.—See S. Peters Estimate No. 2. By this certificate ~~No. 2 Mr. S. Peters~~ receives. 6,822 01
Moore & Wright..... 20,739 83

Making No. 2 certificate.....	$27,561 84
After deducting 10 p. c.....	3,062 42
form the total of.....	$30,624 26
N.-B.—In item *a* was taken.....	329 06
instead of.....	328 61
Difference to be.....	000 45
in item *b* 4½ at $150.....	630 00
instead of.....	675 00
Difference to be made.....	$45 00
Total error.....	$45 45

To be allowed in next estimate.

(Endorsed).—No. 2 Estimate, Moore & Wright July 10th 1878.

RECORD.

In the Superior Court.

No. 89 Plaintiff's Exhibit at trial A23. Filed 11th Feb. 1896.

continued—

PROGRESS No. 4.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from up to and including the 28th day of August 1878.
(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
40,000 cub. yds. of dredging in 150 foot channel as per price bill No. 5 of specification at 25c.....			$10,000 00
Less 10%.....			1,000 00
Amount paid in full Messrs. Moore & Wright by the commissioners.....			$9,000 00
N. B.—Making with 32,777 cub. yds. of certificate No. 2 40,000 " "			
a total for channel of 72,777 " "			

(Endorsed).—No. 4 Estimate, Moore & Wright Aug. 28th 1878.

PROGRESS No. 6.—Estimate Quebec Harbour Improvements, of work done by Peters, Moore & Wright from up to and including the 18th day of September 1878.
(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
For 48000 cubic yards dredging in 150 foot channel as per price Bill No. 5 of specification... at 25c.			$12,000 00
2. 40 foot blocks concrete at .....$2,244 each.			4,488 00
			$16,488 00
Less 10 p. c.....			1,648 00
			$14,839 20
N.-B.—Making with 72,777 cubic yards up to certificate No. 4..... 48,000			
advanced on to date.. 120,777			

(Endorsed).—No. 6 Estimate, Moore & Wright Sept. 18th 1878.

PROGRESS No. 7.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from up to and including the 2nd day of October 1878.

(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
10 blocks concreting as per schedule of 40 feet each at $2,244			$22,440 00
Deducting for 4 pockets at 100 yds. each being 400 yds. at $4.75			1,900 00
			$20,540 00
Less 10%			2,054 00
			$18,486 00
N. B.—Making the 2 blocks of former certificate 12-40 blocks equal 4,120 foot to date.			

(Endorsed No. 7.)—Estimate Moore & Wright, Oct. 21 1878.

PROGRESS No. 9.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from up to and including the 23rd day of October 1878.

(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
5 blocks concreting at schedule rate for 40 feet at $2,244 each			$11,220 00
Less 10 p. c			1,122 00
			$10,098 00
N.-B.—In 17 blocks brought up.			
NOTE.—Balance of deductions on 9 cribs for 27 pockets of 104 yards made in next certificate that is 13,338.00—1900=11,438.			

(Endorsed No. 9.)—Estimate Moore & Wright, Oct. 23rd 1878.

RECORD.

In the Superior Court.

No. 89. Plaintiff's Exhibit at trial A23. Filed 11th Feb. 1896. *continued*—

PROGRESS No. 10.—Estimate Quebec Harbour Improvements of work done by Peters Moore & Wright from up to and including the 6th day of November 1878.

(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
60,000 yds. dredging in channel main and proportional part of quantity given in Bill 5, Item 3, carried to abstract at 25c			$15,000 00
Less 10%			1,500 00
			$13,500 00
Mem. Total amount of dredging in channel 149,488 yds. taken from Drawings			
Dredging still left to be done in South Tidal Harbour 32,378 cub. yds.			
This is in pencil, J. V. B.			
60,000			
120,777			
180,777			
160,000			
20,777			
20,000 sweepings still left			
40,777			
$10,000			

(Endorsed No. 10.)—Estimate Moore & Wright, Nov. 6th 1878.

RECORD.

In the Superior Court.

No. 89 Plaintiff's Exhibit at trial A23. Filed 11th Feb. 1896. *continued*—

PROGRESS No. 12.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from up to and including the 5th day of December 1878.

(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
5090 tons stone aggregates in concrete..... at 40c.			$2,036 00
Bill 14, Item 4, 1100 ft. *pro rata* levelling bottom of Trench stubb piles, &c., at $1,360.00 for 1240 feet			1,200 00
Stone and clay filling, 5811 tons..... at 32½c.			1,888 57
3719 yards handling. at 10 c.			371 90
Stone for deep cribs and toeing shoal cribs 11,449 tons..... at 40c.			4,579 60
Handling stone 9870 yards..... at 10c.			987 00
" " 1084 " ..... at 10c.			108 40
Dredging at Ballast Wharf inside Tidal Harbour front of 250,000 cub. yds. supplementary tender 5000 yds. at 25c. channel required for deep cribs.			1,250 00
Balance in deep trench deducting estimate No. 1 & 2 and lower cut 10,370 yards 28,520 yards. at 33c.			9,411 60
Dredging in upper channel 1696.2 yards..... at 20c.			339 24
			$22,172 31
Less 10 p. c.....			2,217 23
			$19,955 08

Estimate 1.	16,760	Total
" 2.	45,000	90,280
	61,760	61,760
		28,520

(Endorsed No. 12.)—Estimate Moore & Wright, Dec. 5th 1878.

RECORD.

In the Superior Court.

No. 89 Plaintiff's Exhibit at trial A23. Filed 11th Feb. 1896.

continued—

APPROXIMATE No. 1 for 1879.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 9th 1879 up to and including the 29th day of July 1879.

(Copy) J. V. B. Agt.

	Total Estimate.	Previous Estimate.	Amount Due.
Dredging in 15 foot trench 1300 feet lineal	$13,195 00		
Dredging in 10 foot channel 400 feet lineal	5,880 00		
Concrete in 10 deep cribs 10 and 11	4,957 75		
" " fine " "	1,669 00		
Concrete behind north wall of tidal harbour 10 cribs	6,341 20		
Large stone for concrete 1240 tons	496 00		
Broken " " 585 tons	87 75		
Stone and clayey materials behind cribs 10 and 11 1706½ cub. yds	170 11		
Large stone behind cribs 10 and 11 1374½ tons at 40c.	549 84		
Clayey material behind cribs 10 and 11 613$\frac{4}{10}$ tons	153 35		
	$33,500 00		
Less clerical error	13,500 00		
	$20,000 00		
Less 10%	2,000 00		
	$18,000 00		

(Endorsed No. 1.)—Estimate for 1879, Moore & Wright, July 29th 1879. Certificate No. 15.

PROGRESS No. 2 for 1879.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 9th up to and including the 30th day of September 1879.

	Total Estimate.	Previous Estimate.	Amount Due.
Dredging in 15 foot Trench	$13,195 00	$13,195 00	
" " 10 " Channel	5,880 00	5,880 00	
Concrete in deep cribs 10 and 11	4,957 75	4,957 75	
" fine " 10 and 11	1,669 00	1,669 00	
Concrete behind north wall of Tidal Harbour, 25 cribs.	16,021 35	6,341 20	9,680 15
Large stone for concrete 1240 tons	496 00	496 00	
Broken stone 585 tons	87 75	87 75	
Stone and clayey material behind cribs 10 and 11, 1706½ cubic yards	170 11	170 11	
Large stone behind cribs 10 and 11, 1374½ tons at 40c.	549 84	549 84	
Clayey materials behind cribs 10 and 11, 613$\frac{4}{10}$ tons	153 35	153 35	
Concrete in 16 shoal cribs substructure south wet dock.	14,684 00		14,684 00
1170 cubic yards foundations for 16 shoal cribs	3,510 00		3,510 00
225 cubic yards concrete in step from deep to shoal cribs	1,068 75		1,068 75
	$62,442 90	$33,500 00	$28,942 90
Les 10 p. c	6,244 29	3,350 00	2,894 29
	$56,198 61	$30,150 00	$26,048 61

Copy, J. V. B. Agt.

(Endorsed).—No. 2 Estimate 1879, Moore & Wright Sept. 30th 1879. Certificate No. 18.

RECORD.

In the Superior Court.

No. 89.
Plaintiff's Exhibit at trial A23.
Filed 11th Feb. 1886.
continued—

PROGRESS No. 3 for 1879.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 9th up to and including the 5th day of Nov. 1879.

	Total Estimate.	Previous Estimate.	Amount Due.
Deep cribs 10 and 11 concrete	$7,000 00	$6,626 75	$373 25
Concrete behind quay wall	18,643 75	16,021 35	2,622 40
Increase concrete behind quay wall	2,797 75		2,797 75
Concrete foundations 29 shoal cribs	6,168 30	3,510 00	2,658 30
30½ shoal cribs concrete	28,281 12	14,684 00	13,597 12
Dredging 15 foot trench	13,195 00	13,195 00	
" 10 " channel	5,880 00	5,880 00	
Large stone for concrete 1240 tons	496 00	496 00	
Broken " " 585 tons	87 75	87 75	
Stone and clayey materials behind 10 and 11 cribs 1706½ cub. yds	170 11	170 11	
Large stone behind cribs 10 and 11, 1374½ tons	549 84	549 84	
Clayey material behind cribs 10 and 11, 613 4/10 tons	153 35	153 35	
225 cub. yds. concrete in step from deep to shoal cribs	1,068 75	1,068 75	
	$84,491 72	$62,442 90	$22,048 82
	8,449 17	6,244 29	2,204 88
	$76,042 55	$56,198 61	$19,843 94

Copy, J. V. B. Agt.

(Endorsed) No. 3.—Estimate for 1879, Moore & Wright, Nov. 5th 1879. Certificate No. 21.

PROGRESS No. 4 for 1879.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 9th up to and including the 1st day of Dec. 1879.

		Total Estimate.	Previous Estimate.	Amount Due.
Concrete cribs 10 and 11		$7,000 00	$7,000 00	
" behind quay wall		18,643 75	18,643 75	
" increase " "		2,797 75	2,797 75	
" foundations 29 shoal cribs		6,168 30	6,168 30	
" 30½ shoal cribs		28,281 12	28,281 12	
" in step from deep to shoal cribs		1,068 75	1,068 75	
Dredging 15 feet trench 83,255 cubic yards	at 25c.	20,813 75	13,195 00	$7,618 75
" 10 feet channel 84,756 " "	at 20c.	16,951 20	6,219 24	10,731 96
" 24 " " 20,268 " "	at 25c.	5,067 00		5,067 00
" Extra 72,000	at 25c.	18,000 00		18,000 00
Large and fine stone in concrete 8,390 tons	at 40c.	3,356 00	583 75	2,772 25
Stone in clayey material 5465.35 tons	at 40c.	2,186 14		2,186 14
Clay " " " 1765 "	at 25c.	441 25	323 46	117 79
Stone filling behind cribs 5759 tons	at 40c.	2,303 60	549 84	1,753 76
Handling stone 9676 cubic yards	at 10c.	967 60		967 60
" clay 1177 " "	at 10c.	117 70		117 70
Levelling deep cribs 10 and 11		160 80		160 80
" shoal " 30		1,000 00		1,000 00
		$135,324 71	$84,830 96	$50,493 75
		13,532 47	8,483 09	5,049 37
		$121,792 24	$76,347 87	$45,444 38

Copy, J. V. B. Agt.

(Endorsed).—No. 4 Estimate for 1879, Moore & Wright Dec. 1st 1879. Certificate No. 22.

RECORD.

In the Superior Court.

No. 89
Plaintiff's Exhibit at trial A23.
Filed 11th Feb. 1896.
continued—

PROGRESS—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 12th 1880 up to and including the 14th day of July 1880.

	Total Estimate.	Previous Estimate.	Amount Due.
Dredging in 10 foot channel South Wet Dock 35,000 cub. yds. at 20c	$7,000 00	$7,000 00	
Extra dredging 16,000 cub. yds. at 25c	4,000 00	4,000 00	
Dredging 15 foot trench South Wet Dock 4,000 cub. yds. at 25c	1,000 00	1,000 00	
Concrete 600 cub. yds. at $4.75 South Wet Dock quay wall	2,850 00		$2,850 00
	$14,850 00	$12,000 00	$2,850 00
	1,485 00	1,200 00	285 00
	$13,365 00	$10,800 00	$2,565 00

J. VINCENT BROWNE, Agent.

(Endorsed)—Estimate No. 2 for 1880. Certificate No. 26, Moore & Wright, July 14, 1880.

PROGRESS.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 12th 1880 up to and including the 18th day of October 1880.

	Total Estimate.	Previous Estimate.	Amount Due.
Dredging in 10 foot channel 44,250 cub. yds. at 20c.	$8,850 00	$7,000 00	$1,850 00
" " 15 " trench 10,000 " " . at 25c.	2,500 00	2,500 00	
Extra dredging Tidal Basin 40,000 cubic yds. at 25c.	10,000 00	10,000 00	
Concrete quay wall south wet dock 3,400 cubic yards at $4.75	16,150 00	12,350 00	3,800 00
Concrete 16 to 1=22 shoal cribs at $212.70	4,679 40	3,403 20	1,276 20
Concrete 8 to 1=20 shoal cribs at $927.25	18,545 00	12,981 50	5,563 50
Stone agragate in concrete	2,000 00	2,000 00	
	$62,724 40	$50,234 70	$12,489 70
Less 10 p. c	6,272 44	5,023 47	1,248 97
	$56,451 96	$45,211 23	$11,240 73

J. VINCENT BROWNE, Agt.

(Endorsed).—Estimate No. 5, Moore & Wright. Certificate No. 32, Oct 19th 1880.

PROGRESS.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 9th 1880 up to and including the 23rd day of November 1880.

	Total Estimate.	Previous Estimate.	Amount Due.
CONCRETE.			
16 to 1-25 shoal cribs 1772.5 cub. yds. at $3.00	$5,317 50	$4,679 40	$638 10
8 to 1-24½ " " 3332 cub. yds. at $4.75			
4 to 1-24½ " " 1.102 " at $6.25	22,717 63	18,545 00	4,172 63
Quay Wall S. W. Dock 29 shoal cribs 3.538 c. yds. at $4.75	16,805 50	16,150 00	655 50
Tidal Basin 200 cub. yds. at $4.75	950 00	950 00	
Extra balance in quay wall 260 cub. yds. at $4.75	1,235 00		1,235 00
Extra at return pocket crib 55; 4 to 1-45 cub. yds. at $6.25; 8 to 1-91 cub. yds. at $4.75	713 50		713 50
DREDGING.			
Extra tidal basin 92.255 cub. yds. at 25c	23,063 75	10,000 00	13,063 75
10 foot channel 53,144 cub. yds. at 20c	10,628 80	8,850 00	1,778 80
15 " trench 10.195 cub. yds. at 25c	2,548 75	2,500 00	48 75
Levelling 15 foot trench	989 00		989 00
Moving boulders	375 00		375 00
STONE			
Total stone in concrete toeing and pockets of cribs 1.701 toise at 8.5 cubic yards equals 16,772 tons at 40c	6,708 80	2,000 00	4,708 80
CLAY.			
Total clay 2296 tons at 25c	574 00		574 00
Labor handling stone, 7229 cub. yds. at 10c	722 90		722 90
Clay 1531 " " at 10c	153 10		153 10
	$93,503 23	$63,674 40	$29,828 83
	9,350 32	6,367 44	2,982 88
	$84,152 91	$57,306 96	$26,845 94

J. VINCENT BROWNE, Agt.

(Endorsed).—Estimate No. 6, 1880, Moore & Wright. Certificate No. 33.

RECORD.

In the Superior Court.

No. 89. Plaintiff's Exhibit at trial A23. Filed 11th Feb. 1896.

continued—

APPROXIMATE.—Estimate Moore & Wright from May 5th 1881 up to and including the 2nd day of August 1881.

QUEBEC HARBOUR IMPROVEMENTS.	Total Estimate.	Previous Estimate.	Amount Due.
Dredging extra 24,000 cubic yards..... at 25c.	$6,000 00		$6,000 00
" 10 foot channel 24,000 cubic yards. at 20c.	4,000 00		4,000 00
1350 cubic yards concrete..... at $4.75.	6,412 50		6,412 00
	$16,412 50		$16,412 50
Less 10 p. c.....	1,641 25		1,641 25
	$14,771 25		$14,771 25
J. VINCENT BROWNE, Agt.			

(Endorsed).—Estimate Moore & Wright, No. 1, August 1881.

APPROXIMATE.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 5th 1881 up to and including the 5th day of Oct. 1881.

	Total Estimate.	Previous Estimate.	Amount Due.
Dredging extra 44,000 cubic yards..... at 25c.	$11,000 00	$6,000 00	$5,000 00
" 10 foot channel 30,000 cubic yards. at 20c.	6,000 00	4,000 00	2,000 00
Concrete quay wall 3050 cubic yards at $4.75.....	14,487 50	6,412 50	8,075 00
Stone for concrete and filling.....	3,925 00		3,925 00
	$35,412 50	$16,412 50	$19,000 00
	3,541 25	1,641 25	1,900 00
	$31,871 25	$14,771 25	$17,100 00
J. VINCENT BROWNE, Agt.			

(Endorsed No. 2).—Moore & Wright, Oct. 5th 1881. Quebec Harbour Improvements. Certificate No. 36.

(Endorsed).—Plaintiff's Exhibit No. A23, filed Feb. 11th 1896. P. M., D. P. S. C.

Peters & Ts

RECORD

In the Superior Court.

No. 90. Plaintiff's Exhibit at trial A24. Filed 11th Feb. 1896. *continued—*

p. 280, l. 31. et seq.

Moore Ex. Pl. 280-1 l. 31 295 l. 40 albert Peters Ex. p 375 l. 15

List of payments made Simon Peters.

No. of Certificate	$ cts.	Date.	No. of Certificate	$ cts.	Date.
1	12,300 19	1877	20	$13,143 10	1879
2	6,822 01	1878	23	8,624 88	"
3	9,000 00	"	24	5,361 78	"
5	10,648 91	"	26	6,537 03	1880
8	9,000 00	"	27	12,197 49	"
11	5,139 50	"	29	10,673 84	"
13	9,000 00	1879	31	9,111 57	"
14	11,431 74	"	33	6,318 75	"
16	20,301 32	"			
17	18,000 00	"		$195,853 93	
19	12,241 82	"			

This is the form mentioned at p 218

TOTAL ESTIMATE.—Simon Peters from 1877 up to and including Nov. 23rd 1880, on the Quebec Harbour Improvements.

	Total Estimate.	Previous Estimate.	Amount Due.
Northern crib work at Gas House	$2,779 79	$2,779 79	
Substructure Northern cribs	16,033 43	16,033 43	
Superstructure " "	50,995 68	50,995 68	
Northern cribs ballast wharf	8,746 88	8,746 88	
Deep cribs tidal basin	36,030 08	36,030 08	
Shoal " South Wet Dock	39,444 90	39,444 90	
Masonry quay wall	53,824 57	46,357 80	$6,466 77
Bollard boxes	1,027 35	864 89	162 46
Mooring posts	302 04		302 04
Return masonry quay wall	89 56		89 56
Piling from deep to shoal cribs	624 65	624 65	
Return at crib 55	304 27	304 27	
Tablet stone quay wall	150 00	150 00	
Excavation north cribs Gas House	137 50	137 50	
Bolts and timber north cribs Gas House	343 95	343 95	
Bevelled end, piles, &c., ballast wharf	1,821 43	1,821 43	
Towing and sinking north cribs	1,087 50	1,087 50	
" " tidal basin criks	4,005 00	4,005 00	
" " north gas house cribs	866 80	866 80	
Error in percentages	09	09	
	$217,615 47	$210,594 64	$ 7020 83
Less 10%	21,761 54	21,059 46	702 08
J. VINCENT BROWNE, Agt.	$195,853 93	$189,535 18	$6,318 75

(Endorsed).—Final Estimate 1880 shewing all previous estimates from 1877 to 1880, also total amount received by Simon Peters Nov. 23rd 1880.

RECORD.

In the Superior Court.

No. 90. Plaintiff's Exhibit at trial A24. Filed 11th Feb. 1896. *continued*—

PROGRESS No. 1.—Estimate Quebec Harbour Improvements, of work done by Peters, Moore & Wright from May 2nd 1877 up to and including the 29th day of November 1877.

(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
19.95 crib blocks at $134.84 per block			$2,690 06
19.95 " " towing and sinking ... at 44c.			866 80
1301.86 cubic feet extra timber ... at 16c.			208 50
131 super. feet of planking ... at 10c.			13 10
2713 lbs. extra bolting ... at 5c.			135 65
1205 " " iron work ... at 5c.			60 25
12 tie bolts and washers ... at 5c.			16 38
346 cubic yards of excavation ... at 40c.			137 50
			$4,128 04
BALLAST WHARF.			
26.595.29 cubic feet timber ... at 15c.			$3,989 74
14.655.5 super. " platform ... at 10c.			1,465 55
7.076.25 " " planking ... at 10c.			707 62
24.635.6 lbs. spike ... at 05c.			1,231 78
Towing and sinking 14.5 blocks ... at 75			1,087 50
4164.3 cubic feet timber ... at 15c.			624 64
2720 super. feet platform ... at 10c.			272 00
1600 " " planking ...			160 00
			$13,666 87
Less 10 p. c ...			1,366 68
			$12,300 19

(Endorsed) No. 1.—Estimate S. Peters, Nov. 29th 1877

PROGRESS No. 2.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from up to and including the 10th day of July 1878.
(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
Quay wall North Tidal Harbour 4.5 crib work blocks for concrete at $1,139.68			$5,128 56
a 1 bevelled end to fit Ballast Wharf $328.61 error 45c.			329 06
b Towing and sinking 4½ at $150=$675 by error			630 00
			$6,087 62
BALLAST WHARF.			
4145 cubic feet of pine ... at 25c.			$1,036 00
3852 lbs. of bolts ... at 05c.			192 60
1094½ cubic feet of hemlock ... at 15c.			164 17
996 super. feet of platform ... at 10 c.			99 60
			$7,580 01
Less 10 p. c			758 00
			$6,822 01

(Endorsed) No. 2.—Estimate S. Peters, July 10th 1878.

PROGRESS No. 4.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from up to and including the 18th day of Sept. 1878.
(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
For towing and sinking as per schedule 10½ 40 foot crib work blocks at $150			1,575 00
For 9 crib work blocks of 40 feet each as per schedule exclusive of cement at $1139.68			10,257 12
			$11,832 12
Less 10%			1,183 21
			$10,648 91
Amount paid in full S. Peters by Harbour Commissioners			
N. B.—Making with the $13\frac{212.72}{1139.68}$ $22\frac{212.72}{1139.68}$ crib work advanced on to date			

(Endorsed) No. 5.—Estimate Simon Peters, Sept. 18th 1878.

RECORD.

In the Superior Court.

No. 90 Plaintiff's Exhibit at trial A24. Filed 11th Feb. 1896. *continued—*

PROGRESS No. 3.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from up to and including the 14th day of August 1878.
(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
$8\frac{882.56}{1139.68}$ 40 foot crib work blocks at schedule rate for Timber and Iron work exclusive of excavation and concrete or sinking at 1,139.68.....			$10,000 00
Less 10 p. c.....			1,000 00
			$9,000 00
Amount paid in full on account to S. Peters by Commission.			
N.-B—Making with the $4\frac{1}{2}$ of last certificate $13.\frac{212.72}{1339.68}$ blocks advanced on to date.			

(Endorsed) No. 3.—Estimate S. Peters, Aug. 14th 1878.

TIMBER IN SUPERSTRUCTURE OF 120 FEET LENGTH OPEN CRIB NEXT BALTAST WHARF NORTH SIDE.

Pine,	122	feet	length 12″x12″	122.0.0
"	122	"	" 10″x12″	101.8.0
"	30	"	" 12″x12″	30.0.0
"	30	"	" 10″x12″	25.0.0

FENDERS OUTSIDE

Pine,	16	pieces	22	feet x12″x12″	352. 0.0
"	3	"	16	" x12″x12″	48. 0.0
"	2	"	22	" x12″x12″	44. 0.0
"	12	"	7.6	" x12″x12″	90. 0.0
"	3	"	8.6	" x13″x13″	29.10.3
"	1	"	4	" x12″x12″	4. 0.0
					846. 6.0

Calculation made by Navarre

HEMLOCK

2 pieces 21x12″x12″	42.0.0

BOLTS

No.	244	Bolts $22x\frac{7}{8}$
	57	" $22x\frac{3}{4}$
	48	" $24x\frac{3}{4}$

PROGRESS No. 8.—Estimate Quebec Harbour Improvements, of work done by Peters, Moore & Wright from up to and including 16th day of October, 1878.
(Copy) J. V. B.

	Total Estimate.	Previous Estimate.	Amount Due.
$4\frac{926.96}{1139.68}$ crib work blocks at 40 feet each balance to crib blocks No. 9 of 120 feet each at 1139.68...			$5,485 68
$5527\frac{7}{2}$ feet of low crib work inside slope of embankment at $8\frac{1}{6}$ c.....			4,514 32
			$10,000 00
Less 10 p. c.....			1,000 00
			$9,000 00
Amount paid in full to Mr. S. Peters by Harbour Commissioners.			
NOTE.—Completing payment less 10 p. c. to No. 9 crib and a proportion of outside low crib to amount of certificate.			

(Endorsed) No. 8.—S. Peters, Oct. 16th 1878.

RECORD.

In the Superior Court.

No. 90. Plaintiff's Exhibit at trial A24. Filed 11th Feb. 1896. *continued*—

PROGRESS No. 11.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from up to and including the 20th day of November 1878.
(Copy) J. V. B.

		S. Peters.	M. & W.
Balance 10 forty feet blocks of concreting to No. 9 crib of 120 each 17 having been previously allowed 22.10 at 2244 dollars			$22,440 00
Less by deductions of balance on 27 pockets as per agreement see certificate No. 9			11,438 00
			$11,002 00
Less 10%			1,100 20
Fine concrete balance to date, Moore & Wright			$9,901 80
Estimate made to date on timber work, S. Peters, towing and sinking 12 blocks in 4 large cribs at 150.00		$1,800 00	
120 crib work to coping level balance		295 55	
44,265¾ feet cube of at init of contract at 8¼		3,615 00	
		$5,710 55	
Less 10%		571 05	
		$5,139 50	5,139 50
Total certificate No. 11			$15,041 30
	16,712 55		
Less 10%	1,671 25		
	$15,041 30		

(Endorsed) No. 11.—Estimate S. Peters and Moore & Wright, Nov. 20th 1878.

RECORD

In the Superior Court.

No. 90. Plaintiff's Exhibit at trial A24. Filed 11th Feb. 1896. *continued—*

PROGRESS ESTIMATE.—Quebec Harbour Improvements, S. Peters, from May 13th up to and including the 9th day of July 1879.

	Total Estimate.	Previous Estimate.	Approximate Estimate.
Gas wharf crib work superstructure to coping level length 730 feet, say 4 courses high	$2,498 45		$2,498 45
Low crib work northern embankment 800 feet long 5'.0x9"	2,980 83		2,980 83
No. 10 deep crib	3,869 04		3,869 04
No. 11 " "	800 00		800 00
Crib work superstructure to coping level next ballast wharf 410 feet 4 courses	1,293 47		1,293 47
	$11,441 79		$11,441 79
Less 10 p. c	1,144 17		1,144 17
J. VINCENT BROWNE, Agt.	$10,297 62		$10,297 62

(Endorsed).—Estimate No. 13. J. V. Browne 1879.

Stonewall begins

PROGRESS ESTIMATE.—Quebec Harbour Improvements, S. Peters, from May 13th up to and including the 9th July 1879.

	Total Estimate.	Previous Estimate.	Approximate Estimate.
Gas wharf crib work superstructure to coping level length 730 feet say 4 courses high	$3,870 43	$2,498 45	$1,371 98
Low crib work northern wall 1535 feet long 5'5"x9	6,205 23	2,980 83	3,224 40
No. 10 deep crib complete and sunk	3,869 04	3,869 04	
No. 11 " " " "	1,289 68	800 00	489 68
Superstructure ballast wharf 410 feet 15 feet high at $10.70	4,387 00	1,293 47	3,093 53
100 feet on from above 410 feet, 8 feet high at 5'60".	560 40		560 40
100 feet on from above 100 feet	298 94		298 94
Stone wall 3702 cubic feet at 60c.	2,221 20		2,221 20
	$22,701 92	$11,441 79	$11,260 13
Less 10%	2,270 19	1,144 17	1,126 01
J. V. BROWNE, Agt.	$20,431 73	$10,297 62	$10,134 12

(Endorsed) No. 14.—Estimate, J. V. Browne, 1879.

RECORD.

In the Superior Court.

No. 90. Plaintiff's Exhibit at trial A24. Filed 11th Feb. 1896. *continued—*

PROGRESS ESTIMATE.—Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 13th 1879 up to and including the 4th day of August 1879.

	Total Estimate.	Deduct Prev. Estimates.	Amount Due. Estimate.
Superstructure of north cribs	$21,093 90	$ 9,116 77	$11,977 13
Substructure	6,205 23	6,205 23	
DEEP CRIBS.—10	3,869 04	3,869 04	
11	1,289 68	1,289 68	
Stone wall 11,603 cubic feet at 60	6,961 80	2,221 20	4,740 60
PILING.—For shoal cribs	559 68		559 68
For extra at end of crib 11 for step from deep to shoal trench	963 85		963 85
12 shoal cribs say 298.23 each	3,578 76		3,578 76
Deep cribs elm capping	976 37		976 37
	$45,498 31	$22,701 92	$22,796 39
	4,549 83	2,270 19	2,279 63
J. VINCENT BROWNE, Agt.	$40,948 48	$20,431 73	$20,516 76

(Endorsed) No. 3.—Estimate S. Peters, Aug. 1879. J. V. B. Certificate No. 16.

PROGRESS ESTIMATE.—Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 13th 1879 up to and including the 6th day of Sept. 1879.

		Total Estimate.	Previous Estimate.	Amount Due.
Superstructure north face of embankment		$33,393 54	$21,093 90	$12,299 64
Masonry		12,993 72	6,961 80	6,031 92
South Wet Dock cribs and piling 11 cribs at 713.96.		7,853 56	4,477 64	3,375 92
37 piles 15x15x27=1561 cubic feet ..... at 35c.		546 35		546 35
64 " 14x7½x25.5 = 1189 " ..... at 45c.		535 05		535 05
Extra Piling		624 65	624 65	
		$55,946 87	$33,157 99	$22,788 88
Deduct Elm Capping	737 00			
Retained North cribs	2,051 88			
	$2,788 88			$2,788 88
				$20,000 00
Less 10%				2,000 00
Amount paid				$18,000 00
J. V. BROWNE, Agt.				

(Endorsed).—Estimate S. Peters, No. 4 Sept. 6th 1879. J. V. B. Certificate No. 17.

PROGRESS ESTIMATE—Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 13th up to and including the 25th day of September 1819.

RECORD

In the Superior Court.

No. 90 Plaintiff's Exhibits at trial A24. Filed 11th Feb. 1896. *continued—*

	Total Estimate.	Previous Estimate.	Amount Due.
Substructure of north face of embankment.....	$16,088 90	$14,390 02	$ 1,698 88
Superstructure of north wall of embankment.....	37,040 73	33,393 54	3,647 19
Masonry 22,284.88 cub. ft. at 60c.....13,370.92			
Headers 3941 at 60c..... 2,364.60			
	15,735 52	12,993 72	2,741 80
South wet dock cribs 17 complete piles &c., $717.18	12,192 06	8,934 96	3,257 10
PILING BEYOND CRIB NO. 17.			
Main piles for 10 cribs at $ 88.55 = $ 885.50			
Sheet " 7 " at 250.65 = 1754.55			
Main piles shoes 10 " at 10.41 = 104.10			
Sheet " 7 " at 35.70 = 249.90			
	2,994 05		2,994 05
Extra piling at change of slope.....	624 65	624 65	
	$84,675 91	$70,336 89	$14,339 02
Less 10%	8,467 59	7,033 68	1,433 90
	$76,208 32	$63,303 21	$12,905 12
Deduct for elm capping $737.00 less 10% = $663.30			663 30
Amount paid.....			$12,241 82

J. V. BROWNE, Agent

(Endorsed).—Estimate S. Peters, No. 5, Sept. 30th 1879. J. V. B. Certificate No. 18.

RECORD.

In the Superior Court.

No. 90
Plaintiff's Exhibits at trial A24.
Filed 11th Feb. 1896.
continued

APPROXIMATE No. 6.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 13th 1879 up to and including the 20th day of October 1879.

	Total Estimate.	Previous Estimate.	Amount Due.
Superstructure Northern Embankment	$43,000 00	$34,988 85	$8,011 15
Substructure " "	7,904 11	7,904 11	
Deep cribs No. 10 and 11	5,158 72	5,158 72	
Masonry quay wall	16,735 52	15,735 52	1,000 00
South Wet Dock cribs and piles 30 cribs at 717.18	21,515 40	15,186 11	6,329 29
Extra piling at charge of slope	624 65	624 65	
Deep crib elm capping	737 00	737 00	
	$95,675 40	$80,334 96	$15,340 44
Deduct elm capping	737 00		737 00
	$94,938 40	$80,334 96	$14,603 44
	9,493 84	8,033 49	1,460 34
J. VINCENT BROWNE, Agent.	$85,444 56	$72,301 47	$13,143 10

(Endorsed).—Estimate S. Peters, No. 6, Oct. 20th 1879. J. V. B.

APPROXIMATE 1879 No. 7.—Estimate Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 13th 1879 up to and including the 1st day of Dec. 1879.

	Total Estimate.	Progress Estimate.	Amount Due.
Superstructure Northern Embankment exclusive of bollards	$45,458 75	$43,000 00	$2,458 75
Substructure Northern Embankment	7,904 11	7,904 11	
Deep cribs 10 and 11	5,158 72	5,158 72	
Masonry quay wall 35,611 cubic feet	21,366 60	16,735 52	4,631 08
Stone for " " delivered 5430 cubic feet	2,172 00		2,172 00
South wet dock piles 30 cribs at 717.18	21,515 40	21,515 40	
Extra piling change of slope	624 65	624 65	
5 bollards boxes complete 1902½	95 11		95 11
25 " " not "	226 25		226 25
	$104,521 59	$94,938 40	$9,583 19
Les 10%	10,452 15	9,493 84	958 31
J. VINCENT BROWNE, Agt.	$94,069 44	$85,444 56	$8,624 88

(Endorsed).—Estimate S. Peters No. 7, Dec. 1st 1879. J. V. B. Certificate No. 23.

RECORD

In the Superior Court.

No. 90 Plaintiff's Exhibits at trial A24. Filed 11th Feb. 1896. *continued—*

PROGRESS ESTIMATE.—Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 12th 1880 up to and including the 14th day of July 1880.

	Total Estimate.	Previous Estimate.	Amount Due.
Masonry quay wall of tidal basin and south wet dock 12,886 cubic feet at 60c. $7,731.60			
Less advance in 1879 ..... 2,172.00	$5,559 00		$5,559 00
29 bollard boxes complete at $19.02½ 551.725			
Less advance 1879 ..... 321.36	230 36		230 36
Balance due by error 1879	1,474 00		1,474 00
	$7,263 36		$7,263 36
Less 10%	726 33		726 33
J. VINCENT BROWNE, Agent	$6,537 03		$6,537 03

(Endorsed)—Estimate No. 1 for 1880. Certificate No. 26, Simon Peters, July 14th 1880.

PROGRESS ESTIMATE.—Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 12th 1880 up to and including the 11th day of August 1880.

		Total Estimate.	Previous Estimate.	Amount Due.
Total cubic feet masonry quay wall at 60c.	20,996 60			
	$12,597 60			
Deduct allowance 1879	2,172 00	$10,425 60	$5,559 00	$4,866 60
29 bollard boxes at ..... $19.02½ =	$551 72			
Deduct advance 1879	321 36			
	$230 36			
8 bollard boxes at $10	80 00			
		310 36	230 36	80 00
10 shoal cribs and piles at $717.18		7,171 80		7,171 80
Piling equal to 2 shoal cribs at $717.18		1,434 36		1,434 36
		$19,342 12	$5,789 36	$13,552 76
Less 10%		1,934 21	578 93	1,355 27
J. VINCENT BROWNE, Agt.		$17,407 91	$5,210 43	$12,197 49

(Endorsed)—Estimate No. 2, Simon Peters. Certificate No. 27, 1880.

RECORD.

In the Superior Court.

No. 90 Plaintiff's Exhibits at trial A24. Filed 11th Feb. 1896. *continued*—

PROGRESS ESTIMATE—Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 12th 1880 up to and including the 31st day of Oct. 1880.

		Total Estimate.	Previous Estimate.	Amount Due.
Total cubic ft masonry quay wall at 60c.	$29.688 at 60c.			
	17,812 80			
Deduct allowance 1879	2,172 00	$15,640 80	$10,425 60	$5,215 20
29 bollard boxes 1879 at 19.02½	551 72			
Deduct estimate 1879	321 36			
	230 60			
12 bollard boxes $10	120 00			
		350 36	310 36	40 00
18 shoal cribs	at 717 18	12,909 24	8,606 16	4,303 08
Piling equal to 3 cribs	at 717 18	2,151 54		2,151 54
Tablet stone quay wall		150 50		150 00
		$31,201 94	$19,342 12	$11,859 82
		3,120 19	1,934 21	1,185 98
J. VINCENT BROWNE, Agt.		$28,081 75	$17,407 91	$10,673 84

(Endorsed).—Estimate No. 3 for 1880. Certificate No. 29, S. Peters, Aug. 31st 1880.

RECORD

In the Superior Court.

No. 90 Plaintiff's Exhibits at trial A24. Filed 11th Feb. 1896.

continued--

PROGRESS ESTIMATE.—Quebec Harbour Improvements of work done by Peters, Moore & Wright from May 12th 1880 up to and including the 5th day of Oct. 1880.

		Total Estimate.	Previous Estimate.	Amount Due.
Total c. ft. masonry quay wall 40.951 c. ft. at 60c.				
60				
	24.570.60			
Deduct 1879	2.172.00			
		$22,398 60	$15,640 80	$6,757 80
Bollard boxes tidal basin	$230.36			
25 bollard boxes S. W. Dock at $10	250.00			
7 " " " " complete at 9.02½	63.17			
		543 53	350 36	193 17
Return crib No. 55		304 27		304 27
25 shoal cribs at 717.18		17,929 50	15,060 78	2,868 72
Tablet stone quay wall		150 00	150 00	
		$41,325 90	$31,201 94	$10,123 96
		4,132 59	3,120 19	1,012 39
		$37,193 31	$28,081 75	$9,111 57

J. VINCENT BROWNE, Agt.

(Endorsed).—Estimate No. 4 Simon Peters, Oct. 6th 1880. Certificate No. 31.

see p 218 Certificate No. 33 on page 218 should be printed here

APPROXIMATE ESTIMATE.—Simon Peters of work done from May 5th ~~1887~~ 1881 up to and including the 2nd day of August 1881, Quebec Harbour Improvements.

	Total Estimate.	Previous Estimate.	Amount Due.
MASONRY QUAY WALL SOUTH WET DOCK			
16.600 cubic feet at 60c	$9,960 00		$9,960 00
Louise tablet stone	150 00		150 00
8 bollard boxes at $19.02½c	152 20		152 20
29 Mooring Posts at $41.94 = $1174 33			
Deduct Estimate 1880 302 04			
	872 28		872 28
	$11,134 48		$11 134 48
Less 10%	1,113 44		1,113 44
J. V. BROWNE, Agent	$10,021 04		$10,021 04

(Endorsed.)—Estimate Simon Peters, No. 1 August 1881.

What is this?
Less Copy Statement made by Jacobs at close of Contract.

RECORD.

In the Superior Court.

No. 91. Plaintiff's Exhibit at trial A25. Filed 11th Feb. 1896.

p. 284, l. 21

Bill No. 1.—Under this Bill we were to build ten hundred and eighty feet of wall containing twenty-seven cribs, each forty feet in length: the foundation of the cribs was to have been a stone and clay filling, deposited in a trench five feet deep: the foundation for the cribs was changed to a solid pile foundation, and the cribs were built in lengths of 120 feet, instead of 40 feet, and instead of 1080 feet in length, we built 1240 in length of an entirely different model from that designed by the enginneers, and a more substantial and expensive structure than called for under our contract: the spaces to contain the coarse concrete were reduced about one-third in width, from those in the original contract: this change reduced the coarse concrete about one-third and made the balance which was put in the cribs much more expensive: the superstructure was changed from a wood and fine concrete face to a cut stone face the reductions in this bill were:

Stone and clay filling	$10 000
Coarse Concrete	15 000
Dredging in deep trench	2 600
Wood face and fine concrete	20 000
The additions: Stone Wall	26 000

Moore Ex. P. 284 l. 23
Albert Peters Ex. P 376 l. 38, 382 l. 12
Jacobs Ex. P 405 l. 46, 410 l. 10
Moore Ex. P 440 l. 16

Bill No. 2.—This Bill called for an Angular crib near Ballast Wharf, and under the original contract, the concrete was omitted, but by an arrangement with the engineers, we placed the concrete in the crib, in bags, by the aid of divers, and the price for the same was agreed upon as $500 00

Bill No. 3.—This Bill called for two cribs forty feet square which was to have been placed in the wall at the eighty-four foot entrance: all the work under this Bill was abandoned. This reduction, in this Bill were:

Concrete	$13 000
Stone and clay filling	5 000
Wood and Iron	5 000

Bill No. 4.—Contained 55 cribs of 42 feet each in length: the cribs were to have rested on a stone and clay filling: the stone and clay filling was abandoned, and a coarse concrete was placed in the trench at a price agreed upon: a pile foundation was substituted for the stone and clay; the cribs were reduced in width by a system of counterforts which reduced the coarse concrete about one-third from what it was in the original contract and made it more expensive to place the balance of the concrete in the cribs: the cribs were built on a different plan and were more substantial and expensive than those designed by the engineers; the superstructure was changed from a wood and fine concrete face to a fine cut stone wall. The Reductions in this Bill were:

Coarse Concrete	$10 000
Stone and Clay filling	16 000
Wood face and fine concrete	40 000
The additions: Stone Wall	55 000

26000
5500
8 1000

Bill No. 5.—Under this Bill we were to dredge the channels and place the dredged material in the embankment, which was designed to have been 200 feet wide under the contract but was changed to a width of 330 feet this change made it more expensive to place the material at the rear of Northern side of the embankment, as if required extra plant and labor to do it.

Bill No. 6.—Called for a bridge to span the 84 foot entrance in the Quay Wall this was abandoned. The reduction under this Bill was:
Bridge $3 500

Bill No. 7.—Was for a low crib work near the Ballast Wharf to protect the North side of the embankment: this was changed by building 120 feet of the work to coping level, and the whole structure was built of a solid timber face which made it more expensive and substantial than the cribs called for under the contract.

Bill No. 8.—This Bill called for a low crib work near the Gas Wharf, the crib-work as constructed was longer, more substantial and more expensive to build than the one called for under the contract.

Bill No. 10.—Was abandoned. The reduction was $365 60

Bill No. 11.—Was abandoned. The reduction was 94 12

Bill No. 12.—Was abandoned. The reduction was 198 40

Bill No. 13.—This Bill provided for pitching the slopes of the embankment and was abandoned.
The reduction under this Bill was $15 000

Bill No. 14.—Was abandoned in part making reduction of same 20 000

MEMO.

According to our contract, page 28, clause 102, all the rubble concrete for the walls and counterforts was to have been composed of one part cement to eight parts coarse ballast or broken stone, but under the orders of the engineers the compo. was changed to one part cement, four parts broken stone, one part gravel and three parts sand which made the work very much more expensive—page 23, item 2 refers to the mode of mixing concrete.

The extra cost on the dredging was caused by
width of the embankment from 200 feet to 330
which called for extra plant and labor to get
material over to to the Northern side of the embankment
extra dredging called for under our contract
to have been done on a line parallel with the
but instead of being done on that line we were
do a large part of the dredging near the
wharf and the Ballast Wharf where
harder and where we met with obstructions
All the changes called for by the Engineers
great delay and expense:

Page 19, Clause 76, item 5 describes the width
the cribs which was to have been built 11 feet wide, but was reduced in width and built only 7 feet wide, with a system of counterforts.

* In original this part is wanting.

RECORD.

In the Superior Court.

No. 91 Plaintiff's Exhibits at trial A25. Filed 11th Feb. 1896. *continued—*

The last item of clause 76, page 20, explains about the end planking in the cribs to protect the concrete from washing which we claim pay for removing: all the concrete in rear of the walls, had to be laid up by hand labor owing to the substituting of the stone wall in lieu of the wood face and fine concrete; we have suffered great loss and damage by being kept out of money so long.

(Endorsed).—Plaintiff's Exhibit No. A25. Filed Feb. 11 1896. P. M. D. P. S. C.

Office of Moore & Wright,
Contractors for
River and Harbor Improvements.

(P. O. Box, 1498.)

Portland, Me., January, 16th, 1885.

No. 92. Plaintiff's Exhibit at trial A26. Dated 16th Jan. 1885.

p. 284, l. 30.

Moore & Co
P. 284 l. 30

My Dear Peters,

Your letter of the 13th, finds me confined to the house, but am pleased to say my knee is getting better and hope in a few days to be out again. You say our case has assumed an unexpected form. I should say it had and that we are in the hands of K. & M. at present. It also appears from what Mr. Bossé says that the stringent clauses in our contract would be sustained in your law courts. If this is the case, it would appear that our only chance is with Kinipple ~~if~~ if we go to K. & M.; and I assure you that it will be very small. You need expect no mercy from Morris as he will neither give justice or law. You may rest assured that Morris will not change his views, for I must tell you that when his firm referred the dredging error to their legal advisers, in London, they were advised, that they must pay the amount and could not deduct a dollar and still Morris persists in making the deduction and Kinipple consents to it. I coincide with you as to Pilkington. I note what you say as to the deductions and to the Long Ton on Stone. The whole matter is in the same mill and will be ground out by the same crank. It has occurred to me that K. & M. might not pay attention to our cable, but proceed with our certificate as soon as they get their answer from Verret. Did he cable or send his answer by mail? From the tone of your letter, I should judge that you give up all hope of changing our line of action from K. & M. to Perly and Boyd. I have had our contract examined by one of my advisers here who has had a large experience in drawing up Government contracts as to the meaning of clause 17 and also referred to him what had been done by us up to the present time. He says that under clauso 17, Kinipple & Morris are not the Engineers for the time being and that if they give us a certificate it would not be a legal one to the Commissioners. Now while I have agreed with Mr. Bossé that this clause referred to K. & M., I must admit that my counsel has convinced me that it does not. Now if this is the case, would it not be well for us to commit the Board to our present line of action if we proceed with it. Under the present state of affairs, I think we had better make a move to have Perly and Boyd substituted for K. & M. I think we can do it by taking the ground that we have been advised that K. & M. are not the Engineers for the time being, but that Messrs. Perly & Boyd are. I think Mr. Bossé could bring this about through Sir Hector, as he has expressed himself willing and

RECORD.

In the Superior Court.

No. 92. Plaintiff's Exhibit at trial A26. Dated 16th Jan. ~~1880~~. 1885 *continued*—

anxious to have them make up the certificate. While I do not like the principle of swapping horses while crossing the river there is time when this policy should be adopted and I think this is as near to it as we can get. I assure you that the case will be made up by K. & M. and the certificate given for the amount stated to be our due by Morris before the arbitrators which was $18,000 less then their award. We can of course withdraw our request for a certificate from K. & M., if the Board will give us Perly & Boyd. If Mr. Bossé can see his way clear to help us out of our difficulty let me know and I will write to a friend on the Board asking him to aid us in making the change. Clause 58 would allow the Board to make the change, I think. Morris has sent for a copy of the statement which was made up by him and Pilkington, and the latter says in a letter on the subject. They will consider their own safety and interest paramount and will not give Sir H. or any one else an occasion to hold them up to adverse criticism for inconsistency and will therefore follow their statement and Morris' testimony before the Board. I would also say that Kinipple feels quite sure that both the Graving Dock and Harbor Works will again be under their charge within a year on the ground that the present engineers will not be able to finish them, he has made this statement in London within 90 days so you can see that he would have an object to keep our certificate small as his friends will compare the cost of the present work done under Perly & Boyd to that done under his firm. Now this matter of changing over to Perly & Boyd is of the utmost importance to us and should be done if it is possible to do.

Please look this up at your very earliest convenience. With kind regards to Mr. Bossé and self.

Yours very truly,

EDW. MOORE.

P. S.—You must urge upon Bossé to bring this matter about as we have no rights that K. & M. will respect.

E. M.

(Endorsed).—Plaintiffs' Exhibit No. A. 26. Filed, February 11th, 1896.

P. M., D. P. S C.

No. 93 Plaintiff's Exhibit at trial A27, Dated 2nd June, 1885.

Portland Maine, June 2nd 1885.

My Dear Peters,

I learn through a Quebec friend that the Board have paid L. C. & Co. a claim of some ten thousand dollars for levelling down the sand on the Embankment which they claim was left by us. I expect they will make a claim on us for amount. If the case is refered to Perly & Boyd. I think this is what you can call *check*. When we left the works there was not a thousand yards of material above grade on the embankment. There is nothing in our contract that compelled us to level the Embankment. I have heard nothing from our certificate as yet, would you advise writing K. & M. again asking them to hurry up the matter. I do not believe they can make up a certificate without they use the statement made by Brown. If the Board have paid L. C. & Co. $10,000 referred to, they

RECORD.

In the Superior Court.

No. 93. Plaintiff's Exhibit at trial A27. Dated 2nd June, 1885. *continued—*

must have some funds on hand. I see by the letter of my friend that the Union Bank has passed its dividend on act of losses in the North West. Am pleased to learn that Riel is in the hands of the Government but regret to see that the Indians are on the War Path.

Remember me kindly to Mrs Peters and family.

With kind regards,

Yours very truly,

EDWARD MOORE.

(Endorsed).—Plaintiffs Exhibit No. A27, filed Feb. 11th 1896. P. M., D. P, S. C.

No. 94 Plaintiff's Exhibit at trial A28, Dated 6th August 1885.

Portland, Aug. 6th 1885.

Dear Peters,

Yours of the 21st at hand and contents noted. The old award of K. & M., has no force as it was not based on the contract. Have heard nothing from Messrs. K. & M., and think we should give these gentlemen notice very soon that we consider their delay a refusal on their part to comply with our request. If we inform the Board of Messrs. K. & M's. neglect to furnish us a certificate, the Board would give us their old answer without doubt. We should have never asked K. & M. for the final certificate but after we did ask for it we should have sent them a full statement as required by clause 55 of our contract. I am of the opinion that they K. & M., are in correspondence with the Board and have made the point that we have not complied with the contract. Unless our friend has assisted them in making up a certificate I do not believe they can make up one in accordance with the contract, for if you will examine clause 56 you will see that they must make a certificate for the balance due under the contract and for extras. Then again, clause 60 refers to extra work. I hear written to a friend in London to drop in and see K. & M. and get what information he can from them and will give you the result of his mission as soon as I hear from him. Do I understand that Mr. Dobell is on his way to Quebec from London. I suppose you have seen the report that the Panama Canal is in trouble and that work will soon stop—a big failure for De Lesseps. Am sorry to hear that you and Mrs. Peters have been having the Canadian Cholera as it is not a pleasant thing to have. Trust you are both well rid of it by this time. Remember us kindly to Mrs. Peters.

Yours very truly,

EDWARD MOORE.

(Endorsed).—Plaintiff's Exhibit No. A28, filed Feb. 11, 1896. P. M., D. P. S. C.

RECORD Moore Ex.
In the Superior Court. P 284 f. 34, 286 f. 20, 287 f. 37, 312 f. 3

Portland, Me., April 22nd 1893.

WALTER ROBERT KINIPPLE, ESQ.,

Dear Sir,

We need a full detailed statement of your final certificate to cover all the work done and allowed by Kinipple & Morris under the main contract or tender, as well as for the extra work. This statement will facilitate the settlement of all matters existing between the joint contractors on account of their contract on the Quebec Harbour Works. Trusting you will be able to send us such a statement and oblige.

Yours very respectfully,
PETERS, MOORE & WRIGHT,
by EDWARD MOORE.

No. 95 Plaintiff's Exhibit at trial A29. Dated 22nd April 1893. p. 284 l. 53

(Endorsed).—Plaintiff's Exhibit No. A29, filed Feb. 11, 1896. P. M., D. P. S. C.

Moore Ex. P 284 f. 35, 312 f. 3

Westminster Chambers,
3, Victoria Street, London, S. W.
May 15th, 1893.

MESSRS. PETERS, MOORE & WRIGHT,
Portland, Maine., United States.

QUEBEC HARBOUR WORKS.

Dear Sirs,

We are in receipt of your letter of the 22nd *ultimo* asking for detailed statement of work done by you, as per final certificate of 4th Feb. 1886.

In accordauce with your request, we herewish enclose statement as desired, duly certified as being a correct copy, and witnessed by one of the clerks in our office.

Yours truly,
KINIPPLE & JAFFREY.

No. 96 Plaintiff's Exhibit at trial A30. Dated 15th May 1893. p. 284 l. 53

(Endorsed).—Plaintiff's Exhibit No. A30, filed Feb. 11, 1896. P. M., D. P. S. C.

Westminster Chambers,
3, Victoria Street, London, S. W.,
15th May, 1893.

Messrs. Peters, Moore & Wright.

Gentlemen,

When Mr. Morris died, I practically took into partnership, an old assistant of mine, Mr. William Jaffrey, M. Inst. C. E., and who has now been a full partner with me for 2½ years.

He was in our offices, from the first to the last, when the Quebec Works were in progress. I mention this because the copy of the final certificate of Feb. 1886 is signed in the names of the present firm, I hope this is all right.

Yours very truly,
WALTER ROBERT KINIPPLE.

No. 97 Plaintiff's Exhibit at trial A31. Dated 15th May 1893. p. 284 l. 53

Moore Ex. P 284 f. 31, 312 f. 4

(Endorsed).—Plaintiff's Exhibit No. A31, filed Feb. 11, 1896. P. M., D. P. S. C.

RECORD.

In the Superior Court.

No. 98 Plaintiff's Exhibit at trial A32. Dated 18th July, 1878.

Moore & Wright,
Quebec, July 18th, 1878.

S. Peters, Esq.,

Dear Sir,

Please send us 500 more deals and 100 large floats for the screen on the North Side Embankment.

Yours respectfully,
MOORE & WRIGHT,
per Clerk.

(Endorsed).—Plaintiff's Exhibit No. A32, filed Feb. 11, 1896. P. M., D. P. S. C.

No. 99. Plaintiff's Exhibit at trial A33. Dated 2nd Sept. 1878.

Quebec, 2nd Sept. 1878.

S. Peters,

Dear sir,

We need 500 deals and 100 traverses for temporary protection, please give us an order for the same.

Yours truly,
MOORE & WRIGHT.

(Endorsed).—Plaintiff's Exhibit No. A33, filed Feb. 11, 1896. P. M., D. P. S. C.

No. 100. Plaintiff's Exhibit at trial A34. Filed 11th Feb. 1896.

DEDUCTIONS FROM MAIN CONTRACT. as agreed!

Bill No. 3	$17,486.34
6	3,505.48
10	365.68
11	94.12
12	198.40
13	5,180.50
Miscellaneous Items	12,017.30
3645 cubic yds., of 8 to 1 concrete per bill, rear of timber face superstructure, 27 cribs tidal basin at $4.75 per yard	17,313.75
6710 cubic yds., of 8 to 1 concrete do do 55 Cribs Wet Dock at $4.75 per yard	31,872.50
Deduction in pockets of 31 Cribs in Tidal Harbour 104 cubic yds., to crib=3224 cubic yards at $4.75 per cubic yard	15,314.00
Deduction in pockets of 55 Cribs in South Wet Dock, 45 cub. yds. to Crib 2475 cubic yards at $4.75 per cubic yard	11,756.25
Bill No. 5 sweeping of dredgings	1,000.00
	$116,104 32

(Endorsed).—Plaintiff's Exhibit No. A34, filed Feb. 11th, 1896. P. M., D. P. S. C.

Moore's Calculation showing Cubic Yards of Stone in Stone Wall explained thus ?

RECORD.

(In pencil)

Detail of how price of cut stone masonry is established:

There is six cube yards of concrete and masonry is the lin. ft. at $9.63 for cube yard would amount to $59.76.

The 4⅔ c. yds. of concrete at $6.25 per yard would be.....		$ 29 16
1 1⅓ " cut stone at $21.60 per yard or 80cts cube ft.		28 80
	$ 59 96	

In the Superior Court.

No. 101. Plaintiff's Exhibit at trial A36. Moore Co. Filed 11th Feb. 1896. P 300 l. 16 Albert Peters P 376 l. 25

(Endorsed).—Plaintiff's Exhibit No. A.36, filed Feb. 11, 1896. P. M., D. P. S. C.

This is in J. Peters handwriting ? as proved.

(Edorsed)—Memo. of original figures arrived at between Moore & Wright and myself in making supplementary tender.

$159,675 00		
211,773 75		
11,978 80		
	$ 383,427 55	
Wood and iron work.	138,868 76	
	$ 522,296 31	
	7,000 00	
	$ 529,296 31	

No. 102. Plaintiff's Exhibit at trial A37. Filed 11th Feb. 1896. Moore Co P. 300 l. 48 H. J. Peters Co P. 331 l. 41 Albert Peters Co P. 377 l. 3

(Endorsed).—Plaintiff's Exhibit No. A37, filed Feb. 11th, 1896. P. M., D. P. S. C.

Where ? filed.

Letter 9, Nov. 1881.

(In pencil)

	Total Estimate.	Previous Estimate.	Amount due.
Masonry—128,964.² cub. ft. at 60c...	$ 77,378 50	$ 62,784 57	$ 14,593 93
Less 10 0/0.....			1,459 39
			$ 13,134 54

No. 103. H. J. Peters Plaintiff's P 332 l. 38 Exhibit at Albert Peters trial A38. P 377 l. 9 Filed 11th Feb. 1896.

Balance claimed on masonry less 10 0/0 per letter to the Chairman Q. H. C., and signed by Peters, Moore & Wright.

(Endorsed).—Plaintiff's Exhibit No. A38, filed Feb. 11th, 1896. P. M., D. P. S. C.

Where ?

ESTIMATE MADE NOVEMBER 29th, 1877. Viz.

GAS WHARF.

For 19.95 crib blocks at $134.....$	2,690 06
Towing and sinking 19.7 block at $44.....	866 80
1301. 86 cub. ft. extra timber at 16c.....	208 30
131 sup. ft. of extra planking at 10c.....	13 10

No. 104. Plaintiff's Exhibit at trial A39 Dated 29th Nov. 1877. H. J. Peters Co P. 355 l. 36 Albert Peters Co. P 375 l. 8

RECORD.

In the Superior Court.

No. 104. Plaintiff's Exhibit at trial A39, Dated 29th Nov. 1877. *continued—*

Extra bolting at Gas Wharf, 2713 lbs. at 5c		135 65
Bolts for extra work, 1205 lbs. at 5c		60 25
12 large bolts, nuts and washers, 327.6, 5c		16 38
346 cub. yds. of excavations at 40c		137 50
	$	4,128 04

BALLAST WHARF.

26,595.29 cub. ft. timber at 15c	$	3,989 74
14,655.5 sup. ft. platform at 10c		1,465 55
7076.25 sup. ft. planking at 10c		707 62
24,635.6 lbs. spikes and bolts at 5c		1,231 78
Towing and sinking 14.5 blocks at $75		1,087 50
80 ft. length. 4164.3 cub. ft. of timber at 15c		624 64
80 ft. length. 2720 sup. ft. of platform at 10c		272 00
80 ft. length. 1600 sup. ft. of planking at 10c		160 00
	$	13,666 87

Quebec, November 29th, 1877.

(Endorsed)—Navarre's Engineer's Estimate for Harbour Improvements.

Certificate No. 1.

ESTIMATE MADE NOV. 29th, 1877, IN STONE AND DREDGING.

Messrs. Moore & Wright.

1535 tons stone toeing at Gas Ballast Wharf cribs at 40c	$	614 00
Latour haudling 1377 cub. yds. stone at 10c		137 70
2925 cub. yds. dredging 120 and 80 ft. crib blocks at 25c		731 25
9537 cub. yds. dredging Commission wharf at 25c		2,393 25
16760 cub. yds. dredging main trench B. wharf at 33c		5,530 80
	$	9,407 00
Deduct 10 p. c		940 70
Moore & Wright's certificate	$	8,466 30

ESTIMATE MADE NOV. 29th, 1877 ON TIMBER WORK.

19.95 crib blocks at $134.84 per block	$	2,690 06
19.95 crib blocks, towing and sinking at $44		866 80
1301.86 cub. ft. extra timber at 16c		208 30
131 sup. ft. of planking at 10c		13 10
2713 lbs. extra bolting at 5c		135 65
1205 lbs. extra bolting, extra work at 5c		60 25
12 tie bolts and washers at 5c		16 38
346 cub. yds. excavation at 40c		137 50

BALLAST.

26,595.29 cub. ft. of timber at 15c	$ 3,989	74
14,655.5 sup. as platform at 10c	1,465	55
7,076.25 sup. as planking at 10c	707	62
24,635.6 lbs. spikes at 5c	1,231	78
Towing and sinking 14.5 blocks at 75c	1,087	50
41.64.3 cub. ft. timber at 15c	624	64
2720 sup. ft. platform at 10c	272	00
1600 sup. ft. planking at 10c	160	00
Total	$ 13,666	87
Deduct 10 p. c	1,366	68
Peters certificate	$ 12,300	19

Note an error of 18 cents in the total. Makes Moore & Wright $8,466.48 instead of $8,466.30.

ESTIMATE No. 2 MADE JULY 10th, 1878.

Quebec Harbour Improvements.

Messrs. Moore & Wright's dredging :

45,000 cub. yds. in trench at 33c	$ 14,850	00
32,777 cub. yds. in channel at 25c	8,194	25
	$ 23,044	25
Deduct 10 p. c	2,304	42
	$ 20,739	83
Less advance made Messrs. Moore & Wright	6,000	00
	$ 14,739	83

ESTIMATE ON TIMBER WORK MADE JULY 10th 1878.

Quay wall North Tidal Harbour :

45 crib work blocks for concrete at $1,139.68	$ 5,128	56
a 1 beveled end to fit ballast wharf at $328.61 error 45c	329	06
b Towing and sinking 4½ do. at $150=$675.00, by error $630	630	00
	$ 6,087	62

RECORD.

In the Superior Court.

No. 104. Plaintiff's Exhibit at trial A39, Dated 29th Nov. 1877. *continued*—

BALLAST WHARF.

4145 cub. ft. Pine at 25c	$ 1,036 00	
3852 lbs. of bolts at 5c	192 60	
1094½ cub. ft. of Hemlock at 15c	164 17	
996 sup. ft. of platform at 10c	99 60	
		1,492 37
		$ 7,580 01
Deduct 10 p. c		758 00
		$ 6,822 01
By this certificate (No. 2) Mr. S. Peters received	$ 6,822 01	
By this certificate (No. 2) Messrs. Moore & Wright rec'd.	20,739 03	
Making certificate No. 2	$ 27,561 84	
After deducting 10 p. c	3,062 42	
From the total of	$ 30,624 26	

N. B.—Errors in item *a* was taken $329 06
instead of 328 61

Difference ..... $ 0 45
In item *b* 4½ at $150 ..... 630 00
instead of 675 00

Difference to be 45 00

Total difference or error ..... $45 45 to be allowed next certificate

Certificate No. 3.

ESTIMATE MADE AUG. 14th, 1878, FOR MR. PETERS.

For 8 $\frac{882\ 56}{1,139\ 68}$ 40 feet crib work blocks at schedule rates for timber and iron work exclusive of excavation and concrete or sinking, at $1,139.68	$ 10,000 00
Deduct 10 p. c	1,000 00
Total	$ 9,000 00

Certificate No. 4.

ESTIMATE MADE AUG. 28th, 1878, FOR MESSRS. MOORE & WRIGHT.

For 40,000 cub. yds. of dredging in 150 ft. channel as per price Bill No. 5 of specifications at 25 cts	$ 10,000 00
Deduct 10 p. c	1,000 00
Total	9,000 00

Certificate No. 5.

ESTIMATE MADE SEPT. 18th, 1878, FOR MR. S. PETERS.

For towing and sinking as per schedule rate 10½ 40 ft. crib blocks at $150.00	$ 1,575 00	
For 9 crib work blocks of 40 ft. each as per schedule, exclusive of concrete, etc., at $1,139.68	10,257 12	
Total	11,832 12	
Deduct 10 p. c	1,183 21	
	$ 10,648 91	

Certificate No. 6.

ESTIMATE MADE SEPT. 18th, 1878, FOR MESSRS. MOORE & WRIGHT.

For 48,000 cub. yds. of dredging in 150 ft. channelway as per price Bill No. 5 of specifications, at	12,000 00	
For 2.40 ft. blocks concreted, at $2,244.00	4,488 00	
Total	$ 16,488 00	
Deduct 10 p. c	1,648 80	
	$ 14,839 20	

Certificate No. 7.

ESTIMATE MADE OCT. 2nd, 1878, FOR MESSRS. MOORE & WRIGHT.

For No. 12 40 ft. cribs concreted at $2,244.00 per 40 ft.	$ 26,928 00	
Less No. 2 40 ft. cribs concreted and paid for on certificate No. 6	4,488 00	
	$ 22,440 00	
Less deductions to be made as per alterations from original drawings, 100 cub. yards per 120 ft. length	1,900 00	
	$ 20,540 00	
Deduct 10 p. c	2,054 00	
Amount paid	$ 18,486 00	

(Triplicate.)

(In pencil)

No. 8 certificate 16th October, S. Peters	$ 9,000 00 nett	
No. 9 certificate 23rd October, Moore & Wright	10,098 00 nett	
No. 10 certificate, 6th November, Moore & Wright	13,500 00 nett	
No. 11 certificate, 20 November, S. Peters	$ 5,139 50	
Moore & Wright	9,901 80	
	$ 15,041 30	

(Endorsed)—Plaintiff's Exhibit No. A39. Filed 11th Feb. 1896.
P. M., D. P. S. C.

HARBOUR IMPROVEMENTS.

BALANCE SHEET.

Total Contract amount	$743,120 31	Total Estimate up to Aug. 3rd 1881	$599,024 62
Deductions from contract	84,234 47	Estimate made out Oct. 5th 1881	19,000 00
			40,861 22
	$658,885 84	Total balance	$658,885 84
Contract amount less 10%	$592,997 26	Payments made	$556,222 16
10% to be retained	65,888 58	10% retained	61,802 46
	$658,885 84	Balance of 10%	4,086 12
		Balance	36,775 10
			$658,885 84

ST. GEORGE BOSWELL,
Assistant Engineer.

Quebec, December 14th 1881.

WOODFORD PILKINGTON,
Resident Engineer.

Pltff's Ex. No 17 not printed same as this Ex A 40

Kinipple Co.
P 254 L 35

Brunelle Co.
P. 263 L. 44
266 L. 32
267-1 L. 1
270-1 L. 25

Albert Peters Co.
P 374 L 37

Synopsis by Engrs sent to Harbour Comrs with Bills. A-6 10 Dec 87
Based on Engrs progress bills. P51819.
Gives maturity 82 833.37

RECORD.

In the Superior Court.

No. 105. Plaintiff's Exhibit at trial A40. Dated 14th Dec. 1881. *continued—*

HARBOUR IMPROVEMENTS.

SYNOPSIS OF ACCOUNTS BROUGHT DOWN TO THE CLOSE OF THE WORKING SEASON OF 1881.

		Total contract amount.	Payments made.	Total balance.	Total Deductions.	
					Deductions for works not executed.	Deductions from total balance for over payments and works partially executed.
Bill No. 1	Timber Substructure	$39980 08	$40035 08			$55 00
	Concrete "	54250 00	54250 00			
	Concrete backing to masonry—superstructure	19878 75	19878 75			
	Masonry	26129 37	26129 37			
	Bollards	990 14	479 10	$511 04		
	Fenders	786 16			$786 16	
	Bollard Concrete	124 00			124 00	
Bill No. 2	Angular corner of Tidal Harbour Crib No. 1	328 61	329 06			0 45
Bill No. 3	Crib blocks to 80 ft. entrance	17486 34			17486 34	
Bill No. 4	Timber substructure	39444 90	39444 90			
	Concrete "	50998 75	50998 75			
	Concrete backing to masonry—superstructure	31872 50	24168 00	7704 50		
	Masonry	56704 45	36655 20	20049 25		
	Fenders	2520 10			2520 10	
	Bollards	1756 70	415 22	1341 48		
Bill No. 5	Tidal Harbour Channel	68650 00	36761 25	31888 75		
	Do. do. Trench	33214 50	29792 40	3422 10		
	Wet Dock Channel	34000 00	31580 00	2420 00		
	Do. Trench	23362 50	23362 50			
	Maintaining Channelways	448 00		448 00		
Bill No. 6	Bridge over 80 ft. entrance	3505 00			3505 00	
Bill No. 7	Ballast Wharf crib work	6838 44	6838 44			
Bill No. 8	Gas Wharf crib work	2895 14	2895 14			
Bill No. 9	Screens, etc.	614 50			614 50	
Bill No. 10	Crib work at 80 ft. entrance	365 68			365 68	
Bill No. 11	Ladders in Tidal Harbour	94 12			94 12	
Bill No. 12	Ladders in Wet Dock	198 40			198 40	
Bill No. 13	Pitching Slopes—for labour	5180 50			5180 50	
Bill No. 14	Miscellaneous Items	20647 60	7291 10	13356 50		
Contingent Items.	Dredging	62500 00	50707 00	11793 00		
Stone	In concrete, etc. approximately (taken from Contractors returns)	33626 75	24687 96	8938 79		
Extras						
Bill No. 1.	For mooring posts approximately	150 00	150 00			
	For " " boxes, "	589 77	589 77			
Bill No. 4.	For " " " "	280 00	130 00	150 00		
	For " " " "	1046 37	589 78	456 59		
Bill No. 7.	Ballast wharf cribwork	3431 64	3431 64			
Bill No. 8.	Gas " "	1232 90	1232 90			
Miscellaneous extras.	Concrete in foundation of wet dock wall	11485 80	11485 80			
	Concrete in change of slope	1068 75	1868 75			
	" in return at end of wet dock	1115 54	713 50	402 04		
	" in changed stepping in tidal harbour wall	2163 00	2797 75			634 75
	" in changed stepping in wet dock wall	3683 90		3683 90		
	Northern cribwork substructure as per agreement	16088 90	16033 43	55 47		
	" " superstructure " "	58285 36	50995 68	7289 68		
	For piling at change of stope	624 65	624 65			
	For return crib at end of wet dock	304 27	304 27			
	For masonry return at ballast wharf	89 56	89 56			
	For No. 2 Tablet stones	300 00	300 00			
Deductions.	For substructure 1st block northern cribwork	1787 92	1787 92			
Bill No. 5.	Clerical error tidal harbour channel					31150 00
	Tidal harbour trench					3422 10
	Wet dock channel					1000 00
	Maintaining channelways					448 00
Bill No. 1.	For No. 16, mooring posts not put in					511 04
Bill No. 4.	For No. 27, " " "					862 38
Bill No. 14.	Miscellaneous items approximately					12017 30
Miscellaneous deductions.	For one bollard counterfort concrete in, approximately					101 69
	For one " box					19 02
	For No. 48 bollards in northern cribwork not put in					1533 12
	For No. 11 ladders " " "					225 83
	Dredging in contingent items not done					2069 19
		$743120 31	$599024 62	$113911 09	$30874 80	$54049 87
	Certificate Oct. 5th 1881					19000 00
	Totals	$742934 31	$599024 62	$113725 09	$30874 80	$73049 87

ST. GEORGE BOSWELL,
Assistant Engineer.

WOODFORD PILKINGTON,
Resident Engineer.

(Endorsed)—Plaintiff's Exhibit A40. Filed 11th Feb. 1896.

515-576

In the Superior Court.

No. 106 Plaintiff's Exhibit at trial A40½. Dated 15th Jan. 1895.

Telegraphic and cable address, Kahort, London.

Westminster Chambers,
3 Victoria Street, London S. W.
15th January, 1895.

I hereby certify that it is within my personal knowledge as the senior member of the firm of Kinipple & Morris who were engineers for the Quebec Harbour Improvements that in the contract for the section of the works which was undertaken by the firm of Peters, Moore & Wright that Mr. Peters carried out the timber work and masonry (stone face) portion of the contract and Messrs. Moore & Wright the concrete and dredging portion.

WALTER ROBERT KINIPPLE.

(Endorsed)—Plaintiff's Exhibit No. A 40½. Filed Feb. 11 1896.
P. M., D. P. S. C.

No. 107. Plaintiff's Exhibit at trial A41. Dated 8th Jan. 1895.

Telegraphic and cable address Kahort, London.

Westminster Chambers,
3 Victoria Street, London S. W.
8th January, 1895.

We hereby certify that in the copy of the final certificate of date 27th January 1886 for the Quebec Harbour Works which copy was issued and signed by us on the 15th May 1893 that it was not intended to represent that the contractors Messrs. Peters, Moore & Wright actually did the fine or 4 to 1 concrete therein mentioned in items Nos. 2, 7 and 20 in rear of the timber face, inasmuch as the timber face was not constructed and the fine 4 to 1 concrete was not done.

The original intention to construct a timber face backed with fine or 4 to 1 concrete was abandoned, and a masonry face constructed in place thereof.

This masonry face was more costly than the timber and fine concrete face originally intended, the price for such consisting of the amounts for the items of timber facing and fine concrete and an additional sum allowed.

The true intent and meaning of the statements in items Nos. 2, 7 and 20 in the final certificate is that the sums therein stated were allocated as part payment of the masonry face and not at all as certifying that the fine concrete work had actually been carried out.

The three items referred to are as follows viz:

Item No. 2.—Allowed for fine or 4 to 1 concrete rear of timber face of the superstructure of 27 crib blocks South Tidal Harbour	$	7,593 75
Item No. 7.—Allowed for fine or 4 to 1 concrete rear of timber face of the superstructure of Wet Dock crib blocks as per amended plan of June 5th 1879		16,239 30
Item No. 20.—Allowed for fine or 4 to 1 concrete in rear of timber face of the superstructure of the four extra 40 feet crib blocks		1,125 00

KINIPPLE & JAFFREY,
M. M. I. C. E.

(Endorsed).—Plaintiff's Exhibit No. A 41. Filed Feb. 11 1896. P. M. D. P. S. C.

Where ? what ?
Calcs made by att Peters
from Moores calculations A 36 pages 569

578

RECORD.

In the Superior Court.

No. 108 Plaintiff's Exhibit at trial A42. Filed 11th Feb. 1896.

3550	
	$1\frac{1}{3}$
3550	
	$1183\frac{1}{3}$
	$4733\frac{1}{3}$
	27
33137	
9466	
127791	
	9
127800 ft.. c.	

(Endorsed.)—Plaintiff's Exhibit No. A 42. Filed Feb. 11 1896. P. M. D. P. S. C.

Albert Peters Ex.
P. 376 l. 31

Made in Moore's handwriting from
which Albert Peters made B3 8 pages 607-8

STATEMENT OF ACCOUNT

Between S. Peters, E. Moore, A. R. Wright and the Quebec Harbour Commissioners.

RECORD

In the Superior Court.

No. 109. Plaintiff's Exhibit at trial A43, Filed 11th Feb. 1896.

Albert Peters Ex.
P 377 f. 37

Amount of Contract or Tender		$529296 31
Additional work done by order of the Engineers as per clause 48, page 12.		
Four forty foot blocks of cribs for North Quay Wall Tidal Basin.	$19,326 00	
Extras for stone wall and Rough Bouchard to same	21,940 61	
Return end of stone wall at angle of Ballast Wharf	89 56	
Two tablet stones	300 00	
Excess of timber and iron work, in 31 Cribs in Tidal Basin	8,186 17	
Planking, scantling and bolts forming counterfort to wet dock cribs.	3,822 50	
Widening shoal cribs and bolting the same to piling	1,846 35	
Extra lengths of 6 in. on Piles in wet dock	272 25	
Crib work block at Ballast Wharf	5,219 56	
Entremise filling to face of the crib work between the fenders	194 03	
Gas House crib work extra for lengths and for excavating the foundations	1,232 90	
Substructure between Ballast Wharf and Gas House	16,088 90	
Superstructure Northern crib work	58,285 36	
Piling at angle of Ballast Wharf	1,143 07	
Piling at change of slope from deep to shoal trench	624 25	
Crib work and piling at return end of wet dock	304 27	
Allowance on fenders	1,038 00	
85 bollard boxes	1,617 12	
25 barrels, Portland Cement	88 75	
Extra dredging in Tidal Basin 241,723 c. yds. This quantity was allowed by engineers after deducting from the extra dredging for all sweepings	60,430 81	
Extra dredging done for Northern crib work 2925 c. yds. at 25cts.	731 25	
Extra dredging done at angle of Ballast Wharf. On the slopes of Western end of 24 ft. channel and deep trench and for washing in from Ballast Wharf	5,000 00	
For stone, clayey material and Ballast as per contract	51,522 40	
3830 c. yds. of 16x1 concrete placed under shoal cribs at $300 per c. y.	11,485 80	
Concrete from deep to shoal trench	1,068 75	
Concrete at return end of wet dock substructure	713 50	
Concrete at Return end of wet dock superstructure	402 40	
14651 c. yds. rubble concrete in Tidal Basin and wet dock cribs at $6.25 per c. y	91,568 75	
Concrete in bags in angular block at Ballast Wharf	500 00	
Labor and stock at return end of wet dock cribs	100 00	
16,079 c. yds. of Rubble concrete in rear of wet dock in Tidal Basin walls at $6.25 per c. y	100000 00	
For labor in forming the toe of the slope	375 00	
For use of dredge in testing foundations	500 00	
Cash paid out for stocks for receptions at laying tablet stone	750 00	
For 104000 sup. feet of planking to protect concrete in rear of walls.	5,000 00	
For foundations placed under cribs	4,378 55	
Credit by deductions agreed to between Engineers' Contractors	$116104 32	
Credit by deductions on 14657 c. yds. concrete at 4.75 per c. y	69,592 25	
Credit by cash on acct	643999 59	

(Endorsed).—Plaintiff's Exhibit No. A43, filed Feb. 11, 1896. P. M., D. P. S. C.

RECORD.

In the Superior Court.

No. 110. Plaintiff's Exhibit at trial A45, Dated 28th Feb. 1885.

Albert Peters Ex. P 378 l. 8

(Copy) Quebec, 28th February, 1885.

Dear Col. Moore.

I enclose you copy of a letter received from Mr. Bossé this morning. I make no comments, the letter is clear and decisive.

If you agree to the arrangement, telegraph me on Monday so that I may communicate the same to Mr. Bossé as requested.

My mind is made up, I accept the proposition with the proviso that we be heard and allowed to give all the explanations we may deem necessary. You will note what Mr. Bossè says that you must be here, in Quebec, by Thursday, by following this matter up promptly we may get a prompt decision from the Engineers and be in time for the supplementary estimates.

I am happy to inform you that my son Fred's wife presented him with a fine boy last Tuesday. On the same day we burried Mrs Williams, only 40 years of age.

I trust it will not give you too much trouble to bring the parcel belonging to my son which you will find at Mr- M. Smith of your city.

Willis Russel is a little better, was out sleighing yesterday.

Weather lovely, the winter appears broken. I have a letter from Halifax to-day saying that my brother was very ill.

All well here, kind regards to Mrs. Moore and yourself..

Yours truly,

(Signed) SIMON PETERS.

(Endorsed).—Plaintiffs's Exhibit No. A. 45. Filed, February 11th, 1896.

P. M., D. P. S. C.

No. 111. Plaintiff's Exhibit at trial A46. Dated 2nd March 1885.

nutshell

Albert Peters Ex. P 378 l. 10

(Copy) 2nd March, 1885.

Dear Mr. Bossé.

Your welcome letter of last Friday, to hand, I wrote a copy and forwarded same to Col. Moore, Saturday.

Have just received a telegram from him dated Portland. "Will accept proposition as stated in your letter will write to-night-

In the hands of two intelligent engineers, with our explanations our case is as it were in a net shell. Please take such steps as will push the matter that we mey be in the hands of the engineers as soon as possible.

I congratulate you on your success so far.

Yours Truly,

(Signed) SIMON PETERS.

(Endorsed).—Plaintiffs' Exhibit No. A. 46. Filed, February 11th, 1896.

P. M., D. P. S. C.

In the Superior Court.

No. 112 Plaintiff's Exhibit at trial A47. Dated 26 March 1887.

(Copy) Quebec, 26th March, 1887.

Dear Col. Moore.

Yours of the 24th came this morning, I note what you say. Mr. Perly was here last Tuesday, he merely gave his ideas verbally, before making a written report he wants the details upon which K. & M. based their last certificate. So far Cook has not received a definate reply to the letter he wrote in our behalf to the Commissioners. Both Bossé and Cook consider it useless to ask for an outside arbitration as we were refused this before. Both our laywers think we have a better chance in Court. The question will be narrowed down to the clerical error and removal of sand. Cook is of opinion that you will not gain anything on the Ton weight question or the additional concrete. Bossé seems afraid of your getting Pilkington. Cook thinks different, they however both agree that the case should be gone on with without a days delay so as to have a judgement in June next. No doubt you will surprised to learn that I got ~~$2,500 out of~~ $75.00 the Commission to enable Samson to meet his first payment on the 9th. I will tell you about it next time you come on, both kind regards to Mrs. Moore and yourself, believe me Your truly.

Albert Peters &
P 378 l. 24
380 l. 16

B 23 is the same as A47 p. 621

(Signed) SIMON PETERS.

(Endorsed).—Plaintiffs Exhibit No. A. 47. Filed, February 11th, 1896.

P. M., D. P. S. C.

Statement made by Albert Peters on basis of Progress Estimates and shewing the total amount of Work done $711,136. - as per Kinipple & Morris letter d. G. H. C. of 29 April 1886 - A 13 pages 525 & 30

582

RECORD.

In the Superior Court.

No. 113 Plaintiff's Exhibit at trial A48. Filed 11th Feb. 1896.

Albert Peters Ex. P 397 l. 18 400 l. 10

STATEMENT shewing what Final Estimate should be, being all the work not included in the Progress Estimate due Simon Peters.

	Item		
1877 30 Nov.	1	To Progress Estimate No. 1	$13666 87
1878 10 July	2	" " " 2	7,580 01
14 Aug.	3	" " " 3	10,000 00
18 Sept.	4	" " " 5	11,832 12
16 Oct.	5	" " " 8	10,000 00
20 Nov.	6	" " " 11	5,710 55
1879 11 June	7	" " " 13	10,000 00
9 July	8	" " " 14	12,701 92
7 Aug.	9	" " " 16	22,557 02
9 Sept.	10	" " " 17	20,000 00
1 Oct.	11	" " " 19	13,602 02
22 "	12	" " " 20	14,603 44
3 Dec.	13	" " " 23	9,583 19
17 "	14	" " " 24	5,957 53
1880 14 July	15	" " " 26	7,263 30
11 Aug.	16	" " " 27	13,552 76
2 Sept.	17	" " " 29	11,859 82
6 Oct.	18	" " " 31	10,123 96
23 Nov.	19	" " " 33	7,020 83
1881 3 Aug.	20	" " " 35	11,134 48
			$228749 82
	21	To balance due on 31 tidal harbour cribs not included in previous estimates	2,450 24
	22	To balance due on 55 South wet dock cribs not included in previous estimates	9,020 83
	23	To timber for screens not included in previous estimates	307 25
	24	To balance due on stone wall in previous estimates=24323.^{3} ft. c. at 60c	14,593 93
	25	To Excess of timber and bolting in 31 cribs T. H. not included in previous estimates	8,186 17
	26	To forming counterforts in 55 cribs W. D. not included in previous estimates	3,822 50
	27	To widening shoal cribs not included in previous estimates	1,846 35
	28	To entremise filling to face of embankment not included in previous estimates	194 03
	29	To balance due on substructure between ballast wharf and gas house not included in previous estimates	55 47
	30	To balance due on superstructure Northern embankment not included in previous estimates	7,063 85
	31	To piling at angle of ballast wharf not included in previous estimates	1,143 07
	32	To 25 barrels Portland Cement not included in previous estimates.	88 75
	33	To proportion of understated bills of quantities allowed by engineers	2,309 21
		Forward	$279831 47

STATEMENT shewing what Final Estimate should be being all the work nor included in the Progress Estimate due Simon Peters.—*Continued.*

RECORD

In the Superior Court.

No. 113. Plaintiff's Exhibit at trial A48, Filed 11th Feb. 1896.

continued—

Item		
	Forward	$279831 47
34	To pile or stub foundation allowed by engineers	4,378 65
35	To Engineers allowance for fenders	1,038 00
		$285248 12
36	deduct allowance unaccounted for	27 85
		$285220 27
	CR.	
37	By cash received from Q. H. Commissioners	$237942 44
38	4 Feb. 1896 balance due S. Peters as per final certificate	$47277 83
39	To interest 1 year 1 month, 5 days at 6%	3,111 84
		$50389 67
40	By cash 9th March 1887	2,500 00
		$47889 67
41	To interest 6 months, 4 days on 47277.83 at 6%	1,449 39
		$49339 06
42	By cash 14 Sept. 1887	12,500 00
		$36839 06
43	To interest 4 years, 10 months, 12 days at 6%	10,755 98
		$47585 04
44	To interest 3 months, at 4% to 25 Oct. 1892	475 95
		$48070 99
45	By cash 29th October 1892	15,000 00
		$33070 99
46	By proportion legal expenses J. G. Bosse and Cook	2,399 89
		$30671 10
47	To bonus as per notarial agreement	5,000 00
48	Nov. 1877—To amount account rendered	433 75
49	July 1878— " " "	14 11
50	1879— " " "	1,424 26
51	" " "	585 14
52	" " "	45 68
53	" " "	196 70
54	To Moore & Wright's share of silver trowel	26 63
55	To share of account Moorage of Atalaya collected by Moore & Wright	21 33
56	To Moore & Wright's share of account Peters, Moore & Wright	113 85
57	Total amount due S. Peters out of money lying in Union Bank on deposit amounting to $64,972.95	$38532 55

RECORD.

In the Superior Court.

No. 113. Plaintiff's Exhibit at trial A48, Filed 11th Feb. 1896. *continued*—

STATEMENT shewing what Final Estimate should be, being all the work not included in the Progress Estimate due Moore & Wright.

1877	Item		
30 Nov.	1	To Progress Estimate No. 1	$9,407 20
1878			
10 July	2	" " " 2	23,044 25
28 Aug.	3	" " " 4	10,000 00
18 Sept.	4	" " " 6	16,488 00
20 Oct.	5	" " " 7	20,540 00
23 Nov.	6	" " " 9	11,220 00
6 "	7	" " " 10	15,000 00
20 "	8	" " " 11	11,002 00
5 Dec.	9	" " " 12	22,172 31
1879			
31 July	10	" " " 15	20,000 00
1 Oct.	11	" " " 18	28,942 90
5 Nov.	12	" " " 21	22,048 82
3 Dec.	13	" " " 22	50,493 75
1880			
16 June	14	" " " 25	12,000 00
14 July	15	" " " 26	2,850 00
18 Aug.	16	" " " 28	14,000 00
15 Sept.	17	" " " 30	22,334 70
20 Oct.	18	" " " 32	12,489 70
23 Nov.	19	" " " 33	29,828 83
1881			
3 Aug.	20	" " " 34	16,412 50
			$370274 96
	21	To balance due on concrete in 31 tidal harbour cribs not included in previous estimates	2,052 50
	22	To balance due on concrete in 55 wet dock cribs not included in previous estimates	11,869 65
	23	To balance due on dredging not included in previous estimates.	2,706 85
	24	To labor placing screens not included in previous estimates	307 25
	25	To balance due on miscellaneous items not included in previous estimates	1,339 20
	26	To balance due on extra dredging not included in previous estimates	9,723 00
	27	To balance due on stone, clay, and fine ballast not included in previous estimates	13,395 09
	28	To balance due on concrete return end wet dock superstructure not included in previous estimates	402 04
	29	To concrete angular blocks ballast wharf not included in previous estimates	500 00
	30	To timber and labor return wet dock and dredging not included in previous estimates	100 00
	31	To proportion understated bills of quantities	1,870 79
	32	To allowance for washing in of sand	5,000 00
	33	To use of dredge testing foundations	500 00
	34	To labor reception Princess Louise	750 00
	35	To boarding back of concrete	5,000 00
			$425791 33

STATEMENT shewing what Final Estimate should be being all the work not included in the Progress Estimate due Moore & Wright.—*Continued.*

RECORD.

In the Superior Court.

No. 113. Plaintiff's Exhibit at trial A48, Filed 11th Feb. 1896. *continued—*

Item			
	Forward		$425791 33
36	Add excess unaccounted for in previous estimates		124 61
			$425915 94
37	Less removal of sand left on embankment		13,326 00
			$412589 94
	Cr.		
38	By cash received from Harbour Commissioners		$407856 56
39	Due Moore & Wright as per final certificate 4 Feb. 1896		$4,733 38
40	To interest 2 years, one month 18 days at 6%		605 67
			$ 5,339 05
41	By cash 22nd March 1888		15,000 00
42	Overdrawn Dt		$9,660 95
43	To interest on overdraw 4 years, 4 months, 3 days, at 6%		2,171 77
	Total overdraw Dt		$11832 72
45	To clerical error and sand Supreme Court Judgment.	$35457 71	
	To interest 6 years, 5 months, 21 days, at 6%	13,773 59	
			$49231 30
47	To interest 3 months, at 4% to 25th Oct. 1892		373 88
			$37772 46
48	By proportion legal expenses paid Bosse and Cook		3,470 61
			$34301 85
46	By bonus as per notarial agreement and accts. for materials, &c.		7,861 45
50	Due Moore & Wright out of money lying in Union Bank on deposit amounting to $64,972.95		$26440 40

Total Amount of work executed $711,136.00

(Endorsed).—Plaintiff's Exhibit No. A48, filed Feb. 11, 1896. P. M. D. P. S. C.

Made by Albert Peters during trial from S. Peters data B24

STATEMENT.

No. 114. Plaintiff's Exhibit at trial A49. Filed 11th Feb. 1896.

Wood and iron work in Bills Nos. 1, 4, and 7 not done: But allowed for by Kinipple & Morris in final certificate Defendants' Exhibit No. 1 in amount of contract or tender, as a sett off for other work done by Simon Peters.

Bill No. 1—Fenders and bollards	1458 00
Bill No. 4—Fenders, bollards and forming counterforts	3451 50
Bill No. 7—Wood and iron work	2654 23
Additional Work, fenders and bollards in 4 extra cribs	215 88
	$ 7779 61

RECORD.

In the Superior Court.

No. 114 Plaintiff's Exhibit at trial A49. Filed 11th Feb. 1896.

continued—

Albert Peters Co.
P 397-8 f. 32
Moore Co.
P 422-3 f. 39
424-5 f. 35
428 f. 28

Wood and iron work done by Simon Peters as a sett off for deductions in Bills No. 1, 4, 7 and for extra cribs allowed by Kinipple & Morris in final certificate Defendant's Exhibit No.1.

Bill No. 1—Excess of timber and bolting and additional plank and scantling etc. in 31 cribs at	$268 97		
Allowed by final certificate	264 07		
31 cribs		4 90	$ 151 90
Bill No. 2—Extra piling and bolting at angle of ballast wharf	1492 82		
Allowed in final certificate	1143 00		349 82
Bill No. 4—273 screw bolts to elm capping with nuts washers etc., 29,484 lbs. at 5c			1,474 20
6" extra length on sheet piles and driving same 55 times $4.95			272 25
Additional entremise filling to face of sheet piles 55 times $14.32			782 14
Bill No. 8—Extra superstructure			1232 90
Extra masonry 1254.10 ft. at 60c			752 90
			$5016 21

Messrs. Moore & Wright,

To Simon Peters Dr.

1878	To Material delivered for screens as per Plaintiffs' Exhibits No. 37, A32, A33, and never returned as agreed.			
April 29	" 600 pcs. spruce	18×9×3 = 24300		
" "	" 600 " "	14×9×3 = 18900		
July 18	500 " "	18×9×3 = 20250		
" "	" 100 floats 27 ft. average		at 75c	$ 75 00
Sept. 2	" 500 pcs. spruce	18×9×3 = 20250		
" "	" 100 floats 27 ft. average		at 75c	75 00
		83700 at $10.00		837 00
				$987 00

(Endorsed.)—Plaintiff's Exhibit No. A 49. Filed Feb. 11 1896. P. M. D. P. S. C.

Cummings Calculations.

No. 115. Plaintiff's Exhibit at trial A50, Filed 11th Feb. 1896.

Cummings Co
P. 420 f. 32

(In pencil)

Masonry face (stone in the walls) 4177

(Endorsed.)—Plaintiff's Exhibit No. A50. Filed Feb. 11 1896. P. M. D. P. S. C.

RECORD.

In the Superior Court.

No. 116. Plaintiff's Exhibit at trial A51, Filed 11th Feb. 1896.

(Copy) Quebec, 8th August 1887.

To the Chairman and Board of Harbour Commissioners, Quebec.

Sirs,

Mr. Charles Samson to whom I owe between $14,000 and $15,000, is pressing me for a settlement, and threatens me with very serious legal proceedings unless he is paid—such proceedings would injure my business and credit to a ruinous extent. I am therefore reluctantly compelled to ask your Board to place me on the same footing as you have done my colleagues, Moore & Wright, to whom you advanced $20,000 to release them at the Union Bank.

The sum coming to me according to the certificate of Messrs. Kinipple & Morris, amounts to within a trifle of $34,000. The amount to satisfy Mr. Samson will still leave a considerable balance in your hands.

I take this opportunity to state that I take no part in the action pending against the Commission, as I am individually satisfied with the Engineers' Certificate.

I am, Sirs.

Your most obedient servant,

(Sgd.) SIMON PETERS.

(Endorsed).—Plaintiff's Exhibit No. A51, filed Feb. 11th 1896. P. M., D. P. S C.

OFFICE OF SIMON PETERS.

No. 117. Plaintiff's Exhibit at trial A52, Filed 11th Feb. 1896.

P. O. Box 657. Quebec, 24th May 1887.

Dear Col. Moore,

Your letter of the 16th came in due course, wherein you state that the letter to the Board would receive your prompt attention when it came to hand eight days have elapsed and I have not yet received that letter. The sum mentioned in the letter is according to the statement you saw when last here and I have no doubt if the Board do consent to pay me they will have the statement verified by their engineer in accordance with the final certificate of K. & M. I trust that you will remember that I have been kept out of my money all this time entirely on your account. The few extras that I claimed would have been settled by the Board without any trouble your clerical error has been the difficulty all along. I therefore trust that you will not allow me to be kept out of my money any longer your early attention will greatly oblige.

Yours truly,

SIMON PETERS,

(Endorsed).—Plaintiff's Exhibit No. A52, filed Feb. 11, 1896.

P. M., D. P. S. C.

RECORD.

In the Superior Court.

No. 118 Plaintiff's Exhibit at trial A53, Filed 11th Feb. 1896.

(Copy) Quebec, 4th March 1886.

Dear Col. Moore,

Yours of the 26th *ultimo* came to hand only this morning contents noted consequently I am addressing this to Ottawa in the hopes that you may receive it there, since you left I have a copy of K. & M's. letter to Mr. Verret, that accompanied their final certificate copy of which I enclose for your information.

You will find that they have allowed us for all work performed. The deductions are for clerical error and removal of sand $11,000, as per statement mentioned in this letter.

You will therefore perceive that as my claims are allowed there is no reason why I should volunteer a deduction to obtain a settlement, you are well aware that from the beginning it was that alledged clerical error that blocked the way to a settlement.

I think that you are acting in your interest in going to Ottawa, Mr. Bossé leaves for there this evening. Owing to the Riel question, Valin and McGreevy will not be able to leave Ottawa to be here for the proposed meeting next Saturday.

You should get Bossé and the Commissioners to assist you, in making Sir Hector understand the unjustice of these deductions allowed.

We will be even with the award of the Dominion Arbitrators which award was just and fair.

Yours truly,
SIMON PETERS,

(Endorsed). Plaintiff's Exhibit No. A53, filed Feb. 11, 1896. P. M. D. P. S. C.

No. 119. Plaintiff's Exhibit at trial A54, Dated 2nd June, 1879.

Canada, Province of Quebec, District of Quebec. } In the Court of Queen's Bench, (In Appeal.)

No. 90.

Simon Peters, *et al.*, . . . (Deft. in Court below.) Appellants:

and

Antoine Paquet, ... (Plff. in Court below.) Respondent.

FACTUM OF THE APPELLANTS.

The Respondent, in the month of January, 1878, sued the Appellants for damages ($190,) caused to his schooner, the " Elie."

The declaration alleges that on the 22nd September, 1877, said schooner, whilst on her way to the Palais, in the Harbour of Quebec, ran aground on works constructed by the Appellants in the mouth of the river St. Charles, which works were under water and that the Appellants had no mark indicating the presence of such works; that the Appellants were guilty of gross negligence in the premises and responsible for the damages caused.

The Appellants pled a *défense au fonds en fait* and an exception by which they alleged that they were not guilty of any negligence, and that if the Respondents' schooner suffered any damage, it was because of the negligence of the Respondent; that the Appellants, who are constructing a wet dock in the harbour of Quebec, have taken and are taking every possible care and precaution in the execution of their work, that they had marks and buoys to shew the works, and men to prevent accidents; And in the present instance, if any damage was caused to the schooner "Elie," it was in consequence of the want of care of the captain and men on board, and notwithstanding the signals and warning of people in the Appellants' employ.

The Respondent examined Simon Peters, Auguste Lafrance dit Pinel,—Respondents' nephew,—Pierre Pinel dit Lafrance--Respondents' brother in law —and Maxime Pinel dit Lafrance, also a brother-in-law of the Respondent. Simon Peters proves the execution of the works for the improvement of the harbour of Quebec, by the Appellants.

Maxime Pinel dit Lafrance, states that he was captain of the "Elie." The schooner was coming from Metis and arrived at the River St. Charles, about 10.30 a. m., with a good breeze from the North-East. At about 150 feet from the commissioners' wharf she grounded; that there was nothing to shew that there was any obstacle or impediment there.

"Il eut été possible d'éviter l'accident seulement si nous avions été prévenus "d'avance de l'obstruction qu'il y avait dans la Rivière. Il était à notre connais- "sance que l'on faisait des travaux dans la Rivière St. Charles, mais pas à l'endroit "où nous sommes échoués."

Auguste Lafrance dit Pinel and Pierre Pinel dit Lafrance, corroborrates the evidence of Maxime Pinel dit Lafrance.

The above is substantially the evidence adduced by the Respondent in support of his claim.

The Appellants examined Joseph Samson, Charles Delamarre, Michel Proulx and James Moran.

Joseph Samson was in September, 1877, in the Appellants' employ on board of the dredge "Quebec." He remembers when the Respondent's schooner ran aground on the works in course of construction in the river St. Charles. The weather was fine and tide half flood. There was ample room for the schooner to come into the river St. Charles. When he saw that the schooner did not change her course, as he expected, she would do, he hailed her. The schooner was then at a distance from where she afterwards grounded, and had plenty of time to change her course. Samson hailed in a loud voice and made signs with his hands. The people on the schooner saw us.

"Il y avait en ligne entre le dredge et la goëlette lorsqu'elle s'en venait, "une longueur de défence de *crib-work*, de plus de deux cents pieds, et ces bouts "de défenses sortaient de l'eau à une hauteur, dans ce temps, d'environ de quinze "à dix-huits pieds. Il y avait aussi parmi ses défenses de gros pôteaux planté "dans l'eau, et cloués le long du *crib-work*, ces pôteaux sortait de l'eau dans le "temps que la goëlette arrivait de huit à dix pieds. Ces bouts de défenses ainsi "que les pôteaux pouvaient être très bien vus à une distance de quinze cents "pieds, et ils servaient de signaux et d'avertissements. Si les gens à bord de la

RECORD.

In the Superior Court.

No. 119 Plaintiff's Exhibit at trial A54. Dated 2nd June, 1879. *continued*—

" goëlette avaient regardé, et s'ils y avait eu un *lookout*, comme cela devrait être " dans la marine, on ne serait pas venu se jeter sur l'ouvrage ainsi que le deman- " deur l'a fait.

" Malgré les signaux ainsi que les cris des autres hommes à bords avec moi, " le demandeur est venu avec sa goëlette se jeter sur l'ouvrage.

" Vis-à-vis des ouvrages, où la goëlette a échoué, il y avait de la place tout " tout plein pour laisser passer les vaisseaux; il y avait tout le chemin du Nord, " au-delà d'un mille, et aussi les vaisseaux et les steamboats passaient en mon- " tant et en descendant le fleuve St. Charles, vis-à-vis de l'ouvrage en question, " sans aucune avarie, et aussi c'est faute d'attention de la part du demandeur si " sa goëlette est venu s'échouer.

" Les nuits, les défendeurs faisaient mettre des lumières et un *watchman* " pour avertir les gens qui s'approchaient de l'ouvrage.

" Le jour ils ne pouvaient pas donner plus d'avertissements qu'ils le faisaient " de la manière déjà décrite; et en tout les défendeurs prenaient autant de " précaution qu'ils le pouvaient le faire pour éviter les accidents."

This witness states that he first saw the schooner at a distance of about a mile and a half off; that she was sailing with a fair wind and easy to manage, and that it was the fault of the said schooner if she went aground;

Charles Delamarre corroborates the above testimony. He adds:

" L'ouvrage que les défendeurs faisait-là était indiqué au moyen de défenses " de crib et de pôteaux, ses défenses se trouvaient hors de l'eau la longueur d'une " dizaine de pieds. Ces défenses ou marques étaient bien visible dans le jour, " on pouvait les voir de loin et la nuit on y attachait des faneaux. Les défen- " devrs étaient occupés à travailler à cet ouvrage tous les jours. Il y avait aussi " des boués (buoys) pour indiquer là où se faisait l'ouvrage et les goëlettes, " steamboats passaient constamment en montant et en descendant la rivière St. " Charles."

The parties, Appellants and Respondent have admitted that James Moran, master of the dredge " Quebec " will give the same evidence as that of Samson and Delamarre.

Michel Proulx deposes to the value of the schooner.

On the 24th of February last the following judgment, was rendered:

" La Cour ayant examiné la procédure et la preuve de record, et entendu les " parties par leurs avocats sur le mérite;

" Considérant que le demandeur a prouvé les allégations essentielles de sa " déclaration jusqu'au montant de cent piastres, et que les défenses des défen- " deurs ne sont pas fondées;

" Renvoie les dites défenses et condamne les défendeurs conjointement et " solidairement à payer au demandeur, la somme de cent piastres avec intérêt à " compter du deuxième jour de janvier, 1878, et les dépens."

It is from this judgment that present appeal is brought.

The Appellants, in the construction of the foundation of the wet dock in the river St. Lawrence, used every precaution in their power to guard against accidents. The ends of the crib work and the large posts attached to it—15 to 18 feet out of the water—could be seen at a distance of about 1500 feet off. Buoys were placed to indicate the position of the works, the day was fine and

No. 119. Plaintiff's Exhibit at trial A54. Dated 2nd June, 1879. *continued—*

clear. The men in the dredge shouted and hailed the schooner. The people of the schooner were on deck, looking towards the dredge within hearing distance. She had a fair wind, might have been easily brought about, with plenty of water and room for her to pass on by the channel on the north of the works, which channel was used by craft passing up and down the river St. Charles. Notwithstanding the marks and signals and the warning of the Appellants' men, the Respondent continued on his way, indifferent to the consequences. If there was any negligence or want of care in the premises it was certainly on the part of Respondent and not on the part of the Appellants, who ought therefore not to be held responsible.

There is no evidence of record to establish the amount of damages mentioned in the judgment, beyond the rather vague statement of Maxime Pinel dit Lafrance, who says: "Si le bâtiment m'eût appartenu, ça n'est pas pour $300 "que j'aurais voulu qu'il souffrit le dommage souffert par la goëlette...."

For the above, among other reasons the Appellants respectfully pray that the judgment appealed from be reversed, and the action of Respondent against the Appellants be dismissed with costs.

Quebec, 2nd June, 1879.

ALLEYN, CHAUVEAU, LIVERNOIS & ALLEYN,
For Appellants.

(Endorsed) Plaintiff's Exhibit A54. Filed 11th Feb. 1896. P. M., D. P. S. C.

No. 120. Plaintiff's Exhibit at trial A55, Dated 9th Jan. 1885.

Portland, Jan. 9th 1885.

Dear Peters,

Your letters at hand. It would appear that K. & M. are going into our matter with the view of making up our final certificate, as you said nothing as to the cable to be sent them I have thought best to cable them as follows: "Kinmorris, London. See letter before making up certificate." This cable will give us time to form a line of action and decide upon some plan. I am inclined to think that it would be in our interest to have Pilkington go to London. If K. & M. make up the certificate in accordance with clause 56, does Mr. Bossé think we could use it in the Courts provided it was like the old award. I am surprised that K. & M. are going into this matter and after reading over Morris' Testimony, I do not see how he can deal fairly with us and in fact I do not see how he can make a certificate that would equal in amount the 1st award. I want Bossé to look well into this matter before we make a move on London. I will look my matters over and decide us to the trip to London. I think you had better have a letter drawn up and sent to me for K. & M. Please send me the amount you have received including the B. & C. orders and I will compare our statement as to cash with the one sent by Mr. Verret to K. & M. I would suggest in this letter that Mr. Bossé call K. & M's attention to the error in our statement, item No. 2, on four deep cribs to the amount of $2,565, also the weight of stone which was estimated by Mr. Pilkington at 2240 lbs. instead of the legal ton of 2000 lbs. What would you advise as to a statement for K. & M. I do not think it would be well to put the prices which we have in our Bill before K. & M.

Moore Ex. P 458 L.N-

RECORD.

In the Superior Court.

No. 120 Plaintiff's Exhibit at trial A55, Dated 9th Jan. 1885.

continued—

and then again I think they would treat the matter in the same manner as we did before the Board of Arbitrators. At present I am confined to the house. I made a misstep last week and came down on my hand and knee taking the flesh off my knee clear to the bone and bruising the bone. I think a few days will bring me out all right. Remember me kindly to Mr. Bossé with the compliments of the season. The weather with us is very fine for winter weather. No sleighing with us. With our kindest regards to you and family.

I am, yours very truly,

EDW. MOORE.

(Endorsed).—Plaintiff's Exhibit No. A55, filed Feb. 11, 1896. P. M., D. P. S. C.

No. 121. Plaintiff's Exhibit at trial A56, Dated 24th Sept. 1883.

Moore Co. R458 f.41

Portland, September 24th 1883.

My dear Peters,

I left with our Mr. Jacobs the order for Mr. Bossé for the sum of twelve hundred dollars to be paid him on acct. for you to sign and pass over to him. I saw Mr. Valin after I left you Saturday but could get nothing new from him of interest to us. At the Bank Saturday afternoon, I was informed by a friend that McG. said to him that the minister of Justice who has had the Andrew's letter or report reffered to him said that the matter must be settled by the Courts as Andrews says in his letter to the Board that they are not legally bound to pay the award and that the points taken by Andrews was well taken. I give you this for what it is worth but it confirm us in the views we have already taken viz: that our friend cannot help us and also that Mr. Bossé was correct when he informed us that our only course was law. I was approached by a party just as I was leaving Friday who wished to know if we would give $10,000 to have the matter settled on the $108,000 basis. I wanted to know who the principal was but was politely informed that I could not, that it was a friend at Ottawa. I left him without any further talk on the matter. I have given our matter some thought and study on my return trip home and am convinced that we must prepare for a long and expensive law-suit to get even a part of what is our just dues and from certain suggestions made to me by the party reffered to above I think the matter will have to go to the Supreme Court. I also think it would be better for one or the other of us to take the case and I will make an arrangment with you to sell you our interest in the claim or I will take your interest if you think that would be best. If you think it best for me to take your interest I will do so in the following terms:

I will give you an order on the Commission for the sum of seventeen thousand ($17,000) dollars in full settlement for all your interest in the claim against the commission and in full settlement of all matters between us or I will entertain an offer from you on the same basis. In case either one sells he is to assist the other in making a settlement. Before doing anything in this matter perhaps it would be well for you to consult Mr. Bossé and see if he thinks it would be proper for us to make any arrangment of this kind and if it would be for our interest to do so. This matter was suggested to me Friday after leaving you by

No. 121. Plaintiff's Exhibit at trial A56. Dated 24th Sept. 1883. *continued*—

the party that I have already reffered to and while he suggested that it would be better for me to take the matter in hand, I would much rather prefer that you would take it and carry it through. I shall remain at home a few days as I find one of our U. S. contracts will be closed this week. I am fully convinced that if we can make an arrangment of this kind we can get our evidence in before the Court. Please consult Bossé and let me hear from you with kindest regards to self and family.

I am, your very truly,

EDWARD MOORE.

(Endorsed).—Plaintiff's Exhibit No. A56, filed Feb. 11th, 1896· P. M., D. P. S. C.

No. 122 Defendants' List of Exhibits at the trial, Filed 20th Jan. 1896.

Canada, Province of Quebec, District of Quebec. } In the Superior Court.

No. 2453.

Peters, - - - - - - - - - - Plaintiff.

vs.

Moore *et al.*, - - - - - - - - - Defendants.

LIST OF EXHIBITS FYLED BY THE SAID DEFENDANTS AT ENQUETE

B 1. Letters from S. Peters to Colonel Moore, dated 2nd February 1884, 1st May 1884, 27th November 1884, 13th January 1885, 13th April 1885, 10th June 1885, 19th January 1885, 13th May 1885, 17th October 1885, 31st July 1885, 4th January 1887, 26th November 1885, 24th December 1885, 9th April 1889, 7th May 1889, 30th March 1887, 8th January 1885, 21st May 1892, 13th May 1887. Registry receipt Portland, Maine, letter addressed to Kinipple & Morris London, England, from Moore & Wright dated Portland, December 5th 1884. Letter to Chairman and Board of Harbour Commissioners, Quebec, from Moore & Wright, dated Quebec, 13th May 1887.

B 2. Telegram to Edward Moore from Simon Peters, dated Quebec, 17th April, 1885.

B 3. Statement of account between Simon Peters, Edward Moore & Augustus R. Wright and the Quebec Harbour Commissioners.

B 4. Copy of account Quebec Harbour Commissioners to Simon Peters.

B 5. Letter to Colonel Moore from Simon Peters, dated Quebec, 8th January, 1891.

B 6. Letter to Colonel Moore from Simon Peters, dated Quebec, 12th February, 1891.

B 7. Copy of agreement between Simon Peters, Moore & Wright, dated Quebec 10th March 1891.

RECORD:

In the Superior Court.

No. 122 Defendants' List of Exhibits at the trial, Filed 20th Jan. 1896. *continued—*

B 8. Account Quebec Harbour Commissioners to Simon Peters.

B 9. Letter to Colonel Moore from Simon Peters, dated Quebec, 24th August, 1880.

B10. Letter to Colonel Moore from Simon Peters, dated Quebec, 29th December, 1890. Letter and Telegram impounded with A 44

B11

B12. Copy of letter Moore & Wright to S. Peters, dated Portland, Me., April 9th, 1879.

B13. Letter to Peters, Moore & Wright from Woodford Pilkington, dated Quebec, July 22nd, 1879.

B14. Letter to Messrs. Moore & Wright from S. Peters, dated Quebec, 26th August, 1879.

B15. Letter to S. Peters from Moore & Wright, dated Quebec, August 26th, 1879.

B16. Letter to S. Peters from Moore & Wright, dated 2nd September, 1878.

B17. Letter to Moore & Wright from S. Peters, dated 2nd September, 1878.

B18. Letter to S. Peters from Moore & Wright, dated August 23rd, 1879.

B18A. Account Moore & Wright to Simon Peters.

B19. Account Moore & Wright to Simon Peters.

B20. Letter to Messrs. Moore & Wright from S. Peters, dated Quebec, 12th October, 1880.

B21. Letter to Simon Peters from Moore & Wright, dated October 7th, 1880.

B22. Letter to Simon Peters from Edward Moore, dated Portland, March 29th, 1878.

B23. Letter to Colonel Moore from S. Peters, dated Quebec, 26th August, 1887.

B24. Calculations by Plaintiff with respect to Bills of Quantities.

B25. Cheque for four hundred and eighty-nine dollars and fifty-five cents ($489.55) in favor of R. Alleyn, signed by Moore & Wright on Union Bank of Lower Canada, dated Quebec, September 16th, 1879; cheque for one hundred dollars ($100.00) in favor of Alleyn & Chauveau, signed by Moore & Wright on Union Bank of Lower Canada, dated Quebec, 27th July, 1877. Statement of costs in case of A. Paquet and S. Peters *et al* S. C. No. 351.

There was no B 27

B26. Henry Peters' estimate of concrete in quay wall.

B28. Cheque for one hundred dollars in favor of J. Vincent Browne, signed by Ed. Moore, dated April 14th 1887, on First National Bank Portland, Maine. Cheque for one hundred dollars in favor of J. V. Browne, signed by Edward Moore, dated December 6th, 1883, on First National Bank of Portland, Maine. Cheque for one hundred dollars in favor of J. Vincent Browne, signed by Edward Moore, dated January 15th, 1884, on First National Bank of Portland, Maine. Receipt from J. V. Browne for one hundred dollars from Moore & Wright, dated August, 30th 1882. Money Transfer by Western Tel. Co. for fifty dollars, by Edward Moore to repaid to J. Vincent Browne, Rochester, N. Y., and dated Portland, May 8th, 1888.

B29. Cheque for two hundred dollars in favor of Woodford Pilkington, signed by Ed. Moore, dated June 29th, 1884, on First National Bank, Portland, Maine.

RECORD.

In the Superior Court.

No. 122
Defendants' List of Exhibits at the trial, Filed 20th Jan. 1896.
continued—

B30. Cheque for four hundred and fifty dollars in favor of William Cook, signed by Moore & Wright, dated Quebec, December 23rd, 1879, on Union Bank of Lower Canada, Quebec; cheque for fifty dollars in favor of W. Cook, signed by Moore & Wright, dated Quebec, June 7th, 1879, on Union Bank of Lower Canada, Quebec. Letter William Cook to Moore & Wright, dated Quebec, 5th June, 1879. Account Messrs. Peters, Moore & Wright to W. & A. H. Cook, Quebec, 22nd December, 1880. Account Peters, Moore & Wright to W. & A. H. Cook, dated 25th July, 1893. Letter Wm. Cook to Hon. Col. Ed. Moore, dated Quebec, 25th July, 1893.

B31. Account Peters, Moore & Wright to Hon. Jos. G. Bossé. Letter J. I. Lavery to Col. Moore, dated 15th January, 1890. Letter Edward Moore to Quebec Harbour Commissioners, dated Quebec, February 3rd, 1890.

printed B32. Letter to S. Peters from Ed. Moore, dated Portland, Me., May 27th, 1887.

× B33. Daily Journal Moore & Wright, Quebec, 1878.

B34. Copy of writ of summons and declaration, Superior Court case No. 655, S. Peters *et al*, vs. The Quebec Harbour Commissioners, dated 20th December, 1883.

B35. Copy of account filed in the Superior Court case S. Peters *et al* vs. The Quebec Harbour Commissioners No. 655, filed January 3rd, 1884.

B36. Copy of writ of summons and declaration Superior Court case No. 957, S. Peters *et al* vs. The Quebec Harbour Commissioners, dated 19th August, 1886.

Quebec, 20th January, 1896.

CARON, PENTLAND & STUART,
for Defendants.

(Endorsed).—List of Exhibits fyled by the Defendants at Enquete, filed Jan. 20th 1896. P. M., D. P. S. C.

Series of letters 2 July '84 - 21 May 1892 - showing interest taken by Peters to have Case settled between Peters, Moore & Wright and L. H. C.

No. 123.
Defendants' Exhibit at trial B1, Dated 2nd Feb. 1884.
Moore Ca.
P 306 l. 26
308 l. 15

(Private) Quebec 2nd February 1884.

Dear Co. Moore,

Yours of the 30th ultimo is to hand I also had some information about our matter which I was about telling you of when I received yours above mentioned I met at the post office early this week a certain Secretary Treasurer whose name it is not necessary to mention who told me that there was a move amongst the Commissioners tending to a settlement of our claim and that we might expect its accomplishment in a very few weeks or say sixty days. With reference to my portion of the claim I must repeat that I dont see my way to take off anything. I am mad with myself for having omitted to bring forward before the arbitrators my just claim for all the drive bolts in those tidal harbour cribs; this claim would stand trumps before the Courts—my idea is that we will get a settlement

RECORD.

In the Superior Court.

No. 123 Defendants' Exhibit at trial B1, Dated 2nd Feb. 1884. *continued*—

without having to sacrifice—for my part I am not in a position to make any. I met Bossé yesterday when he told me that Andrews had put in his plea in our case, that he had sent it to Cook and that he, Bossé, would answer it, before returning to Ottawa he would let me know if he wanted us in the matter.

Mrs. Peters is in Montreal since last week, looking after Mrs. Russel, who has given birth to a daughter. I am well and happy to say, quite busy.

With kind regards to Mrs. Moore and yourself.

I remain, yours faithfully.

SIMON PETERS.

P. S. I am informed that the commission have paid the $20,000 transferred to Union Bank, this relieves you to that extent.

S. P.

No. 124. Defendants' Exhibit at trial B1, Dated 1st May, 1884. *continued*—

Quebec, 1st May 1884.

Dear Col. Moore,

I have delayed writing to you in the hope of having something good to communicate. I regret to say, that I have nothing very encouraging so far. The result of last weeks meeting, when our letter asking for a new arbitration was read, was the appointment of a deputation ta wait on Sir Hector Langevin, which deputation consisted of R. R. Dobell, F. Hamel and our worthy friend McGreevy. It would appear that Langevin does not favor a new arbitration, at the meeting yesterday, it was decided that the Chairman was to see Andrews the lawyer, most probably to get him to frame an answer to our letter it would seem as if they were advised to allow the Courts to decide the question. They will probably be satisfied with the first decision. Pilkington told me that the commission need not expect any further assistance from Kinniple & Morris. Mr. K. is very indignant at the treatment we are receiving from the Harbour board. I am led to believe that the Commission do not intend to oppose our case strongly. I feel almost sure that the Judge will advise experts—so soon as I get the answer will send you copy. Bossé was to argue on some point of law in our case to day. We are having cold easterly wind, backward season.

Yours truly,

SIMON PETERS,

No. 125. Defendants' Exhibit at trial B1, Dated 27th Nov. 1884. *continued*—

OFFICE OF SIMON PETERS

P. O. Box 657. Quebec, 27th Nov. 1884.

Dear Col. Moore,

Yours of the 24th inst. to hand contents noted. I also had communication of yours to Mr. Bossé. The result is that Mr. B. has written the enclosed off hand rough letter to be forwarded to K. & M. in the hope that they will refuse the certificate and thus, place us in a more favorable light to proceed with our case, as Mr. Bossé advises, you can date the letter when you and Wright sign it. be sure to have this letter registered to insure its delivery to the parties, keep a

copy for proof. Both Mr. B. and myself are surprised with the tenor of your letter as you led us to suppsse that an amicable settlement might be arrived at through that friend. If K. & M. were here Pilkington might be of service under our coaching, he is too much of a crank to trust with our interests out from sight. Mr. Bossé does not concur in your views about the statement you allude to—to be a final statement it must meet the maintenance clause as per the enclosed written by Mr. Bossé. I trust you will loose no time in forwarding the letter to K. & M. We are all well, with barely snow enough for sleighing.

No. 125. Defendants' Exhibit at trial B1, *continued*— Dated 27th Nov. 1884.

With kind regards, believe you truly yours,

SIMON PETERS,

Quebec, 8th January, 1885.

No. 126. Defendants' Exhibit at trial B1, *continued*— Dated 8th Jany. 1885.

Dear Col. Moore,

Yours of 30th *ultimo*, and 3rd inst. received. I have just returned from visiting my brother at Halifax, which will account for your not hearing from me sooner. I have seen Mr. Verret as you suggested K. & M. have communicated our demand for a final certificate to Verret and the Board. Perly is here evidently for the purpose of advising the Board as to the maintenance clause, Mr. Verret is to have a letter from Perly to-day stating that the maintenance is all right. I have communicated all this to Mr. Bossé, who now advises that some one, suggesting you, should go over and see Kinipple personnally to explain matters, as there is no mercy to be expected from Morris. I leave this in your hands to do for the best. Should you require the evidence copies that I have, let me know.

Yours in haste,

SIMON PETERS,

Quebec, 13th January 1885.

No. 127 Defendants' Exhibit at trial B1, *continued*— Dated 13th Jany. 1885.

Dear Col. Moore,

Yours of the 9th inst. to hand, am sorry to hear of your accident. I trust you will soon get over it. You were quite right in cabling, as you say it will give us time to consider what is best to do. Our case has assumed an unexpected form, amongst at other things deprives us of the chance of a reference to Perly & Boyd, who I think, would have done us justice. Mr. Bossé has had communication of yours and in reply to your question is of opinion that should Morris adhere to his first award we would have grounds for action on the plea of collusion, perhaps difficult to prove, but should he modify that award although not to the extent to which we are entitled, but enough to give the award an appearance of good faith, we would loose our grounds for an action.

The only chance remaining is to work on Mr. Kinniple, who has the reputation of being a fair man and is not compromised in the case of the extent that Morris is by his evidence before Dominion Arbitrators although Mr. Bossé and myself dont approve of sending Pilkington over, as you have the largest amount at stake, I would leave this to your own decision. I would say if Pilkington

RECORD.

In the Superior Court.

No. 127, Defendants' Exhibit at trial B1, *continued*— Dated 13th Jan. 1885.

went that you or some one equally competent should accompany him. Our disputed claims stand about thus, mine, all told, a trifle over $13,000 yours over $48,000 about as one to three as to the ton weight K. & M. are the parties to decide that question now and you may rest assured that they will claim the English long ton; Please let me know what move you intend making; in the meantime I will prepare a statement of accounts. Mr. Bossé left for Montreal last night with many other Quebecers to pay homage to Sir John A. McDonald.

Kind regard to yourself and Mrs. Moore.

I am yours faithfully,

SIMON PETERS.

Quebec, 19th January, 1885.

No. 128. Defendants' Exhibit at trial B1, *continued*— Dated 19th Jan. 1885.

Dear Col. Moore,

Yours of the 16th to hand, am pleased to note that your knee is getting better.

Saw Mr. Bossé this morning and gave him communication of your letter. I learned from him that you had written to him in about the same sense. He suggested waiting till he went to Ottawa for the Session to have a personal interview with Sir Hector about having our claim referred to Perly & Boyd. I requested him to write which he promised to do to-day, he should be able to do more to move Sir Hector in this matter than we can that was a bad move of Bossé's calling on K. & M. for a certificate, had we acted at once on the fact that Perly & Boyd were the engineers for the time being, our case would have been in their hands ere this. It looks now as if we would have to wait K. & M. final certificate and if unsatisfactory, as it is sure, to be, threaten law proceeding or offer to take the decision of Perly & Boyd. I don't see any other course unless Mr. Bossé can do something with Sir Hector. The Commissioners will naturally wait the result of K. & M. certificate before making a new move. You know my opinion about clause 17, Perly is engineer in chief of harbour works to all intents and purpose, the others receive a small consideration as consulting engineers, they will never be consulted again. Perly will use the canal gate for entrance, to wet dock having discarded *K's. Patent Caisson.* I can say that whatever communication has taken place between Verret and K. & M. has been by letter even to Perly's *satisfactory report anent maintenance.* Dobell is still absent and Col. Forsyth is in New York, of course I will do all in my power, and you should write to your friend, we want all the help we can get.

We have had too much law in this matter already what we must now use is common sense backed with diplomacy and coaxing when it comes to a question of law this infernal blue book of K. & M. is sure to contain something to trip us up. I will keep you posted as to Bossé's success with Sir Hector if any.

The snow storm of Friday and Saturday has been terrible all the horses are busy hauling away the snow drifts—12 below zero this morning K. & M. will have to wait a long while before they are wanted here.

Yours faithfully,

SIMON PETERS.

RECORD.

In the Superior Court.

No. 129. Defendants' Exhibit at trial B1, *continued*— Dated 13th April, 1885.

Quebec, 13th April, 1885.

Dear Col. Moore,

Yours of the 31st March, only reached me on the 7th April, due no doubt to the snow storm. No doubt our case is making little progress—the troubles in the North-West will make things worse I fear.

I met Mr. Verret last Friday he informed me that they had heard from K. & M. telling the Harbour Commission that they could not send them a copy of their final certificate as we had forbidden them doing so.

No doubt the Harbour Commissioners are delaying the settlement of our case because they have no money wherewith to pay us. Mr. Verret told me that he believed the harbour works would have to be stopped as there would be no money voted for them this Session. Do you think it possible to induce K. & M. to give us a reasonable certificate. If anything could make them do so it would be by sending Pilkington to confer with and explain matters to them in a proper manly way, as you have an opportunity of seeing him you will be the best judge as to his present fitness for the task. If we are to send a statement the one I prepaired and sent you a copy of should suffice—before sending it you and I should meet, and consider the whole matter over carefully—if you are unable to come here I will endeavour to meet you at Portland, when we can see Pilkington, give him our views and hear what he is prepaired to recommend.

I have pushed Mr. Bossé very hard on this question of delay, he has promised me to see Valin and McGreevy at Ottawa this week to urge them to a closing of our negotiations for a reference to Perly & Boyd by the signing of the proposed bond without further delay. For my part I am prepared for any action that can forward our getting a settlement.

I shall anxiously await your further views in this matter. My son, Harry, was well and is now back at Winnipeg. Mrs. Peters is now quite well, try and take a run down to be here next Friday. I am mad for action of some kind.

With kind regards to Mrs. Moore and yourself believe me truly yours.

SIMON PETERS.

OFFICE OF SIMON PETERS.

P. O. Box 657.

No. 130 Defendants' Exhibit at trial B1, *continued*— Dated 13th May, 1885.

Quebec, 13th May, 1885.

Dear Col. Moore,

Yours of the 9th to hand. I note what you wrote K. & M. is just to the point. I trust they will now hurry up their famous certificate.

No doubt our friend will go straight to K. & M. for a job—no doubt, after the servile manner he served them, they will be sure to employ him, that is if they have anything to do, which I should think doubtful, after all their bungling here and elsewhere. Your friend's influence with K. & M. is nothing. I met Boswell the other day and I mentioned that I feared your friend was hard up, Boswell could not believe it but thinks he had a nice little sum saved out of his Quebec earnings.

It has since occurred to me that he may have been playing a poor mouth to you in the hope of making something out of our case. I hope you will not have

RECORD.

In the Superior Court.

No. 130 Defendants' Exhibit at trial B1, *continued*— Dated 13th May, 1885.

to father that bill you endorsed for him. The engineer office messenger told me that there was a pump belonging to you in Mr. Bennet's wood house that was in danger of being injured, shall I look after it for you. Larkin, Connolly & Co's. Bazaar is commenced. They sunk two 136 ft. cribs in cross-wall ajoining the entrance crib North side—It was too late to concrete them, they just have in a lot of stone ballast to hold them and drove the sheet piles forming the back of concrete compartment. The ice has shoved those cribs out of place and about one-third of the cribs is floating off the ballasted part. The sheet piling has all been drawn up by the ice. The whole thing is a wreck and will take most of the coming summer to make right as the cribs and ballast will have to be removed and the cribs more or less re-constructed. You can imagine what a funk they are in. I am told that the elder Connolly is in a terrible state of mind about it. They commenced dredging in Tidal Harbour last night with one dredge, they have had 50 iron tubs made at Carrier & Lainé last winter.

Perly & Boyd are expected to-day. They will have a nice picture to stare at. I have heard from authority that Thomas McGreevy is pretty well disgusted with Larkin, Connolly and Robert McGreevy is not likely to make much profit out of this cross wall contract. The general opinion is that L., C. & Co. will not succeed in making a job of the Graving Dock which they undertook to do for a given sum last season. So soon as we get K. & M's. certificate you will have to come on to help me push our reference to Perly & Boyd. When will you send that umbrella.

With kindest regards to Mrs. Moore and yourself from yours faithfully.

SIMON PETERS.

P. S.—I bought a hat for $5 as good as the Portland Hatter asked me $8 for.

S. P.

Quebec, 10th June 1885.

No. 131, Defendants' Exhibit at trial B1, *continued*— Dated 10th June, 1885.

Dear Col. Moore,

Yours of the 2nd and 8th inst. received and contents noted. This claim of the Harbour Commission is something new. We need not be surprised at anything the Commission will do for Larkin, Connolly & Co. The company is Mr. McGreevy's Brother, there is not the least doubt in my mind about it. Now with regard to Kinniple and Morris, I dont see how they can take any action on Mr. Verret's letter referred to. They have Mr. Perly's certificate as to the maintenance clause, which is all that concerns them. I went to Mr. Bossé's office this morning to find that he was at Ottawa—to save time I would advise you to write K. & M. as strongly as you can to not take any notice of Mr. Verret's letter in making their final certificate. This is a matter that they, K. & M. have no personal knowledge off, and therefore can have nothing whatever to do with it. The sand which was removed was largely composed of what L. Connolly & Co. put there themselves: the removal was done when the sand was frozen hard as

rock, a perfect army of men were employed at it, everyone looked as something to employ the poor who were suffering from want of bread. Had this material been moved at the proper time and with suitable appliances it would not have cost over one quarter the amount. Your friend Mr. Dobell is in town. I hear that Valin, the Chairman, was married yesterday to a Miss Bardy, a charming woman of about 40.

No. 131, Defendants' Exhibit at trial B1, *continued*— Dated 10th June, 1885.

The weather has been very unseasonable, we had to have recourse to over coats and fires. We hope that K. & M. won't delay their certificate on account of Verret's letter. I am getting sick of the delay we are being subjected to. Write all you have suggested and as much more as you can think of. They will have seen Pilkington ere this. With kind regards to Mrs. Moore and yourself.

I remains yours faithfully,

SIMON PETERS.

P. S.—The umbrella came all right. Thanks. S. P.

OFFICE OF SIMON PETERS.

No. 132. Defendants' Exhibit at trial B1, *continued*— Dated 31st July, 1885.

P. O. Box 657. Quebec, 31st July, 1885.

Dear Col. Moore,

Yours of 22nd to hand I showed your letter to Bossé. I also let him see our copy of K. & M's. first famous award he took time to consider it and came to the conclusion that as both parties had agreed to the reference to Dominion arbitrators, would set that award aside and necessitate the new certificate we asked for. Mr. Bossé seems to think that there is nothing else for us to do but wait sometime longer after which we could inform the commission of K. & M's. neglect to furnish us the certificate as provided for in the contract. I believe that Mr. Dobell will return to Quebec shortly. My leg is getting better slowly last week I had a very severe attack of Canadian Cholera three days in bed under the doctors care and now have to live on chicken broth and such like so as to get my system in order once more. This week Mrs. Peters had her turn of the same sickness perhaps a little worse than mine however she is getting over it and is able to sit at table once more. Our daughters and sons and their families are quite well. It is a pity we ever wrote a word to K. & M. in regard to the final certificate after having committed the errors of asking for same. We are having very hot weather just now.

With kind regards to Mrs. Moore and yourself.

I remain yours truly,

SIMON PETERS.

No. 133 Defendants' Exhibit at trial B1, *continued*— Dated 17th Oct. 1885.

Quebec, 17th October, 1885.

Dear Col. Moore,

Yours of the 14th to hand this morning. Have seen Mr. Verret to-day, he has heard from Kinipple & Morris; all I could learn from him is that we may expect a final certificate from K. & M. the coming week—no doubt you will be the first to hear of it. The sooner it comes the better for us as we will then be

RECORD.

In the Superior Court.

No. 133. Defendants' Exhibit at trial B1, *continued*— Dated 17th Oct. 1885.

able to proceed and know what to do. I always believed that if we could have got Kinipple's ear we would have done better—this we could not do without going to where he was. If you and I could have spared the time to see him I am inclined to think we would have succeeded.

I could not resist telling Mr. Verret this morning that had we had the contract for Graving Dock it would have been finished years ago, and that following the same course we did with Louise Embankment, we would have pointed out the faulty engineering of K. & M., we would have taken means to find out the depth of sand at entrance and had the Dock built altogether on the rock and thus have saved the Commission over a quarter of a million of dollars and four or five years valuable time. However, it is some satisfaction to learn as I did from Mr. Verret this morning, that the coffer dam gave out this week before they had the caissons in place; the Dock is once more at the mercy of the tide and that it will cost a good many thousand dollars to fix the dam and if they don't succeed in doing so this fall a new dam will have to be made next summer.

We are having a lovely spell of fine weather just now as a compensation for the cold and wretched wet spell we had some time since. I also have had a light season's work and very poor prospects for the coming winter.

With kind regards to Mrs. Moore and yourself, in which Mrs. Peters joins.

I remain, yours truly,

SIMON PETERS.

No. 134 Defendants' Exhibit at trial B1, *continued*— Dated 26th Nov. 1885.

OFFICE OF SIMON PETERS.

P. O. Box 657. Quebec, 26th November, 1885.

Dear Col. Moore,

Yours of the 21st to hand. Mr. Bossé read it through. He received an answer from Sir Hector promising to move in our matter, at the same time, mentions Mr. Perly's absence for 4 to 5 weeks at British Columbia as a cause of delay. Mr. Bossé has again written him to say that now is the time for him, Sir Hector, to move the members of the boord under his control to have the question of reference settled by the time Mr. Perly returns, thus saving time. Mr. Bossé does not seem inclined for a trip to Ottawa just now. I will keep you posted when the answer comes. The chairman I believe is still absent attending to his new wife and ship at Philadelphia, he has not attended a board meeting for over two months. Should no move be made by the board within the next fortnight, we shall have to hold a consultation as to our next move. We can't allow this thing to drag along as it has done in the past; for my part I am getting sick and tired of waiting. How would it do to try the Irish plan of doing a little *shooting*. I am mad enough for anything. Mrs. Peters left for New York and Stamford yesterday.

Kind regards to Mrs. Moore and yourself.

Yours truly,

SIMON PETERS.

REGISTRY RECEIPT.

Post Office at Portland, Maine,

Registered Letter No. 1728. Received December 5th, 1884, of Moore & Wright, P. O. Box 1498, addressed to Kinipple & Morris, London, England.

C. H. BARKER, P. M.

No. 135, Defendants' Exhibit at trial B1, *continued*— Dated 5th Dec. 1884.

OFFICE OF SIMON PETERS.

P. O. Box 657. Quebec, 24th December 1885.

No. 136. Defendants' Exhibit at trial B1, *continued*— Dated 24th Dec. 1885.

Dear Col. Moore,

Yours of the 14th received and carefully noted. Sir Hector arrived yesterday and Mr. Bossé saw him last night about our matter and arranged to see him again in company with Mr. McGreevy either on Saturday or Monday next so as to fix upon a line of action. I am to meet Bossé next Tuesday morning to learn particulars after which I will be able to tell you what has been decided upon, and when you should be here. Has the expected final certificate from Morris reached you.

The man Pilkington is nothing but a d——Jack Ass he thought he was doing something very smart when he cabled his supposed discovery of the clerical error and thought he was making an everlasting berth for himself with the commissioners. Damn him—he has been the cause of all our vexation and trouble and I have no doubt he will suffer for it some day. Mrs. Peters returned safe and sound from New York and Stamford last week, Mrs. Russell and husband and three children arrived on Tuesday for the holidays.

My son Fred is not well he is laid up with inflamation of the bowels. Before coming here will you kindly call on Mrs. Manasas Smith, she has a small parcel to send to Mrs. Fred Peters which I told her you would kindly bring for her.

Wishing yourself and Mrs. Moore, many happy returns of the season.

Believe me, your faithfully,

SIMON PETERS.

OFFICE OF SIMON PETERS.

No. 137 Defendants' Exhibit at trial B1, *continued*— Dated 4th Jan. 1887.

P. O. Box. Quebec, 4th January, 1887.

Dear Col. Moore,

Yours of 27th *ultimo* received on the 1st inst. Mr. Bossé was off on a tour with Mrs. B. hence my reason for not answering you sooner. I saw him this morning, gave him sight of yours—he will be at our disposal all next week after which he will have to attend the court at Ottawa and here. The death of judge Ramsay has upset law matters a good deal. I am leaving for Metis to return Saturday evening next if you will be here next Saturday we can have Sunday and every other day of the week to talk over and arrange our plans of battle.

With kind regards to Mrs. Moore and the compliments of the season to you both believe me, yours sincerely,

SIMON PETERS.

RECORD.

In the Superior Court.

No. 138 Defendants' Exhibit at trial B1, *continued*— Dated 30th Mar. 1887.

Col. Moore, Portland, Maine.

OFFICE OF SIMON PETERS.

P. O. Box 657. Quebec, 30th March 1887.

Dear Col. Moore,

Yours of the 28th to hand. Bossé being out of town, I saw Mr. Cook and talked over the subject of your letter with him. Cook wrote to the board yesterday in the sense you suggested. I am sorry to have to say that I dont think the board will agree to our proposition backed up, as they are by Stuart as legal adviser. I don't think Perly made a written report. He wants details from K. & M. as to how they arrive at their final certificate before making a written report. The commissioners have written to K. & M. for those details, Perly has compromised himself to the board, long ago on the clerical error question, and it was he who bullied Morris into the charge for removal of sand. Therefore his report cannot possibly have been influenced by anything that may have taken place a few days ago, what I intend should be referred to arbitration are the items in dispute I understand that the letter sent yesterday is referred to Perly to say if the board would be justified in acceeding to our request. Both Bossé and Cook are of opinion that there is nothing left but to bring along your witnesses and get at them.

Yours truly,

SIMON PETERS.

No. 139. Defendants' Exhibit at trial B1, *continued*— Dated 13th May, 1887.

OFFICE OF SIMON PETERS.

Quebec, 13th May, 1887.

Dear Col. Moore,

I was with Mr. Cook this morning when he drafted the letter which he will forward to you for your signatures, by to-night's mail. Mr. Cook was particular that Mr. Bossé should see the letter and approve of it, which was done. I trust you will lose no time in signing and returning the letter to Mr. Cook or to me. I have gone over the ——— partition and statement which I had made out and which was sent you based on the award of Dominion Arbitrators after deducting $20,000 paid Union Bank from your share $55,494.97 add to the balance remaining after I am paid out of the $52,011 K. & M. certificate, the clerical error and $13,000 for removal of sand, you will be some $4,600 better off than by award of Arbitrators.

Yours truly,

SIMON PETERS.

Moore Ex. A. 308 L. 15

RECORD

In the Superior Court.

No. 140.
Defendants' Exhibit at trial B1, *continued*—
Dated 13th May, 1887.

(Approved, J. G. B.) Quebec, 13th May 1887.

To the Chairman and Board of Harbour Commissioners of Quebec.

Gentlemen,

Mr. Peters and our firm (Moore & Wright) have had an interim settlement of accounts, by which it appears, that for his share of the work actually done, on the basis of the $52,000 allowed by the engineers, there is due to him, out of that sum reduced by the recent payment of $2500, the sum of $33,910.38 on capital account, together with interest accrued. We enclose a statement, which shows in detail how this balance is arrived at.

We hereby consent that the Commissioners, if satisfied with the correctness of Mr. Peters enclosed account, pay over the sum of $33,910.38 to him, with interest accrued—the capital sum to be considered as a payment to Messrs. Peters, Moore & Wright, *pro tanto* on the amount allowed by the certificate.

We of course agree to this course wholly without prejudice to the pending suit. The matters in dispute mainly or altogether affecting our firms portion of the contract, it is fair that Mr. Peters should be relieved.

No. 141
Defendants' Exhibit at trial B1, *continued*—
Dated 9th April 1889.

Quebec, 9th April, 1889.

Dear Col. Moore,

Judge Caron completed his judgment this forenoon, a copy of which I hasten to enclose for your information, I am hurrying Mr. Laveri, Bossé's partner, to make out the *Bill of Costs*. In looking over the Prothonotary's book, I note that your witness Brown, was not taxed—loose no time in forwarding an account of his time and expenses and the time and expense of any other witnesses you may have Subpœned in the case. The Commission, by the judgment, are condemned to pay our costs in the case. We want if we can, to have the account before the Commission for next Monday's meeting. I have barely time to write you this much as I have to be at Court in a case of Carrier against Government for the Intercolonial Railway at Levis.

Yours in haste, Simon Peters.

No. 142.
Defendants' Exhibit at trial B1, *continued*—
Dated 7th May 1889.

Quebec, 7th May 1889.

Dear Col. Moore,

When I was at Ottawa the other day I had a letter to Sir Hector Langevin from our Mr. W. Cook asking to be heard verbally or by writing in our behalf before any steps were taken towards an appeal. At first Sir Hector, wouldn't listen to me, I pressed him hard when he told me to get Cook to write to him as proposed. I mailed the document by the 1.30 P.M. train, so that he will received it to morrow-morning. I have mailed you a copy of what I sent to-day you will be able to judge of what we are doing in the case. I sent copies to Sir John Thompson at same time, judge Bossé has copy also and speaks well of it. Sir Hector is to be here next week, Bossé has promised me to see him to try to stop the appeal. I find him not very sanguine about our success however we must continue to do our best, will your friends bo able to help us—let me know what you think of Cook's letter? We are all well.

Mrs. Peters joins me in kind regards to yourself and Mrs. Moore.

Yours faithfully, Simon Peters.

RECORD.

In the Superior Court.

No. 143, Defendants' Exhibit at trial B1, *continued*— Dated 21st May 1884.

(Private.)

Quebec, 21st May, 1892.

Dear Col. Moore,

Yours of the 15th inst. came in due course. I was laid up at the time with stoppage of the bowels. Thanks to good care and nine doses of castor oil, I am all right once more.

After receiving your letter I saw Mr. Cook who told me he had written a second time to the minister. He wrote again after my seeing him. I have not heard that he received an answer. This matter is hanging fire so long that it is becoming monotonous. Sir John Thompson's confidential advice received through our mutual friend, Turcotte, M. P., and Harbour Commissioner, to get judgment against the sureties and the money would be forthcoming from somewhere. Cook took suit but dropped it on account of your objections.

You are wrong in thinking that either Langevin or McGreevy have now any power with the Government in keeping us out of our money. The Deputy Minister, Gobeil may block the way some, especially as the Harbour Commission are claiming between 3 and 400,000 dollars of unexpended appropriations. Their demand for money from the Government to pay us, is mixed up with the large demand they are making for money to complete the wet dock and repair the Pointe-à-Carcy wharf where the Elevator was built.

I am doing all I can with Sir John Thompson. He is ready to recommend the payment the moment the papers are submitted for his advice by Ouimet. Your better plan is to use Secretary of State Blain. He may be able to shame the Ottawa Government in doing us justice. Dobell is now here, Turcotte, Hon. Philippe Landry, Hon. John Hearn, have waited on the minister to urge the claim of the Harbour Board to the money they claim from Government—rest assured that I am not idle in the matter. On the 11th I received the following from the Minister of Justice (copy.) " Dear Mr. Peters, I am sorry that I was " unable to see Mr. Cook when he was here and am not aware as to the cause of " the delay in collecting the amount of your judgment from the sureties, but I " will consult with Mr. Ouimet and see if anything can be done." Hoping that this will find both you and Mrs. Moore well.

Yours truly,

SIMON PETTRS.

No. 144 Defendants' Exhibit at trial B2, Dated 17th April 1885.

(Telegram)

Dated: Quebec, April 17th, 1885.

To Edward Moore,

Can't come before Monday night. Will that do. Answer.

SIMON PETERS.

Moore Ex.
P 307 f. 27

Made by Albert Peters from Original
handed him by Moore and at Moore's request.

STATEMENT OF ACCOUNT

Between Simon Peters, Edward Moore, Augustus R. Wright and the Quebec Harbour Commissioners.

RECORD.

In the Superior Court.

No. 145, Defendants' Exhibit at trial B3, Filed 20th Jan. 1896.

No. of Bill		Items			
	Amount of Contract or Tender	1		$529296 31	
	Additional work done by order of the Engineers as per clause 48, page 12.				
	Four forty foot blocks of cribs for North Quay Wall Tidal Basin	2	$19,326 00	(In pencil) $2 extra	
v	Extras for stone wall and Rough Bouchard to same	3	21,940 61		
	Return end of stone wall at angle of Ballast Wharf	4	89 56		
	Two *tablet stones*	5	300 00		
Bill No. 1	Excess of timber and iron work, in 31 Cribs in Tidal Basin	6	8,186 17		
" " 4	Planking, scantling and bolts forming counterforts to wet dock cribs	7	3,822 50		
	Widening shoal cribs and bolting the same to piling	8	1,846 35		
	Extra lengths of 6 in. on Piles in wet dock	9	272 25	not admitted	
" " 7	Crib work block at Ballast Wharf	10	5,219 56		
	Entremise filling to face of the crib work between the fenders	11	194 03		
" " 8	Gas House crib work extra for lengths and for excavating the foundations	12	1,232 90		
	Substructure between Ballast Wharf and Gas House	14	16,088 90		
	Superstructure Northern crib work	15	58,285 36	$225 extra	
	Piling at angle of Ballast Wharf	16	1,143 07		
	Piling at change of slope from deep to shoal trench	17	624 65		
	Crib work and piling at return end of wet dock	18	304 27		
	Allowance on fenders	39	1,038 00		
	85 bollard boxes	19	1,617 12		
	25 barrels, Portland Cement	20	88 75		
	Extra dredging in Tidal Basin 241,723 c. yds. This quantity was allowed by engineers after deducting from the extra dredging for all sweepings	21	60,430 81		
	Extra dredging done for Northern crib work 2925 c. yds. at 25cts.	22	731 25		
	Extra dredging done at angle of Ballast Wharf. On the slopes of Western end of 24 ft. channel and deep trench and for washing in from Ballast Wharf	33	5,000 00		
	For stone, clay material and Ballast as per contract	23	51,522 40	13,439 35	
	3830 c. yds. of 16x1 concrete placed under shoal cribs at $3.00 per c. y	24	11,485 80		
	Concrete from deep to shoal trench	25	1,068 75		
	Concrete at return end of wet dock substructure	26	713 50		
	Concrete at Return end of wet dock superstructure	27	402 40		
	14651 c. yds. rubble concrete in Tidal Basin and wet dock cribs at $6.25 per c. y	40	91,568 75	21,976 00	
	Concrete in bags in angular block at Ballast Wharf	28	500 00		
	Labor and stock at return end of wet dock cribs	29	100 00		
	16,079 c. yds. of Rubble concrete in rear of wet dock and Tidal Basin walls at $6.25 per c. y. Items 30,31	32	100493 75	38,720 00	
	For labor in forming the toe of the slope	34	375 00		
	For use of dredge in testing foundations	35	500 00		
	Cash paid out for stocks for receptions at laying tablet stone	36	750 00		
	For 104000 sup. feet of planking to protect concrete in rear of walls	37	5,000 00		
	For foundations placed under cribs	38	4,378 65		
				$476641 11	
				$1005937 42	

607-608

Deductions from Main Contract.

Bill No. 3	$17486 34		41	
" " 6	3,505 48		42	
" " 10	365 68		43	
" " 11	94 12		44	
" " 12	198 40		45	
" " 13	5,180 50		46	
Miscellaneous Items	12,017 30		47	
3645 cub. yds. of 8 to 1 concrete per Bill 1 of Timber face superstructure 27 cribs Tidal Basin at $4.75 per yd	11,313 75		48	
6710 cub. yds. of 8 to 1 concrete per Bill 1 of Timber face superstructure 55 cribs Wet Dock at $4.75	31,872 50		49	
Deduction in Pockets of 31 cribs in Tidal Harbour 104 cub. yds. to crib=3224 cub. yds. at $4.75 per cub. yd	15,314 00		50	
Deduction in Pockets of 55 cribs in South Wet Dock 45 cub. yds. to crib=2475 cub. yds. at $4.75 per cub. yd	11,756 25		51	
Bill No. 5 Sweepings of Dredgings	1,000 00		52	
	$116104 32	116104 32		
By deduction on 14651 cub. yds. concrete at $4.75 per cub. yd.	$69592 25	69,592 25	53	
Amounts received from Harbour Commissioners on account, during progress work to October 5th, 1881	$586222 42		54	
Amounts received from Harbour Commissioners on account, June 15th, 1882	10,000 00		55	
Amounts received from Harbour Commissioners on account, July 4th, 1882	20,000 00		56	
Paid Beaucage & Chateauvert by Harbour Commissioners Sept. 22nd, 1883	6,577 17		57	
Paid J. G. Bosse by Harbour Commissioners Oct. 13th, 1883.	1,200 00		58	
Paid Union Bank by Harbour Commissioners Feb. 28th, 1884.	20,000 00	643999 59	59	829696 16
				$176241 26

With interest at 6% from January 1st, 1882.

Moore Ex
P 308 l. 9
316 l. 5

Albert Peters Ex
P. 377 l. 27

(Endorsed).—Defendants' Exhibit at Enquete B3, filed Jan. 20th, 1896. P. M., D. P. S. C.

Statement made by Simon Peters clerk showing approximate Balance due him by Quebec Harbour Commissioners 8 Jany 1891.

RECORD.

In the Superior Court.

No. 146.
Defendants' Exhibit at trial B4, Dated 8th Jany. 1891.

QUEBEC HARBOUR COMMISSIONERS IN ACCOUNT WITH SIMON PETERS.

Bill No.			
1	31-40 ft. blocks ..... at $1661		$51491 00
2	Angular blocks		328 61
4	55-42 ft. wet dock wall ..... at $1228.45		67,567 50
7	Crib work at Ballast Wharf		4,582 21
8	Crib work at Gas Wharf		2,895 14
9	Half of breast work and screen		307 25
	Stone wall		21,940 19
	Deduction on fine concrete applicable to cost of stone wall		27,531 25
			$176643 15
	EXTRAS.		
	Return angle Ballast Wharf		$89 56
	2 tablet stone		300 00
1	Excess of timber in counterforts of 31 cribs ..... at $264.07		8,186 17
4	Forming counterforts to 55 wet dock cribs ..... at $69.50		3,822 50
	Widening cribs and bolting piles to same		1,846 35
	Driving extra length of 6″ to piles wet dock		272 25
7	1-120 ft. block at Ballast Wharf to coping level		5,219 56
	Entremise filling rounded and bolted between fenders		194 03
8	Extra length and excavation of Gas House crib work		1,232 90
	Substructure between Ballast and Gas Wharf		16,088 90
	Substructure Northern crib		58,285 36
	Piling at angle Ballast Wharf		1,143 07
	" " change of slope		624 65
	Return crib and piling at end of wet dock		304 27
	Bollard boxes		1,617 12
	95 barrels Portland Cement		88 75
			$275958 59
	DEDUCTION.		
	Fenders less allowed	$1,038 00	2,096 10
			$273862 49
	CR.		
	From November 30th, 1877 to October 5th, 1881	210874 94	
	July 4th, 1882 cash received	20,000 00	
	September 22nd, 1883 cash paid Beaucage & Chateauvert	6,577 17	
			237452 11
	(In pencil)		$36410 38
	Jan. 8th 1891. This Statement was sent to me in letter of Jan. 8th 1891.		

(Endorsed).—Defendants' Exhibit at Enquete B4, filed Jan. 20th, 1896. P. M., D. P. S. C.

Moore Ev.
P. 308 l. 27
313-4 l. 15
H. J. Peters Ev.
P. 342 l. 34
Moore Ev.
P 425-7 l. 22
428-9 l. 21
440 l. 33
Archt Peters
l 3/8 l. 34

see next page S Peters

for Inclosure see previous page. 609

RECORD.

In the Superior Court.

No. 147 Defendants' Exhibit at trial B5, Dated 8th Jan. 1887.

Moore Ev. P. 308 l. 33

Quebec, 8th January 1891.

Dear Col. Moore,

I was absent when Mr. Cook went to meet you at Montreal, otherwise I should have seen you with him. He has told me of the conversation he had with you on my matter, and in compliance with the wish you expressed to him, I enclose a statement of my account with the Harbour Commissioners, showing the balance in 1887 due me to be..... .....$36,410 38
upon which over five years interest was accrued at 6% making say nearly $11,000 to be added to that date with other interest accrued.
Since on acccount of the above I rec'd..... 15,000 00
and an order for..... 8,000 00
$23,000 00
I now require your order for..... 15,000 00
$38,000 00

which will still leave a considerable balance in my favor, I am willing to sign the strongest agreement Mr. Cook will draw up binding myself to make good any deficiency that could possibly occur. I sincerely believe that good may come to you by signing this order as it will necessitate my going to Ottawa where I hope to obtain an interview with several members of the Government, this will afford me an opportunity of letting Sir John A. McDonald know how shamefully we have been treated. I will tell him all I know about McGreevyism and Langevinism etc. I believe I will be able to help our case in some way.

Wishing you and Mrs. Moore the compliments of the season in which Mrs. Peters joins.

Yours truly,

SIMON PETERS.

(Endorsed.)—Defendants' Exhibit at Enquête B5, filed Jan. 20th 1896.

P. M., D. P. S. C.

No. 148 Defendants' Exhibit at trial B6, Dated 12th Feb 1891.

Moore Ev. P 308 l. 38

Quebec, 12th February 1891.

Dear Col. Moore,

Yours of the 9th to hand. I note the reasons you give for not acceeding to my request for an order for fifteen thousand dollars on account of the amount coming to me, you are again wrong in saying that Stuart intends to re-open the case in as far as I am concerned, Mr. Cook can tell you to the contrary. The judgment lately rendered is final as far as I am concerned. I may have run the amount too close in asking for $15,000 however to meet your views let the order be for $10,000 which will be only three thousand dollars more than you proposed, if I cancelled the $8,000 order transferred to Samson Estate. This amount will suffice until our case is decided. I therefore trust you will send me this order as soon as possible after the receipt of this. I have had a talk with Mr. Cook about my going to Ottawa with him, he thinks that under present circumstances I can be of service.

With kindest regards to Mrs. Moore and yourself in which Mrs. Peters joins me.

Yours truly,

Col. E. Moore. SIMON PETERS.

(Endorsed.)—Defendant's Exhibit at Enquête B6, filed Jan. 20th 1896.

P. M., D. P. S. C.

where is Exhibit "A"? It has not been filed!

RECORD

In the Superior Court.

No. 149. Defendants' Exhibit at trial B7, Dated 10th Mar. 1891.

Moore Ex. P 309 1.7

(Copy)

This agreement between Simon Peters of the City of Quebec, Contractor, party of the first part, and Edward Moore and Augustus R. Wright, of Portland, in the State of Maine, partners, under the name of Moore & Wright, parties of the second part.

Whereas the parties to this agreement have obtained judgment in the Superior Court of Quebec against the Quebec Harbour Commissioners, which judgment is now in appeal before the Supreme Court of Canada, and whereas the several parties to this agreement are variously interested in the amount of the said judgment and in the sum to be recovered from the Quebec Harbour Commissioners and it is impossible until the final judgment is rendered to determine exactly the amount of their respective interest.

And whereas the Quebec Harbour Commissioners are prepared without prejudice to the said litigation to pay on the joint receipt of the parties to this agreement a portion of the sum which they admit to be due, and whereas the said Simon Peters has applied to the parties of the second part to join in an application with him to the said Quebec Harbour Commissioners to obtain from them for the use of the said Simon Peters the sum of seven thousand dollars on account.

Now then this agreement witnesses; 1. The parties of the second part shall give to the said Simon Peters an authority to receive from the said Commissioners the sum of seven thousand dollars on account of their indebtedness, such authority to be wholly without prejudice to all existing litigation and in the event of the Commissioners paying the said money, the said Simon Peters may apply the same to his own use.—2. It is specially agreed between the parties hereto that the granting of the present power shall in no manner be construed as settling in any manner the respective interests of the parties in the debt due by the Commissioners, but that on the contrary the same shall be adjusted between them in the manner heretofore provided by arbitration. 3. And the said Simon Peters hereby covenants and agrees to, with the parties of the second part, that if hereafter on the adjustment of the respective interest of him and of the parties of the second part in the debt due them by the said Commissioners, it is ascertained that he has been overpaid, that he will on demand, repay to the parties of the second part any balance that may hereafter be ascertained to be due.

In witness thereof the parties have hereunto set their hands at Quebec on the tenth day of March, A.D. 1891.

SIMON PETERS.

(True copy)

CARON, PENTLAND & STUART,
Attys. for Deft.

(Endorsed).—Defendants' Exhibit at Enquête B7, filed Jan. 20th 1896.

P. M., D. P. S. C.

Statement Made by Simon Peters, Clerk showing approximate Balance due him by Quebec Harbour Commissioners in 1887.

RECORD.

In the Superior Court.

No. 150, Defendants' Exhibit at trial B8, Filed 20th Jan. 1896.

Moore Ex
P 309 l. 23
313-14 l. 47
316 l. 35

H. J. Peters Ex.
P 343 l. 3

Albert Peters Ex
P 378 l. 11
379-82 l. 36

Moore Ex.
P 425-7 l. 22
428 l. 21
429 l. 4

P 309 l. 28 et seq.

QUEBEC HARBOUR COMMISSIONERS IN ACCOUNT WITH SIMON PETERS.

Bill No.			
1	31-40 ft. blocks ..... at $1661		$51491 00
2	Angular blocks		328 61
4	55-42 ft. wet dock wall ..... at $1228.45		67,567 50
7	Crib work at Ballast Wharf		4,319 27
8	Crib work at Gas Wharf		2,895 14
9	Half of breast work and screen		307 25
	Stone wall		21,940 19
	Deduction on fine concrete applicable to cost of stone wall		27,531 25
	EXTRAS.		$176380 21
	Return angle Ballast Wharf		$89 56
	2 tablet stone		300 00
	Excess of timber in counterforts of 31 cribs		8,186 17
	Forming counterforts to 55 wet dock cribs ..... at $69.50		3,822 50
	Widening cribs and bolting piles to same		1,846 35
	Driving extra length of 6″ to piles wet dock		272 25
	1-120 ft. block at Ballast Wharf from ....to coping level		5,219 56
	Entremise filling rounded and bolted between fenders		194 03
	Extra length and excavation of Gas House crib work		1,232 90
	Substructure between Ballast and Gas Wharf		16,088 90
	Substructure Northern crib		58,285 36
	Piling at angle Ballast Wharf		1,143 07
	" " change of slope		624 65
	Return crib and piling at end of wet dock		304 27
	Bollard boxes		1,617 12
	25 barrels Portland Cement		88 75
	DEDUCTION.		$275695 65
	Fenders less allowed	$1,038 00	2,096 10
	CR.		$273599 55
	From November 30th, 1877 to October 5th, 1881 cash received.	205874 94	
	July 4th, 1882 cash received	20,000 00	
	September 22nd, 1883 cash paid Beaucage & Chateauvert	6,577 17	
	March 9th 1887 cash received	2,500 00	
			$234952 11
	(In pencil) Due Simon Peters		$38647 44
	Peters received Feb. 2nd 1880 and not accounted for in the above		5,000 00
	E. Ex.		$33647 44

(In pencil)
This statement was handed to me by Mr. Peters at the St. Louis Hotel in the presence of Mr. J. V. Browne and E. B. Cummings on March 9th 1887.—E. M.

(Endorsed).—Defendants' Exhibit at Enquete B8, filed Jan. 20th, 1896. P. M., D. P. S. C.

RECORD

In the Superior Court.

Quebec, 24th August, 1880.

MESSRS. MOORE & WRIGHT.

Dear Sirs,

I hereby acknowledge that the sum of five thousand dollars, advanced to Messrs. Peters, Moore and Wright by the Quebec Harbour Commissioners on the twentieth day of February, 1880, was for my special benefit, and was an advance on that portion of the Quebec Harbour Improvements now being executed by me. Should this advance be deducted by the Commissioners at any time, it will be deducted from a certificate due on that portion of the work done by me.

SIMON PETERS.

No. 151. Defendants' Exhibit at trial B9, Dated 24th Aug. 1880.

Moore Ev P 309 L 40

(Endorsed).—Defendants' Exhibit at Enquête B9, filed Jan. 20th 1896.

P. M., D. P. S. C.

Quebec, 29th December 1890.

Dear Col. Moore,

Yours of the 19th inst. in reply to my last to hand: In reply, I have to say, that your proposal, to cancel the order, given me, in lieu of the money you should have refunded, cannot be done, as it is transferred to the heirs Samson, and on which, I am paying interest to the estate, at the rate of 7% per annum, every three months.

By the award of arbitrators and final certificate of engineers, my balance stood at within a trifle of $34,000: add the accrued interest to the above and you will find, that the $15000 I received and the order for $8000, (on which interest is still running); there is still a large balance due me: enough to cover twice over, the order for $15000, I am asking you to sign.

You are mistaken when you say that Mr. Cook proposed the cancelling of the order for $8000, as he knew of its being transferred.

To protect your interest at the final settlement, I am willing to sign the contract you propose Mr. Cook should draw up for the purpose.

I therefore trust that you will accede to my reasonable request by signing and sending me, the order asked for.

Yours truly,

SIMON PETERS.

No. 152 Defendants' Exhibit at trial B10, Dated 29th Dec. 1890.

Moore Ev P 310 L 12

(Endorsed.) Defendant's Exhibit at Enquête B10, filed Jan. 20th 1896.

P. M., D. P. S. C.

RECORD.

In the Superior Court.

No. 153, Defendants' Exhibit at trial B11, Dated 20th Feb. 1884.

Moore Ev. P 310 l. 15 316 l. 17

Albert Peters Ev. P 377 l. 43 378 l. 4

Quebec, 20th Feb., 1884.

Yours post marked the 7th inst. to hand. I signed a paper yesterday, and the Union Bank Cashier received the $20,000 transferred to the Bank. When Mr. Verret told me the money was paid he made a mistake he should have said that he had the money and would pay when he received that legal receipt that we all had to sign. I met our friend Mr. Bossé on Sunday, I know that he is making very strenuous efforts at Ottawa to get our matter settled, the fact is, the Commissioners are all getting ashamed of themselves for the unheard of treatment they have meted out to us after the loyal manner in which we have acted towards them. $23,442.84 is the balance due me on the award of arbitrators. There is not much margin for a rebate on that small amount. You must bear in mind that I am very little better off than by Kinipple & Morris' award. I have been kept out of a settlement fighting your battle, therefore don't ask me to make a further sacrifice that I really can't afford. We are having an old fashioned winter. With kind regards to Mrs. Moore and yourself.

I remain Yours truly,

SIMON PETERS.

(Endorsed).—Defendants' Exhibit B11 and handed in to Prothonotary on 18th December, 1895. After motion by Appellant had been made to impound.

Filed 18th Dec. 1895. P. M., D. P. S. C.

Moore Ev. P 316 l. 8

No. 154. Defendants' Exhibit at trial B11, *continued*— Filed 18th Dec. 1895.

(Telegram) Quebec, Canada. 1884

To Simon Peters, Esq.

I will accept the proposition as stated in your letter will write to-night.

E. M.

Albert Peters P. 378 l. 2

No. 155. Plaintiff's Exhibit at trial A44, Dated 2nd Mar. 1895

(Telegram) (original) Dated: Quebec, March 2nd 1885.

From Portland, Me.

Will accept proposition as stated in your letter will write to-night.

ED. MOORE.

(Endorsed.)—Plaintiff's Exhibit A 44, filed Dec. 18th 1895. P. M., D. P. S. C.

No. 156. Defendants' Exhibit at trial B12. Dated 9th April 1879.

Moore Ev. P. 312 l. 26

(Copy.) Portland, Me., April 9th 1879.

S. Peters, Esq.,

Dear Sir,

We have received a copy of Mr. Pilkington's letter and the resolution as passed by the Board and we find that Mr. Pilkington expects to have the embankment made the whole length before the 20th of September; now this matter has been delayed so long that we cannot get the proper machinery made in time

No. 156. Defendants' Exhibit at trial B12. *continued*— Dated 9th April 1879.

to make this fill by the 20th of September as asked for by Mr. Pilkington and of course we must make these facts known to him, but will delay the matter until we meet you and talk the matter over; our offer was to fill the 700 feet asked for by the Board last fall and will do what we can towards filling embankment as now proposed; we also got a copy of Mr. Pilkington's letter in regard to agent and we will join you on our return and try and find some one that will suit and that can perform the duties of the office.

Yours truly,

MOORE & WRIGHT.

(Endorsed.)—Defendants' Exhibit at Enquête B12, filed Jan. 20th 1896.

P. M., D. P. S. C.

No. 157. Defendants' Exhibit at trial B13, Dated 22nd July 1879.

RESIDENT ENGINEER'S OFFICE

HARBOUR IMPROVEMENTS WORKS.

Quebec, July 22nd, 1879.

MESSRS. PETERS, MOORE & WRIGHT,

Contractors.

Sirs,

In reference to the altered back section of the wall and counterforts of the Tidal Harbour and Wet Dock respectively—by working drawing supplied June 5th, 1879 which brings each offset of the superstructure on the same vertical and horizontal line throughout—I have to state that the quantity in excess shewn in drawing will be computed and paid for according to the contract and schedule of rates.

Yours obediently,

(Signed), WOODFORD PILKINGTON,

Resident Engineer.

(Endorsed).—Defendants' Exhibit at Enquête B13, filed Jan. 20th 1896.

P. M., D. P. S. C.

No. 158 Defendants' Exhibit at trial B14, Dated 26th Aug. 1879.

Quebec, 26th August, 1879.

MESSRS. MOORE & WRIGHT.

Dear Sirs,

I am in receipt of yours of this date asking me to give you my lowest price for furnishing and driving the stub piles for shoal cribs to rest upon.

I reply I must say I have not the necessary data by which to make an estimate of this work. In the meantime I will say that my intention is to charge you the bare cost of this work. I will get particulars from my Mr. Ross and let you know what it comes to.

I remain, Yours truly,

SIMON PETERS.

(Endorsed).—Defendants' Exhibit at Enquête B14, filed Jan. 20th, 1896.

P. M., D. P. S. C.

RECORD.

In the Superior Court.

No. 159 Defendants' Exhibit at trial B15, Dated 26th Aug. 1879.

OFFICE OF MOORE & WRIGHT.

Contractors on Quebec Harbor Improvements.

Simon Peters, Esq. Quebec, August 26th 1879.

Dear Sir,

Please give us your lowest price for which you will furnish and drive the stub-piles per piece in the shoal trench for the shoal cribs to rest upon; please send us an answer to-day, as we want to know the cost before we proceed with any more of the work.

Yours truly,

MOORE & WRIGHT,

Per A. H. J.

(Endorsed.)—Defendants' Exhibit at Enquête B15, filed Jan. 20th 1896.

P. M., D. P. S. C.

No. 160. Defendants' Exhibit at trial B16, Dated 2nd Sept. 1878.

Quebec, September 2nd, 1878.

S. Peters, Esq.,

We find that the piles in rear of cribs No. 2 must be removed before we can fill the crib and think that two or more guide piles should be driven so as to hold the crib in place before these are removed. The bottom for No. 4 is ready for the short piles, and we would like to have you give us a piece per price for furnishing and driving the same, so that we may know what this method of leveling the bottom is to cost.

Yours truly,

MOORE & WRIGHT.

per Clerk.

(Endorsed).—Defendants' Exhibit at Enquête B16, filed Jan. 20th, 1896.

P. M., D. P. S. C.

No. 161. Defendants' Exhibit at trial B17, Dated 2nd Sept. 1878.

Quebec, 2nd Sept. 1878.

MESSRS. MOORE & WRIGHT,

Dear Sirs,

In reply to your note of this morning, I would remind you that the Piles and Bracing behind No. 2 Crib, had to be put in, in consequence of the bottom not being properly levelled; I dont think the guide piles you speak of, would be sufficient to keep this crib up at the back. It will require bracing reaching from the slope as low down as possible to support the crib at top as at present.

I am pleased to note that the bottom for No. 4 crib is ready, for the short piles, as I have them all ready to drive. I have to decline giving a stated price for this work, but at the same time will do it as economically as possible in your interest without assuming responsibility.

Yours truly,

SIMON PETERS.

(Endorsed.)—Defendants' Exhibit at Enquête B17, filed Jan. 20th 1896.

P. M., D. P. S. C.

RECORD

In the Superior Court.

No. 162. Defendants' Exhibit at trial B18, Dated 23rd Aug. 1879.

3
H. J. Peters Co.
P 347 f. 21
Moore Co.
P 427-8 f. 36

OFFICE OF MOORE & WRIGHT.

Contractors on Quebec Harbour Improvements.

Quebec, August 23rd, 1879.

SIMON PETERS, ESQ.,
Quebec.

Dear Sir,

With regard to a certain letter dated the 23rd August addressed to Messrs. Kinipple & Morris, Engineers Quebec Harbour Works, to place 16 to 1 concrete in five foot trench under shoal cribs in wet docks; it is distinctly understood that we assume the cost of supplying and driving the stub piles to support these cribs, and the supplying and fixing of the one and a half inch plank at the back of the cribs in the manner of sheet piling, to follow the outline of the concrete to be placed in the cribs; we would like to have you send us your lowest price for furnishing and driving the stub piles for the shoal trench.

Yours truly,

MOORE & WRIGHT.

pr. A. H. J.

(Endorsed).—Defendants' Exhibit at Enquête B18, filed Jan. 20th, 1896.
P. M., D. P. S. C.

MESSRS. MOORE & WRIGHT

SIMON PETERS, Dr.

No. 163 Defendants' Exhibit at trial B18a, Filed 20th Jan. 1896.

1878—To Sundry Pile driving :		
Richard Young, engineer on pile driver, time and material making one oak follower including iron fixtures, 1 piece oak 41x14x14.....	$ 50 00	H. J. Peters Co.
Driving 128 stub piles, including material and labor Tidal Harbor Crib No. 10 and 11..... at $5.85	748 80	P 346 f. 4
1879—W. Ross, engineer on pile driver, driving 28 stub piles, including material and labor Tidal Harbour Cribs No. 10 and 11..... at $5.85	163 80	Albert Peters Co.
Time and material new oak follower, 1 per oak 43x12x13.....	40 00	
Driving 120 stub piles, including material and labor Wet Dock at $3.07	368 40	P 391-2 f. 31
Removing and replacing one gauge pile, broken by dredge 42 ft. c. at $35.00.....	14 70	
1880—Ferdinand Labbe—Driving 100 stub piles, including material and labor Wet Dock..... at $3.07	307 00	Moore Co
		P 428 f. 13
E. & O. E.	$1,692 70	

(Endorsed).—Defendants' Exhibit at Enquete B18 A, filed Jan. 20th, 1896.
P. M., D. P. S. C.

RECORD.

In the Superior Court.

No. 164, Defendants' Exhibit at trial B19, Dated 6th June 1879.

MESSRS. MOORE & WRIGHT

in account with SIMON PETERS.

1877				
Dec. 17	To balance due as per statement		$679 85	
	" Amount of acct. for Tamarac		197 90	
24	" Shipping charges, Elm		11 87	
31	" Amount of acct. for Spruce Board		6 40	
	" Over delivery on Tamarac		50	
1878				
April 30	" Amount of acct. Sundries		236 76	
May 31	" " " "		99 75	
				$1,233 03
	CR.			
1878				
Feb. 25	By promissory note 4 months		400 00	
	" Contra acct. for use of dredges, ropes and chains		70 55	
	" ⅓ of $1096.63 being amount paid by M. & R. for sundry disbursements, including agent		365 54	
				$836 09
	Balance due S. Peters			$396 94
	To Bill Stamps			12
				$397 06
	E. & O. E.			
	Settled by promissory note dated 6th June at 90 days.			
	Quebec, 6th June, 1878.			
	SIMON PETERS, per H. Bohme.			
	Sundry Items including requirements of engineers office, etc., etc		240 38	
	Paid J. B. Navarre from 23rd May to 1st Dec. at rate of $125.00 per month		781 25	
	From 1st Dec. to 1st Jan		75 00	
				$1,096 63
	SIMON PETERS, per H. Bohme.			

(Endorsed).—Defendants' Exhibit at Enquete B19, filed Jan. 20th, 1896.

P. M., D. P. S. C.

RECORD.

In the Superior Court.

No. 165. Defendants' Exhibit at trial B20. Dated 12th Oct. 1880.

H. J. Peters Co. P 355 l. 23

Moore Co. P 432 l. 29

Quebec, 12th October 1880.

Messrs. Moore & Wright,

Dear Sirs,

I am in receipt of your letter dated 7th October and in reply, will take the necessary steps to have the $5000 advanced to me by the Commissioners in February last, placed on the same footing as the $25,000 advanced to your firm, my application was based in those terms:

According to the contract existing between us you undertook among other works, the forming of the Northern Embankment up to coping level, and further by your letter dated Portland, Maine, February 10th 1879, you consented to continue the filling to the crib work then proposed to be constructed; all of which up to the present time you have omitted to do, notwithstanding you were urged to do so, by the engineers as well as by me. Consequently I now inform you that I hold you responsible for any damage that the Northern Cribwork may suffer; as well as for the damage already caused to the low cribs the winter before last, in consequence of the non-fulfilment of your part of the work in backing up the same with dredged material; the small quantity of filling placed in these cribs last autumn has been washed out by *escape* from the lake formed behind the cribs and not as you state from want of care in preparing the foundations, which foundations were made according to plan and under the superintendence of the engineers, I don't dispute the importance of backing up the stone wall and shoal cribs this need not have prevented you in any way from fulfilling your obligations with regard to the northern embankment.

I deny that the masonry has not been properly pushed forward to completion or that you have been retarded by it, on the contrary when the time comes to go into this matter you will find that you have been often at fault; I maintain that the gap you caused to be left in the wall retarded the work considerably, and not a scow load of material was dumped to the west of the gap, the height at which I have to put the bollard ties shew it.

I deny your assertion that I alarmed the Commissioners in regard to certain portions of my work, consequently there will be no necessity to discuss the matter in their presence. Since you received the advance of $25,000,—the Commissioners have decided not to recognize any separate estimates, consequently if they refuse to pay any more estimates it applies to us all.

Yours very truly,

Simon Peters.

(Endorsed.)—Defendants' Exhibit at Enquête B20, filed Jan. 20 1896.

P. M., D. P. S. C.

No. 166 Defendants' Exhibit at trial B21, Dated 7th Oct. 1880.

H. J. Peters. P 355 l. 27

(Copy)

Oct. 7th, 1880.

Simon Peters, Esq.,

Dear Sir,

After carefully considering the matter of your estimate passed by the Commissioners yesterday, together with the notice given us by Mr. Verret "that "the Commissioners would pay no further estimates until the Northern crib work "was filled" we have decided to sign the usual receipt, *after* and *not before*, we

RECORD.

In the Superior Court.

No. 166 Defendants' Exhibit at trial B21, Dated 7th Oct. 1880. *continued*—

have arrived at a distinct understanding with you and the Commissioners on at least two important points:—1st. We want a positive assurance from the Commissioners that the $5,000.00 advanced to you in February last, shall in no event be taken from any current estimate for work executed by us. 2nd. There is a contract existing between us which distinctly provides, that each part shall protect his own work during the progress and maintenance of the Harbour Improvements, yet you assume and insist, that we, and we alone, are bound to protect the Northern crib work constructed solely by you, and from which we have never received a dollar profit; we placed a large amount of filling in these cribs last fall in accordance with the directions of the engineers as well as for our own convenience in disposing of certain dredged material, and had more care been exercised in preparing the foundation, the washouts which have since occurred would not have taken place; when, and whether we put more material in these cribs, depends entirely upon the engineers, who by the express terms of contract with the Commissioners, possess the sole power to direct where the dredged material shall be deposited; in the meantime we propose to continue the important work of backing the stone wall and shoal cribs, which require the full amount of our present dredgings; in connection with this matter, we would remind you that we have repeatedly notified you, that the masonry was not being properly pushed forward to completion, and its present backward state has seriously and expensively retarded our work of filling, all of which will appear at the proper time; finally, you have taken it upon yourself to alarm the Commissioners in regard to the condition of certain portions of *your* work for which it is proposed to withhold our estimates—we therefore insist that these questions should be fully discussed in the presence of the Commissioners, and if they then determine to withhold our estimates, they must retain yours as well.

Yours, etc.,

MOORE & WRIGHT.

True copy,

CARON, PENTLAND & STUART,
for Defts.

(Endorsed).—Defendants' Exhibit at Enquête B21, filed Jan. 20th 1896.

P. M., D. P. S. C.

No. 167. Defendants' Exhibit at trial B22, Dated 29th Mar. 1878.

Albert Peters &c. P 380 1.13

(Private) Portland, Me., March 29th, ~~1878.~~ 1887

My dear Peters,

Yours of the 26th at hand and contents noted. Mr. Perly not only made a verbal report to the Board but sustained it with a written report with a mass of figures. He said to the Board that while he would prefer that this matter be left to some other engineer, he, as the chief engineer to the Board was bound to say to them that the certificate of K. & M. which awarded us $52,000 really gave more than there was due us. He went over the testimony of Pilkington and Morris and also the figures with Boswell, and in making up his report he not only deducted the dredging, sand and the concrete, but all of the deductions made by Morris on the timber work. The board, on the strength of Perly's

No. 167. Defendants' Exhibit at trial B22, Dated 29th Mar, 1878.

report, voted to inform Mr. Cook that his request could not be granted. I have gone over our papers and after careful study of them, I am of the opinion that Shanly, if he took up the case, would only treat with the disputed items. I am also inclined to think that Sir Hector will refuse to allow the case to go to arbitration as I am of the opinion that he does not propose to have it settled on any terms. I am not very particular about calling Pilkington and will talk the matter over with you when we meet. I am strongly in favor of pushing our case to trial and as soon as the board decide on our request for an arbitration, I will come to Quebec and arrange matters with you and our lawyers so that we can proceed with the trial either before Shanly or the Court. I was pleased to hear that you got the ($2500) twenty-five hundred from the board. After leaving you I saw Mr. Dobell and also Col. Forsyth and urged them to assist you in the matter—also requested Cook to write the board on the matter. Am sorry to see that you are snowed up again.

continued— P. 581

With kind regards to Mrs. Peters and yourself.

I am very truly yours,

EDWARD MOORE.

(Endorsed.)—Defendants' Exhibit at Enquête B22. Filed 20th Jan., 1896.

P. M., D. P. S. C.

No. 168 Defendants' Exhibit at trial B23, Dated 26th Mar. 1887.

OFFICE OF SIMON PETERS.

P. O. Box, 657. Quebec, 26th March 1887.

Dear Col. Moore.

Yours of the 24th came this morning I note what you say. Mr. Perly was here last Tuesday, he merely gave his ideas verbally; before making a written report he wants the details upon which K. & M. based their last certificate. So far Cook has not received a definite reply to the letter he wrote in our behalf to the Commissioners. Both Bossé and Cook consider it useless to ask for an outside arbitration as we were refused this before. Both our lawyers think we have a better chance in Court. The question will be narrowed down to the clerical error and removal of sand. Cook is of opinion that you will not gain anything on the ton weight question or the additional concrete. Bossé seems afraid of your getting Pilkington, Cook thinks different, they however both agree that the case should be gone on with without a day's delay, so as to have a judgment in June next. No doubt you will be surprised to learn that I got $2500 out of the Commission to enable Samson to meet his first payment on the 9th. I will tell you about it next time you come on.

B23 is a duplicate of A 47 folio 581

With kind regards to Mrs. Moore and yourself.

Believe me yours truly,

SIMON PETERS

(Endorsed.)—Defendants' Exhibit at Enquête B23. Filed Jan. 20th 1896.

P. M., D. P. S. C.

Why? & etc?
Ex. A 47 of Dimon Peters details of Wood & Iron Work of
Ex. A 47 of Work done and set off for Work not done.

RECORD.

In the Superior Court.

No. 169, Defendants' Exhibit at trial B24, Dated from 16th Oct. 1877 to 22nd Aug., 1882.

Albert Peters Co.
P 398 l. 14
400 l. 45

ADDITIONS TO BILL No. 1.

Excess of Timber and Bolting in one crib of 40 ft. in length.....			$181 70
As per specification pages 43 to 45.			
4010 ft. cube timber at.....15c		$601 50	
1080 ft. sup. 3″ planking at..... 8c		86 40	
		$687 90	
As per actual construction.			
5080 ft. cube at.....15c		$762 00	
2152 bolts ¾ – ⅞ & 1″ at..... 5c		107 60	
		$869 60	181 70
EXCESS OF TIMBER AND BOLTING IN ONE CRIB OF 40 FT. LENGTH.			
Additional plank and scantling forming counterforts.			
5⅓ pc. hemlock 28x12x6 = 74′.8″ ft. cub. at.....30c		22 40	
2 pc. W. pine 28x 6x6 = 14.0 ft. cub. at..... .....35c		4 90	
28x12 ft. sup. 3″ plankg. = 336 ft. sup. at..... 8c		26 88	
35 bolts ⅞″x27″ heads, nuts and washers 332½ lbs. at 8¼c		27 43	
252 spikes 6″ = 944 lbs. at..... 6c		5 66	87 27
			$268 97

(In pencil)
$835 20
687 90
$147 30
87 27
$234 57

22 Aug. 1882.
A referring to change plan.
B referring to proposed change. J. V. B

ADDITIONS TO BILL No. 4.

Widening shoal cribs 2 feet and bolting same to piles.		
6 pcs. 2′.0″x11″x11″ = 10′.1″ at 15c.....$1 51		
18 " 2′.0″x 9″x 3″ = 6′.9″ at 35c..... 2 35		
12 " 2′.0″x11″x 6″ = 11′.0″ at 30c..... 3 30		
	$7 16	
BOLTING TO CRIBS.		
18 bolts 30″x1″ = 8 lbs. each = 144 lbs.....		
36 washers 5″x5″x⅜ 94 lbs = 238 lbs at 7c.	$16 66	
18 rag bolts 14″x¾ = 39 lbs at 5¼c.....	2 05	
7 screw bolts 40″x1″ = 10½ lbs 74 lbs.....		
14 washers 36 lbs		
——— 110 lbs at 7c.....	7 70	
55 cribs at.....	$33 57	
		$1846 35

(In pencil) (In pencil)

$2.38	$3 48
1.10	
$3.48	$37 05

Extra length of 6″ on sheet piles and during same.
11 ft. cube per crib of (42 ft.) at 45c..... $4 95

55 cribs at..... $4 95 $272 25

(In pencil)	$6 60	(In pencil)	$6 30
	3 48		3 48
	$3 12		$2 82

ADDITIONS TO BILL No. 7

Entremises filling to ballast wharf between fenders.

82 pcs entremises 9′.6″x12″x9 = 584.3 at 25c.....146 06
246 drive bolts 18″x⅞ = 959½ lbs. at 5c..... 47 97
194 03

(Endorsed) Bill No. 4.	$1846 35	(In pencil)	
			$6 30
	272 25		3 48
Bill No. 7.	$194 03		$2 82

Quebec 1882. J. V. B.

ADDITIONS TO BILL No. 4.

Planking, scantling and bolts forming counterforts to 55 crib blocks wet dock.

3 pcs. 13.0x11x6 = 17.10½ ft. c.....	at 30c.	5 36	
2 " 13.0x 8x6 = 8. 8.....	at 35c.	3 04	
2 " 13.0x 7x6 = 7. 7.....	at 35c.	2 67	
4 " 13.0x11x6 = 23.10.....	at 30c.	7 20	
45.4 x13 ft. Planking = 589.4 ft. sup.....	at 7c.	41 26	

BOLTING.

6 Bolts 26″x⅞ headnuts and washers.....	34		
9 " 20″.....	40		
3 " 24″.....	16		
3 " 31″.....	21		
	111 lbs. at 9c.	9 99	$69 50

ADDITIONS TO BILL No. 4.

Widening Shoal Cribs 2 feet and bolting same to Piles.

6 pcs. 2.0x11x11 = 10.1.....	at 15c.	$1 51	
18 " 2.0x 9x 3 = 6.9.....	at 35c.	2 35	
12 " 2.0x11x 6 = 11.0.....	at 30c.	3 30	
		87 16	

RECORD.

In the Superior Court.

No. 169, Defendants' Exhibit at trial B24, Dated from 16th Oct. 1877 to 22nd Aug., 1882. *continued—*

Forward.....	$7 16	
BOLTING TO CRIBS.		
18 bolts 30″x1″ = 8 lbs. = 144 lbs.....		
36 washers 5″x5″x⅝″ 94		
—— 238 lbs ..... at 7c.	16 66	
18 rag bolts 14x¾ 39 lbs..... at 5½c.	2 05	
7 screw bolts 40″x1″ = 10½ lbs = 74 lbs.....		
14 washers 36		
—— 110 lbs ..... at 7c.	7 70	
55 cribs at.....	$33 57	
		$1,846 35
Extra length of 6″ on Sheet Piles and driving same.		
11 ft. cubic per crib of 42 ft..... ..... at 45c.	4 95	
55 cribs.....	$4 95	
		$272 25

BILL No. 7.

Entremises filling to Ballast wharf between Fenders.

82 pcs. entremises 9.'6″x12″x9″ = 584.³ ..... at 25c.	146 06	
246 drive bolts 18″x⅛″ 959½ lbs..... at 5c.	47 97	
		$194 03

CERTIFICATE No. 1.

ESTIMATE OF TIMBER WORK, NOV. 29TH 1877.

GAS HOUSE.	
19.95 Crib Blocks at $134.84 per block.....	$2690 06
" " Towing and sinking $44.....	866 80
1301.86 Cube feet extra timber at.....16c	208 30
131 ft. sup. planking at.....10c	13 10
2713 lbs. extra bolting at.....05c	135 65
1205 " " " to extra work at..... 05c	60 25
12 Tie bolts and washers 327.6 lbs. at.....05c	16 38
346 Cube yards of excavation at.....40c	137 50
	$4128 04
Low Crib substructure at Gas House as per contract.....	2895 14
Balance due in excess of Contract.....	$1232 90
Amount paid for in this certificate.	
No. 13 Amount claimed in general account.....	$1232 90

ADDITIONAL WORK TO CRIBS AT GAS WHARF, 16 OCT. 1877.

RECORD.

In the Superior Court.

No. 169. Defendants' Exhibit at trial B24, Dated from 16th Oct. 1877, to 22nd Aug. 1882. *continued—*

Hemlock	41x12	41	
	40x12x13	43.4	
	42x13	49. 3.6	
	41x12x13	44.5	
Length starting at 5½ inches at West End	32x12	32	
	41x12x13	44.5	
	30x12	30	
	31x12	31	
	30x12	30	
	32x12x13	34.8	
			380.1.6
	39x13x14	49. 3.6	
	41x13	48. 1.5	
	34x13x14	42.11.8	
	31x14x15	45. 2.6	
	32x14x16	49. 9.4	
	41x14	55. 9.8	
	42x12	42	
	29x11x12	26. 7	
	47x12	47	
	34x12	34	
			440.9.1
	16x11x12	14. 8	
	40x12	40	
	11x12	11	
	27x12	27	
	26x11x12	23.10	
	28x12	28	
	9x11x12	8. 3	
	9x13	9. 9	
	9x11	7. 6.9	
	9x11x12	8. 3	
			178.3.9
	9x12	9	
	9x11x12	8. 3	
	9x10x11	6.10.6	
	9x12	9	
	9x12x13	9. 9	
	9x12	9	
	9x12	9	
	9x11x12	8. 3	
	9x13	10. 6.9	
	9x12	9	
			88.8.3
	9x12x13	9. 9	
	9x13	10. 6.9	
	9x11	7. 6.9	
	9x12	9	
	9x12	9	
	9x11	7. 6.9	
	9x11x12	8. 3	
	9x10x11	6.10.6	
	9x11	7. 6.9	
	9x11x12	8. 3	
			84.4.6
	9x12	9	
	9x10x11	6.10.6	
	9x11x12	8. 3	
	9x11	7. 6.9	
	9x11	7. 6.9	
	9x10x11	6.10.6	
	9x11x12	8. 3	
	9x10x11	6.10.6	
	9x11x12	8. 3	
	9x11x12	8. 3	
			77.9.0
	9x12	9	
	9x11x13	8.11.3	
	9x11	7. 6.9	
			25.6.0
			1275.6.1 ft. cube.
43 pieces Entremises etc., at East end			222.
			1497.6 ft. cube.
			1301.86 am't as return in office.

EXTRA BOLTING TO EXTRA WORK.

BOLTING.—	104 Bolts	¾x¾ 18″	Fenders,	156 ft.	= 296.4 ?
	82 "	¾x¾ 27″	cross ties	184⁶	= 350.3 ?
	300 "	¾x¾ 18″	Longitudes	450 ft.	= 855.
	1500 "	½x9 spikes	sheathing	1125 ft.	= 900 7/10
					2401 lbs 5c. 120.05
	12 large Bolts 1¼″x6′.4″ long 76 ft.				319.2
	Nuts				36
	With 2 nuts and washers each				48
					327.6 lbs.

BILL No. 8. No. 1. 16 Oct. 1897.

RECORD.

In the Superior Court.

No. 169. Defendants' Exhibit at trial B24, Dated from 16th Oct. 1877 to 22nd Aug. 1882. *continued—*

PROGRESS ESTIMATE OF OPEN CRIB WORK BLOCKS TO OUTER SLOPE AT GAS WORKS.

Length 746 main work Return 52		
Total length 798 feet.		
EXCAVATIONS.		
438.0x12.0x3.6 average depth = 681 yards 9.0x6.0		
Length 6'.0" 40 feet		
222 c. feet in Longitudinal Bearers.....at 16 c.		35 53
132 c. feet in Transverse Stretchers.....at 16 c.		21 12
45 c. feet in Hemlock Fenders inside and outside.....at 16 c.		7 20
234 ft. sup. in Hemlock Planking say 6 feet high.....at 10 c.		23 40
340 ft. sup. in Platform.....at 10 c.		34 00
IRON WORK.		
272 lbs. of ¾" rag bolts to above work.....at 5 c.		13 60
		$134 84
Say 19 lengths of 40 feet and one of 38 feet	$2561 96	
	128 06	
		2690 02
Towing and sink entire length of cribwork.....		704 00
Extra cribs say 4.....at $44		176 00
18.7 40 ft. block $44		
1 50 " " 44 =		866 80
19.7		

BILL No. 8.

	Contract.		
Northern Cribwork at Gas House substructure as per contract 650 ft. long owing to widening of embankment length was increased to 746 feet taking 650 ft. at $4.4540 per foot linear on 96 feet.....	2895 14		$2895 14
Extra Excavation for same.....		$427 58 309 56	737 14
			$3632 28
Substructure Northern cribs as per Navarre's Estimate	$16,088 90		

RECORD.

EXTRA SHEATHING.

In the Superior Court.

No. 169, Defendants' Exhibit at trial B24, Dated from 16th Oct. 1877 to 22nd Aug., 1882. *continued—*

Say 1038 inches difference in height by 10 feet long = to 865 ft. sup. of Extra Sheathing at 10 c	86 50
EXTRA LENGTH TO FENDERS.	
2/1038 inches long by 10″x10″ = 120 ft. cub. at 16 c	19 20
BOLTING TO ORIGINAL CRIBS LENGTHENED.	
Extra Bolting to 40 ft cribs 9′.0″x6.′0″ Say 70 bolts ¾x¾x10″ long longitudinal bearers = 58.4 long, weight 110.8 lbs.	
Say 40 bolts ¾x¾x2″ long 80 inch Fenders 12.6	
Say 20 bolts ¾x¾x4″ long outside square floats 12.6	
Total extra to 40 ft. long 136.0 lbs.	
Say 19 times 136 lbs and 38 ft. = 129.2 lbs. Total 2713 lbs. at 5c	135 65
2584 lbs 129 2713 lbs.	

No. 170 Defendants' Exhibit at trial B25, Dated from 27th July 1877 to 16th Sept. 1879.

re Judgment Pelquet + al

(Cheque) Quebec, Sept. 16th 1879.

No. 1090.

To the Cashier of the Union Bank of Lower Canada, Pay R. Alleyn or order, Four hundred eighty-nine Dollars $\frac{55}{100}$

$489.55 MOORE & WRIGHT.

(Cheque) Quebec, 27th July 1877.

No. 44.

To the Cashier of the Union Bank of Lower Canada, Pay Alleyn & Chauveau, or order, One hundred Dollars.

$100. MOORE & WRIGHT.

Jacobs Ex.
P. 405 l. 26

Moore Ex.
P. 436 l. 18
454 l. 9
455-6 l. 41

Albert Peters Ex.
P. 470 l. 37
471-2 l. 39

In re A. PAQUET

vs.

S. C. 351. S. PETERS, *et al.*,

RECORD.

In the Superior Court.

No. 170 Defendants' Exhibit at trial B25, Dated from 27th July 1877 to 16th Sept. 1879. *continued—*

Principal		$100 00
Costs Montambault, Langelier *et al*		89 70
" Alleyn, Ch. Livernois & Alleyn		54 95
In appeal. Costs etc., Al., Ch. L. & Al.		155 01
" " Montambault, L. *et al*		129 89
	$529 55	$529 55
10 Cr. 1879, 19th March	40 00	
Due	$489 55	

With interest on $100 since 2 Jan., 1878 at 6%.

(Endorsed.)—Defendants' Exhibit at Enquête B25, filed Jan. 20th 1896.

P. M., D. P. S. C.

H. J. Peters Calculations from Moores figures of Concrete behind stone Wall.

No. 171. Defendants' Exhibit at trial B26. Filed 20th Jan. 1896.

Total cubic feet contained in one 40 ft. Block of Tidal Basin superstructure, including stone face, minus coping course say 5867.874 cubic feet or 217.323 cubic yards.

Total cubic feet contained in one 42 ft. Block of South Wet Dock, superstructure, including stone face minus coping course say 6674.831 cubic feet or 20 247.216 cubic yard.

Total cubic yards in 31 Blocks Tidal Basin as above	6737.168	
Total " " 55 " S. W. Dock "	13596.880	
cubic yards	20334.048	

Moore Ev. P. 430 f. 22
P 462-3 f. 42
464 f. 35
465 f. 11
469 f. 15
Albert Peters

Total cubic feet of masonry in stone wall entire length of 3550 ft. say 130.230 cubic feet = 4823 cubic yards.

Deducting coping..... 568

Total cubic yards of masonry deduction. 4255 4255

Cubic yards 16.079.048

(Endorsed.)—Defendants' Exhibit at Enquête B26, filed Jan. 20th 1896.

30 P. M., D. P. S. C.,

No. 172. Defendants' Exhibit at trial B28, Dated from 30th Aug. 1882 to 8th May 1888.

$100 Portland, April 14th 1887.

The First National Bank of Portland, Maine, Pay to J. Vincent Browne or order One hundred Dollars.

EDWARD MOORE.

Moore Ev P. 457 f. 15

RECORD.

In the Superior Court.

No. 172. Defendants' Exhibit at trial B28, Dated from 30th Aug. 1882, to 8th May 1888. *continued—*

$150 Portland, Me,, Dec. 6th 1883.

The First National Bank, Pay to the order of J. V. Browne, One hundred and fifty Dollars.

EDWARD MOORE.

$100 Portland, Me, Jan. 15th 1884.

The First National Bank, Pay to the order of J. Vincent Browne one hundred Dollars.

EDWARD MOORE.

Quebec, August 30th 1882.

Received of Moore & Wright, One hundred dollars on account of travelling expenses and services for Simon Peters, Edward Moore and A. R. Wright in attending as a witness before the Board of Arbitrators in their behalf.

$100 J. VINCENT BROWNE.

THE WESTERN UNION TELEGRAPH COMPANY.

MONEY TRANSFER ORDER.

Portland, Me., May 8th 1888.

The Western Union Telegraph Company, received of Edward Moore, Fifty dollars, to be paid to J. Vincent Browne, Rochester, N. Y., subject to the above terms and conditions,

JOHN D. WILLIAMS,
Cashier.

Amount of Transfer	$50 00
Telegraph Service..	0 90
Other Service.....	0 50
Total	$51 40

(Endorsed.)—Defendants' Exhibit at Enquête B28. Filed Jan. 20th 1896.
P. M., D. P. S. C.

No. 173 Defendants' Exhibit at trial B29, Dated 29th June 1884.

$200. Portland, Me., June 29th 1884.

First National Bank, Pay to the order of Woodford Pilkington, Two hundred dollars.

EDWARD MOORE.

(Endorsed)—Defendants' Exhibit at Enquête B29. Filed 20th Jan. 1896.
P. M., D. P. S. C.

Moore Et.
P. 457 f. 39

In the Superior Court.

No. 174. Defendants' Exhibit at trial B30, Dated 5th June, 1879.

Quebec, 5th June 1879.

Dear Sirs,

Will you kindly oblige me with a cheque for $50, an account of professional services present and future.

Yours very truly,

WILLIAM COOK.

Moore & Wright B45-9 f.9

No. 175 Defendants' Exhibit at trial B30, *continued*— Dated 7th June 1879.

No. 1028. Quebec, June 7th 1879.

To the Cashier of the Union Bank of Lower Canada, Pay W. Cook, or order Fifty dollars.

$50.00 MOORE & WRIGHT.

No. 176. Defendants' Exhibit at trial B30, *continued*— Dated 23rd Dec. 1879.

No. 2094. Quebec, Dec. 23 1879.

To the Cashier of the Union Bank of Lower Canada, Pay William Cook or order Four hundred and fifty dollars.

$450.00 MOORE & WRIGHT.

No. 177. Defendants' Exhibit at trial B30. *continued*— Dated 22nd Dec. 1880.

MESSRS. PETERS, MOORE & WRIGHT

To W. & A. H. COOK.

1880		
Aug. 24—Advice *re* extension of time on contract		$5 00
Sept. 22—Consultations and interviews with Messrs. Peters. Moore & Wright, and letter to Commissioners		20 00
Oct. 11—Consultations and advice on various occasions		15 00
		$40 00

Quebec, Dec. 22nd, 1880.

RECORD.

In the Superior Court.

MESSRS. PETERS, MOORE & WRIGHT

To. W. & A. H. COOK, Dr.

No. 178, Defendants' Exhibit at trial B30, *continued*— Dated 25th July 1893.

To professional services *re* yourselves *vs.* the Quebec Harbour Commissioners from 1885 to date	$5,000 00
To disbursements, travelling expenses, agents fees, etc., etc., not met by you	1,040 26
	$6,040 26

Cr.

By cash from Moore & Wright	$1,500 75
	$4,539 51
Add Mr. Osler's Fee as settled	1,200 00
	$5,739 51

Cr.

By cash	$4,841 47
	$898 34

This does not include travelling and Hotel expenses, etc., paid by Col. Moore.

Received payment in full.

25th July, 1893.

W. & A. H. Cook.

Quebec, 25th July, 1893.

No. 179 Defendants' Exhibit at trial B30, *continued*— Dated 25th July 1893.

Hon. Col. Ed. Moore,

Portland.

My Dear Colonel.

I am in receipt of your favour in the 20th with enclosures, and now return account receipted. Mr. Peters signed the cheque to-day and I am obliged to you for forwarding it.

In your last letters you do not mention family matters. I sincerely trust all are well.

Yours very truly,

William Cook.

M.

(Endorsed.)—Defendants' Exhibit at Enquête B30, filed 20th Jan. 1896.

P. M., D. P. S. C.

MESSRS. PETERS, MOORE & WRIGHT

To HON. JOS. G. BOSSÉ.

RECORD.

In the Superior Court.

No. 180 Defendants' Exhibit at trial B31, Dated 15th Jany. 1890.

Moore Ex. R. 459 l. 13

Re PETERS *et al*, vs. THE QUEBEC HARBOUR COMMISSIONERS.

	Interviews with Messrs. Peters & Moore, correspondance with them and Quebec Harbour Commissioners negotiations to arrive at a settlement, from date of award to the date of the institution of the action	$100 00
1896	Drawing of first action	25 00
August 19	Paid G. G. Stuart his costs on first action	59 70
	Taxed bill on first action	91 80
	Instructions to prepare second action and several interviews	40 00
	Drawing second action	50 00
	Writ and copy	4 10
	Signification	50
	Entry	5 80
	Demand of plea	20
	Significations of answers	80
	Motion for Commission Rog	1 00
	Attorney on	3 00
	" " suing Com. Rog	9 00
	" " drawing Interrogatories	20 00
	" " Supplementary Interrogatories	4 00
	" for taking instructions	5 00
	" on cross questions	10 00
	" " Petition for delay to file plea	3 00
	" " Demurrer	8 00
	Petition to hear witnesses and service	1 20
	Attorney on	3 00
	Inscription at enquête and service	1 20
	2 Petition to hear witnesses and service	1 20
	Attorney on	3 00
	Notice to produce documents	20
	1 Subpœna and copy and service	80
	" " " " "	2 25
	" " " " "	50
	Articulation of facts and answers	11 40
	Signification of Interrogatories	20
	Attorney on motion to file new plea	3 00
	Attorney on requisition to produce documents	3 00
	Paid on filing Exhibits at Enquête	1 50
	" " issuing Com. Rog	3 00
	Notice	80
	Motion for Com. Rog. at Brazil	1 20
	Attorney on	3 00
	Drawing affidavit of E. Moore on 21st April 1887	3 00
	" " " " " 27th " "	3 00
	Witness Cummings stamp	17 80
	" Brown "	34 00
	" Verret "	2 60
	" Jacobs "	6 70
		$548 45

RECORD.

In the Superior Court.

No. 180.
Defendants' Exhibit at trial B31, Dated 15th Jan. 1890.
continued—

	Carried forward	$548 45
	Witness Beemer stamp	8 30
	" Glackmeyer "	1 40
	" Desruisseaux "	1 20
	" Lagacé "	1 10
	" Edmond "	1 40
	" F. L'Abbé "	40
	" Pennée "	90
	" Thibaudeau "	1 50
	" L'Abbé "	1 70
	" Roberge "	1 00
	" Brown "	30 80
	" Verret "	1 00
	19 days at Enquête at $25.00	475 00
	Cross examining ten witnesses over 5	20 00
	Counsel at Enquête	10 00
	Reading and studying return of Com. Rog	50 00
	Inscription on merits and service	3 70
	Cost of Ehxibit 12 pp. C. Thibault	3 00
	Two continuations of Enquête at $2.00	4 00
	Attorney on retrogression from case 9 to case 7 on filing new plea.	20 00
	Attorney's fee and Retainer	1,000 00
	Bill of costs and duty	1 20
	Notice and tax	50
	Correspondence while case pending and going on	50 00
	Telegram	35
	"	25
	"	25
	"	25
	"	25
	"	45
	"	1 20
	Paid L. Lynch for copy of proof for Colonel Moore	79 65
	Paid E. J. Duggan for copy of proof for same	2 30
	Preparation of factum and synopsis of proof for the judge	200 00
		$2,521 50

Cr.

1886			
June 22	By Cash	$200 00	
" 28	" "	150 00	
1888			
April 2	" "	300 00	
			$650 00
	Balance due		$1,871 50

RECORD.

In the Superior Court.

Col. Moore, Quebec, 15 Jan. 1890.

of Messrs. Moore & Wright,

Contractors, Portland, Maine.

Dear sir,

No. 181. Defendants' Exhibit at trial B31, *continued*— Dated 15th Jany. 1890.

I am now about closing Mr. Judge Bossé's account which have been outstanding since his promotion to the Bench, in September 1888. I beg to enclose statement of his disbursements and fees in your case with the Quebec Harbour Commissioners, showing a balance of $1871.50.

I would feel obliged if you would peruse it and, if satisfactory please let me know if you could give me a draft for the amount upon the Commissioners.

This mode would save you disbursing cash and enable me, I believe, to settle the matter.

Yours truly,

J. I. LAVERY.

No. 182 Defendants' Exhibit at trial B31, *continued*— Dated 3rd Feb. 1890.

$1871.50 Quebec, Feb. 3rd 1890.

To the board of Quebec Harbor Commissioners.

Gentlemen,

Please pay to the order of the Hon. J. G. Bossé, one thousand eight hundred and seventy-one dollars and fifty cents and charge the same to our account.

The above payment to be made without prejudice to the *rights of either party* in the suit which we have against the Quebec Harbour Commissioners and now pending before the Court of Appeals for the Province of Quebec.

Yours very truly,

EDWARD MOORE.

(Endorsed.)—Defendants' Exhibit at Enquête B31, filed Jan. 20th 1896.

P. M., D. P. S. C.

No. 183. Defendants' Exhibit at trial B32, Dated 27th May 1887.

Portland, Me., May 27th 1887.

My dear Peters,

Your letter of the 24th came to hand last night and I note your complaint as to my delay in answering Mr. Cook's letter. I received the letter on the 17th, I answered it and mailed it myself on the same day to Mr. Cook as requested by you in your letter of the 12th. I will send you a copy of the letter if you wish. I will also say that I wrote Mr. Cook that I could not sign the letter as drafted and gave him my reasons for declining. The letter sent me made me assume certain responsibility which belonged to you. I will repeat what I said to you at Quebec, viz: That I am willing to assist you in getting your full due from the Board but I cannot assume any risk or responsibility beyond those which already belong to me. I will also say to you in confidence that I had an interview just before leaving Quebec with two of the members of the commission and gave them the plan which you had in view for your relief. They said to me at once that it would be useless to ask the Board to accept any such proposition as the Board would have to refer the matter to their lawyers, who would in their opinion advise the Board not to accept it. You will remember that I expressed the same opinion to you at Quebec at our interview at the Hotel the night I left.

Moore Ex. P460 f.20

RECORD.

In the Superior Court.

No. 183, Defendants' Exhibit at trial B32, Dated 27th May 1887. *continued*—

Mr. Cook was of the same opinion, as I remember. You will pardon me if I take the liberty to dissent from the views expressed in your letter, That you have been kept out of your money all this time on my acc't, and would suggest that it would be far better to drop that kind of nonsense from your correspondence with me in the future. In reference to your statement which you refer to, I would prefer to have a copy of it that I may examine it more carefully then what I had a chance to do while at Quebec. I wish you would kindly mail to me the copy of the written contract which I loaned to you while at Quebec, as I find I have no copy here. If you wish I will have Mr. Jacobs make copy and return to you or you can let one of your clerks make copy of the same before mailing the same. Trusting that Mr. Cook can suggest some plan in which I can see my way clear to assist you in your efforts to secure from the Board the balance due you.

I remain yours very truly,

EDWARD MOORE.

(Endorsed.)—Defendants' Exhibit at Enquête B32, filed Jan. 20th 1896.

P. M., D. P. S. C.

No. 184 Defendants' Exhibit at trial B34, Dated 20th Dec. 1883.

COUR SUPÉRIEURE, Québec.

No. 655.

S. Peters, *et al.*, ... *Demandeurs;*

vs.

The Quebec Harbour Commissioners, ... *Défendeurs*

Malouin Et. R. 460 f. 38

A CETTE HONORABLE COUR :

Les Demandeurs exposent :

Que par acte authentique fait à Québec devant Mtre Angers, Notaire Public, le deux Mai mil huit cent soixante-dix-sept, les présents Défendeurs, agissant par le ministère de l'Honorable Pierre Joseph Olivier Chauveau, leur Président, et d'Ambroise Hector Verret, Ecuier, leur Secrétaire, convinrent avec les Demandeurs de ce qui suit, savoir :

Qu'eux, les Demandeurs, feraient et construiraient pour les Défendeurs, sur les terrains de ces derniers, en la cité de Québec et à l'embouchure de la rivière St. Charles, tous les divers ouvrages décrits en les spécifications détails de quantités et formes de soumissions, aussi dans les particularités supplémentaires annexées au dit acte et y mentionnées, et conformément aux dessins aussi y mentionnées et à ceux qui pourraient être de temps à autre fournis par les ingénieurs des Défendeurs, et suivant les diverses clauses et conditions mentionnées en les dits documents.

Qu'il fut de plus convenu par le dit acte que les Défendeurs auraient le droit de substituer un mur en pierre avec ciment en arrière, au front de bois avec ciment en arrière tel que porté aux dits plans et spécifications et que si la dite substitution était faite, les Défendeurs paieraient aux Demandeurs pour le dit mur une somme de dix-huit mille trois cents quatre-vingt-treize piastres, cinquante-huit cents.

Que le dit contrat fut ainsi fait par les Demandeurs en considération du prix (bulk sum) de cinq cent cinquante-quatre mille deux cent quatre-vingt-seize

piastres, trente et un centins ainsi que le tout appert par le dit acte, *auquel les Demandeurs réfèrent comme formant partie des présentes.*

Et les dits Demandeurs représentent de plus qu'en et par les dits détails de soumissions, spécifications et forme de soumissions sus-mentionnés, il est entre autres choses stipulé et convenu que les dits ingénieurs auraient le droit de faire aux dits plans, spécifications et forme de soumissions de même qu'à tous les ouvrages alors projetés tous les changements qu'ils jugeraient à propos d'ordonner, soit en augmentant ou diminuant les ouvrages, soit en les changeant autrement, et que les Demandeurs seraient obligés de suivre les instructions qu'ils pourraient ainsi recevoir et de s'y conformer en tous points, et que pour tels ouvrages ainsi modifiés, les Demandeurs seraient payés à raison des prix divers portés aux cédules et seraient obligés de faire les dits ouvrages modifiés pour les dits prix, pourvu que les dits changements ou modifications n'excédassent pas une valeur de dix par cent sur le prix susdit du dit contrat, ainsi que le tout appert par les dits détails, forme de soumissions, cédules, plans et autres documents mentionnés au dit contrat et auxquels les Demandeurs réfèrent *comme formant partie des présentes.*

Et les Demandeurs représentent de plus qu'ils ont de suite commencé les dits travaux; qu'ils en ont fait une partie conformément aux dits contrats et documents, mais que de temps à autre les dits ingénieurs ont, avec l'autorisation et le consentement des Défendeurs, modifié et changé les dits plans et la nature des dits ouvrages, et que par leurs ordres à cet effet, ils ont obligé les Demandeurs de faire des travaux tout autres que ceux projetés par le dit contrat, d'une nature, construction et forme entièrement différentes et de matériaux aussi différents, le tout d'une valeur excédant quatre-vingt pour cent du prix susdit du dit contrat;

Que les Demandeurs ont été, en vertu des conventions sus-relatées obligés de se conformer aux dites instructions et de faire les dits ouvrages en conformité avec icelles.

Qu'ils ont en tous points suivi leur dit contrat et terminé les ouvrages-savoir: tant ceux projetés lors du contrat que ceux subséquemment modifiés, et ordonnés comme susdits, le tout à la satisfaction des dits ingénieurs et des Défendeurs qui les ont acceptés et en sont maintenant en possession.

Que les ouvrages ainsi faits sont détaillés en le compte de particularités maintenant produit comme partie des présentes, et que les prix y portés sont pour les ouvrages faits et matériaux fournis suivant les dits contrat et document et prévus lors de la signature d'iceux, les divers prix y portés, et pour les ouvrages non prévus lors du dit contrat ou modifiés depuis, le prix courant, et la valeur des dits ouvrages et matériaux, et que les Défendeurs en ont profité pour autant.

Que pour tous les matériaux fournis et ouvrages faits en vertu des dites modifications et changements, les Demandeurs ont droit d'exiger des Défendeurs paiements en raison des divers prix portés aux dits documents et cédules et aussi et en outre pour la différence entre les dits prix et la valeur réelle des dits ouvrages et matériaux telle que portée au compte de particularités produit, lesquelles deux sommes ils réclament des Défendeurs.

Que les dits ouvrages ont été terminés par les Demandeurs et reçus par les Défendeurs dès le premier Novembre mil huit cent quatre-vingt-un et que les Demandeurs ont dès cette date, et itérativement depuis, tant de vive voix que

RECORD.

In the Superior Court.

No. 184. Defendants' Exhibit at trial B34, Dated 20th Dec. 1883. *continued*—

par écrit, demandé paiement de la balance à eux due, et mis les Défeedeurs en demeure de la leur payer, ce que ces derniers ont toujours refusé, et que les Demandeurs ont partant droit à l'intérêt sur la dite somme à compter du dit premier Novembre mil huit cent quatre-vingt-un.

Qu'en raison de ce que sus-allegué, il est maintenant dû aux Demandeurs une balance de trois cent cinquante-deux mille, quatre cent trente-sept piastres et vingt centins, tel qu'il appert par le compte de particularités produit, avec intérêt comme susdit, laquelle somme les Défendeurs refusent de payer quoique requis.

Pourquoi les Demandeurs demandent que les Défendeurs soient condamnés à payer la dite somme de trois cent cinquante-deux mille quatre cent trente-sept piastres et vingt centins, avec intérêt du premier Novembre mil huit cent quatre-vingt-un et les dépens.

Québec, 20 Décembre 1883. (Signé,) BOSSÉ & LANGUEDOC,
Proc. Demds.

(Vrai Copie)
P. MALOUIN, D. P. C. S.

CANADA,
PROVINCE OF QUEBEC,
District of Quebec.
No. 655.

In the Superior Court.

VICTORIA, *by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.*

To all and every the Bailiffs of Our Superior Court, for Our Province of Quebee, appointed for the District of Quebec—

GREETING:

We command you within the limits of Our District of Quebec, to summon The Quebec Harbour Commissioners, a body politic and corporate, having their principal office and place of business in the city of Quebec to be and appear before Us, in Our Superior Court, in Our City of Quebec, in Our District of Quebec, on the third day of January next to answer Simon Peters, of the City of Quebec, Esquire, contractor, Edward Moore and Augustus Wright, both of Portland, in the State of Maine, one of the United States of America also contractor and all three carrying business in the City of Quebec in partnership under the name and style of Peters, Moore & Wright of the *demande* contained in the annexed Declaration; and further, to do and receive what, in Our said Court, before Us, in this behalf shall be considered; and have then and there this Writ.

In witness whereof, we have caused the Seal of Our said Court to be hereunto affixed, at Quebec, the twentieth day of December in the year of Our Lord, one thousand eight hundred and eighty-three and in the forty-seventh year of Our Reign.

(Signed,) FISET, BURROUGHS & CAMPBELL,
P. S. C.

(True Copy)
P. MALOUIN, D. P. S. C.

(Endorsed).—Defendants' Exhibit at Enquête B34, filed Jan. 20th, 1896.
P. M., D. P. S. C.

Whose ? dated?

Simon Peters, Edward Moore and Augustus R. Wright in account with the Quebec Harbour Commissioners for work done on the Louise Embankment and Docks.

RECORD.

In the Superior Court.

No. 185. Defendants' Exhibit at trial B35, Dated 3rd Jan. 1884.

Malouin Ex. P 460 l. 40

3379 cub. yds. 4 to 1 Concrete in 31 deep cribs, Tidal Basin	$6 25	$21118 75
7006 " " 8 to 1 " 31 " " " "	6 25	43787 50
2475 " " 4 to 1 " 55 shoal " Wet Dock	6 25	15468 75
7645 " " 8 to 1 " 55 " " " "	6 25	47781 25
16079 " " 8 to 1 " rear of Tidal Basin and W. Dock walls	6 25	100493 75
3830 Cub. yds. concrete in foundation Wet Dock Cribs	3 00	11490 00
Concrete at return end Wet Dock substructure		713 50
" " " " superstructure		402 04
" in bags in Angular Block, Ballast Wharf		500 00
Timber and labour in return end, Wet Dock		100 00
Leveling trenches		3349 80
109301 tons of stone for concrete and back of crib work blocks and toeing in front of same	0 40	43720 40
27000 tons of fine ballast for concrete	0 15	4050 00
22208 tons of clayey material for toeing and in rear of walls	0 25	5552 00
Labour handling 66000 cub. yds. stone and clayey material	0 10	6600 00
Screens		614 50
928071 cub. yds. of dredging in 29 and 15 foot trenches, 24 foot channel, Tidal Basin, 10 foot channel and for Northern Crib Work	0 33	306263 43
Pile foundations for cribs		18700 00
25 Brls. Cement		88 75
Removing end planking in 55 cribs, Wet Dock	25 00	1375 00
" " " 11 " Tidal Basin	30 00	330 00
" sunken hull of vessel " "		1250 00
104000 sup. feet of planking in rear of concrete of Tidal and Wet Dock Walls	0 07	7280 00
Engineering expenses on the works during construction of the same		9000 00
Use of dredge and labour in testing bottom of trenches		750 00
Labour and stock used in preparing place H. R. H. the Princess Louise to lay the tablet stone July 1881		750 00
Boulders placed at toe of slope		375 00
Timber, Iron and Labour in 1240 feet of Tidal Harbour, crib work built in lengths of one hundred and twenty feet.		
147579 cub. feet Hemlock timber and labour	0 20	$29515 80
434 cub. feet Pine and scantling 6x6x28 feet long	0 35	151 90
5042 cub. feet Hemlock 6x12	0 30	1,512 60
75330 super. feet 3 in. Hemlock planking, including spike	0 10	7,533 00
1679 cub. feet Elm capping in long lengths	0 65	1,091 35
123797 lbs. 1 in. $\frac{1}{8}$ and $\frac{3}{4}$ in. screw bolts including heads nuts and washers.	0 10	12,379 70
158823 lbs. drive-bolts 1 in. $\frac{7}{8}$ and $\frac{3}{4}$ in	0 06	9,529 38
Towing and sinking cribs		6,200 00
Use of pile driver and crew, and material furnished in removing fenders and bolts, driving sheet and gauge piles at S. West angle Ballast Wharf		1,492 82
Cub. feet cut-stone masonry to face of Tidal and Wet Dock walls to coping level		82,923 38
Two Tablet Stones		300 00
Amount carried forward		$784534 35

RECORD.

In the Superior Court.

No. 185. Defendants' Exhibit at trial B35, Dated 3rd Jany. 1884. *continued—*

Amount brought forward.....		$784534 35
Bollards to Tidal and Wet Docks as agreed.....		2,746 84
85 Bollard Boxes ordered by Engineer per plan	10 02½	1,617 13
16 Fenders 24x12x12 to stone wall including labour 384 cubic feet....	50	192 00
48 Lewis bolts, one end screwed, nuts and washers.....	2 50	120 00
32 Drive-bolts 1 in. x22 = 227 lbs.....	0 06	13 62
Pile driver, screw testing bottom Tidal Harbor.....		100 00
Timber, Iron and Labour in 55 Cribs for Wet Dock, built 13 ft. wide, 42 ft. long in lieu of 11 ft. wide, bolting same to piles.		
23662 cub. feet 11x11 in. Hemlock timber and labour.....	0 20	$4,732 40
7281 " " 11x 6, 7x6 and 11x4.....	0 30	2,184 30
2413 " " 9x 3	0 35	844 55
53365 super. feet 3 in. planking in rear of concrete including spike....	0 10	5,336 50
30030 " " 2 in. back planking to retain clay and stone filling..	0 07	3,003 00
13542 cub feet Gauge piles.....	0 40	5,416 80
33755 " " Sheet "	0 50	16,877 50
2681³ cub. ft. 7½x26 entremise between gauge piles..	0 50	1237 50
3128 " Elm capping and labour....	0 65	2033 20
55880 lbs. screw bolts, ⅝, ⅞ and 1 in heads nuts and washers.....	0 10	5588 00
27141 " 1¼ batts, heads, nuts and washers.....	0 08	2171 28
5252 " drive-bolts to entremises.....	0 06	315 12
60968 " Gauge and sheet piles shoes	0 05	3048 40
12870 " Cast iron washers.....	0 04	514 80
Towing and sinking 55 cribs.....	92 98	5113 90
52′6″ cub. ft. nail, 12x14 back of No. 1 shallow crib at change of slope	0 40	21 00
108 lbs. drive-bolts 18x¾.....	0 06	6 48
Low Crib-Work at Gas House.		
409 cub. ft.x20 = 8180 cub. ft. hemlock timber.....	0 20	1636 00
334 sup. " x20 = 6680 feet 4 in. planking.....	0 12	801 60
340 " " x20 = 6800 " 9 " thick platform.....	0 10	680 00
272 lbs. x20 = 5440 lbs. drive bolts.....	0 06	326 40
Towing and sinking 20 cribs.....	44 00	880 00
Additional extra work ordered by Engineers		
1302 cub. ft. timber.....	0 20	260 40
131 sup. ft. planking.....	0 10	13 10
3918 lbs. bolting	0 06	235 08
328 " screw tie bolts.....	0 10	32 80
346 yards excavation.....	0 40	138 40
Ballast Wharf Low Crib Work.		
12607 cub. ft. hemlock timber.....	0 20	2521 40
10157.9 in. thick platform.....		1218 84
4411 sup. ft. 4 in. planking.....	0 12	529 32
8158 lbs. 1 in. sq. ⅞ and ¾ drive bolts.....	0 06	489 48
Amount carried forward.....		$878937 74

RECORD.

In the Superior Court.

No. 185. Defendants' Exhibit at trial B35, Dated 3rd Jany. 1884. *continued*—

Amount brought forward		$878937 74
Towing and sinking		825 00
Low Crib-work substructure between low crib work at Gas House and low crib work at ballast wharf		16088 90
120 foot block at ballast wharf to coping level		9182 24
82 entremises rounded and bolted between fenders, from ballast wharf to first angle	3 00	246 00
Timber. Iron and Stone Ballast in Northern Crib Work superstructure commencing from the 120 foot block next to Ballast Wharf, to Gas-house Wharf.		
40340 cub. feet Hemlock including labour	0 15	$6,051 00
168065 " " White Pine	0 25	42,016 25
55786 super. feet Platform	0 10	5,578 60
144777 lbs. $\frac{7}{8}$ and $\frac{3}{4}$ drive-bolts	0 05	7,238 85
53 Bollards with cast iron caps and 4 in. wrought iron straps fitted and bolted to same	31 94	1,692 82
4000 Tons Stone Ballast	0 40	1,600 00
		$969457 40
Less amounts received from Harb. Com		616222 42
Balance remaining due		$353234 98
Less clerical error page 3, (30030 ft. at 7c.)		900 90
		$352334 08
Add error page 4 (2681^3 ft. at 50c.)		$103 12
		$352437 20

(Vraie Copie)
P. MALOUIN, D. P. S. C.

(Endorsed).—Defendants' Exhibit at Enquête B35, filed Jan. 20th 1896. P. M., D. P. S. C.

RECORD.

In the Superior Court.

No. 186.
Defendants' Exhibit at trial B36, Dated 19th Aug. 1886.

SUPERIOR COURT, QUEBEC.

S. Peters and others, ... *Plaintiffs;*

vs.

The Harbour Commissioners of Quebec, . . . *Defendants.*

TO THE SUPERIOR COURT:

The Plaintiffs allege:

Malouin Cx. P 461 l. 3

1. By deed executed at Quebec, before Angers, Notary Public, on the 2nd of May 1877, the Defendants acting by the Honorable P. J. O. Chauveau their chairman, and A. H. Verret, their secretary, agreed with the Plaintiffs as follows, that is to say:

2. The Plaintiffs undertook to construct for the Defendants upon the property of the latter in the city of Quebec, and at the mouth of the River St. Charles, all the works described in the specifications, bills of quantities, form of tender and also in the supplementary particulars and supplementary tender annexed to said deed and mentioned therein, such works to be in accordance with the drawings therein also mentioned, and with such others as should be from time to time supplied by the Defendants' engineers, and also in accordance with the various clauses and conditions set out in the said documents.

3. It was further specified in and by the said deed that the Defendants should be entitled to substitute a stone wall backed with concrete in lieu of the timber face and fine concrete as set out in the said plans and specifications, and that if such substitution were made the Defendants should pay the Plaintiffs for the said wall the sum of twenty-one thousand nine hundred and forty dollars and sixty-one cents, ($21,940.61) including 2½ cents per square foot for rough Bouchard work on face of wall.

4. The foregoing contract was so made by the Defendants in consideration of the bulk sum of $554,296.31, five hundred and fifty-four thousand, two hundred and ninety-six dollars and thirty-one cents, as appears by said deed to which the Plaintiffs refer as forming a part hereof.

5. By the said forms of tender, specifications and particulars it is further stipulated and agreed that the said engineers shall be entitled with regard to such plans and specifications and with regard to all the works therein specified, to make all such modifications as they might deem necessary, by adding to, or omitting certain of the works, or by otherwise altering them, and that the Plaintiffs should be bound to follow the instructions which they might so receive and to comply with them in all points, and that for such works so changed and modified the Plaintiffs should be paid at and after the rate of the various prices specified in the schedules and terms of the contract and should be bound to execute such works so changed for such prices, provided that such alterations or modifications should not exceed ten per cent, of the aforesaid price or bulk sum of the said contract, as the whole appears by the said specifications, bills of quantities, forms of tender, schedules, plans and other documents specified in the said contract, to all which Plaintiffs refer as forming part hereof.

6. In pursuance of such agreement the Plaintiffs forthwith commenced the said works, and constructed a portion thereof in conformity with the said contracts and documents. From time to time however, the engineers with the authority and consent of the Defendants, added to, modified and altered the said plans and the quantity and quality of the works, and by their orders to that end compelled the Plaintiffs to construct works other than and in addition to, those contemplated in the contract, and materially different in quantity, quality, construction and form, the whole of a value exceeding by more than eighty-four per cent, the aforesaid price or bulk sum. Under the agreement above cited the Plaintiffs were obliged to comply with the instructions of the engineers, and to construct the said works in conformity thereto. They have in all points carried out the said contract and completed and finished all the works thereunder,—that is to say: not only those projected and contemplated when the said agreement was entered into, but all subsequent alterations, modifications and additions thereto: ordered as hereinbefore set forth; the whole to the complete satisfaction of the engineers and of the Defendants who have now long been in full possession thereof.

7. For the materials furnished, and for the work executed under the said modifications, alterations and additions, the Plaintiffs are entitled to exact payment from the Defendants in accordance with the various prices specified in the said documents and schedules, so far as applicable, and for work not contained in said schedules at a reasonable compensation due regard being had to said schedule rates.

8. The said works were completed by the Plaintiffs and accepted by the Defendants on the 1st of November 1881, from which time the Plaintiffs have constantly, both in writing and verbally, demanded payment of the balance due to them and placed the Defendants *in mora* to pay them, which the latter have refused to do. By reason whereof the Plaintiffs are entitled to interest on the said sum from the first day of November aforesaid.

9. The specifications, bills of quantities, forms of tender, and conditions of the said contract were drawn up and prepared by Messrs. Kinipple & Morris of Westminster in England, Engineers, who were employed by the Defendants for that purpose.

For a long time before the making of the contract declared upon in this cause and during the whole period of the construction of the works the said Kinipple & Morris were the engineers of the Defendants and employed by them in and about the superintendance of the due execution thereof. Messrs. Kinipple & Morris have no domicile in Canada and no property therein, but were represented during the progress of the work by Woodford Pilkington, a resident engineer, who was authorized to act for said Kinipple & Morris and the Defendants, in the construction of the works.

10. The Plaintiffs further aver that by reason of the works executed by them, in accordance with the provisions of the contract for the price or bulk sum therein specified and for the works by them executed by the order of said engineers as additions, alterations and modifications thereof, and after deducting and allowing for all omissions ordered by the engineers they were entitled by reason of the bulk sum specified in the said contract and the value of the said additions,

RECORD.

In the Superior Court.

No. 186, Defendants' Exhibit at trial B36, Dated 19th Aug. 1886. *continued*—

alterations and substitutions computed in accordance with the provisions of such contract to the sum of $820,240.85 by the terms thereof, for and on account of which they received during the progress of the works from time to time, on the certificate of the resident engineer, the sum of $586,222.42, and since the completion and acceptance thereof, from the Defendants the further sum of $57,777.17, leaving as balance due them by the Defendants the sum of $176,241.26,—all which will more fully appear on reference to a statement of account herewith filed as Plaintiff's Exhibit which contains a full and true statement of the additional and modified works executed by the Plaintiffs as aforesaid, together with all deductions to which the Defendants are entitled.

11. The said Kinipple & Morris have drawn up and granted to the parties defendant in this cause in alleged compliance with the clauses in the said contract contained, a pretended final certificate of the works by the Plaintiffs executed and of the sums which they are entitled to receive, which certificate bears date at London, the fourth day of February, eighteen hundred and eighty-six, by which they establish the balance to be paid to the Plaintiffs for the causes aforesaid, at the sum of $52,011.21, currency, all which will appear by a true copy thereof herewith produced.

12. The said certificate is not binding upon the said Plaintiffs and should be rejected and set aside, because it assumes facts contrary, to the provisions of the said contract and the facts of the case; it has been prepared collusively with the Defendants and upon their erroneous statements which have been accepted by the engineers, though untrue; and more particularly because it is altogether opposed to the facts and to the conditions of the contract in the following particulars, that is to say:—

(*a*) Because by the said certificate the Plaintiffs are only allowed the sum of four dollars and seventy-five cents per cubic yard for concrete, which should have been composed of the materials and proportions of materials specified in paragraphs 79, 102 and 103 of the specifications, whereas, the engineers compelled the Plaintiffs to make and place concrete composed of one part of cement, three parts of sand and ballast and five parts of large stone, which concrete was different from that specified in the contract and was, to their knowledge worth at Quebec six dollars and twenty-five cents per cubic yard.

(*b*) Because the said engineers after having, by a change of plan and by their written orders compelled the Plaintiffs to place in the works a quantity of concrete greatly exceeding that specified in the said original plans and having substituted for the same, the plans now produced improperly and unfairly, and with a view to favor the Defendants and to injure the Plaintiffs, have refused to allow the latter payment for any quantity in excess of that required by the original plans; and this while admitting that the additional quantity for which payment was claimed had been really and truly made and placed by the Plaintiffs in said works in accordance with their written orders and plans and with the approval of the Commissioners, thus unjustly refusing to grant to the Plaintiffs an additional sum of $14,000.00, the value of such additional concrete according to the prices specified in the contract.

(*c*) Because the said engineers have further in their said certificate computed the various quantities of clayey material and fine and coarse ballast and broken

stone by the ton of 2240 pounds, in lieu of computing them by the ton of 2000 pounds, as bound by law to do, and have further refused with respect to such materials to allow payment for the full quantities furnished and which additional quantities had been nevertheless placed by the Plaintiffs in the execution of said work by order of said Defendants' engineers; making another difference of $13,000 currency.

(*d*) Because the engineers have deducted from the amount alleged by them to be due the Plaintiffs. a sum of $13,326, which they pretend to be a sum paid by the Commissioners for the levelling and removal of sand left by the Plaintiffs on the works after they were handed over. This deduction has been made on the statements of the Commissioners themselves, the engineers well knowing that the Plaintiffs had left no sand on the embankment and that the sand levelled by the said Commissioners, if there was any such, was so placed and left by the contractors who, after the Plaintiff's works were taken over and accepted, undertook a further contract with the Commissioners at the same place. As matter of fact the Plaintiffs left no sand or other material on the embankment to be leveled down, and their work had been accepted both by the engineers and the Commissioners.

(*e*) Because the said engineers further arbitrarily and without cause, deduct from the Plaintiffs, another sum of $34,472 currency, being as they pretend, a clerical error in the amount of dredging set out in the specifications. The engineers were not entitled under any covenant in the said coutract, to make a deduction of this nature. The quantities specified therein as also those stated in the specification were final between the parties as both the engineers and the Defendants well know, but nevertheless being aware that if such diminution could or should be made in favor of the Commissioners by measuring the dredging actually done additions larger in extent in other parts of said work would have to have been made to make up the true amount. Nevertheless in violation of the said contract the engineers refused to carry out its provisions and further refused to grant a new measurement except in the case of alleged diminution, and not in the cases of alleged augmentations. By their action in this matter the engineers have assumed to themselves the right to diminish at their pleasure on the ground of a supposed clerical error committed by themselves in the bills of quantities the price or bulk sum for which the contract was undertakeu, by the amount hereinabove set forth. The said engineers were by law not entitled to pronounce upon the pretended clerical error, which, if it existed, had been committed by themselves. They were further personally responsible towards the Commissioners for any damages to the latter occasioned by this supposed error, of which the Commissioners had notice long before the completion of the works, and the engineers thereupon became, have ever since been, and are now, disqualified by reason of personal pecuniary interest to the knowledge of the Defendants from exercising a fair, independant judgment in the matter or granting a final binding certificate.

13. In relation to each and every such items the engineers have acted in bad faith, being aware that the Plaintiffs were entitled to the sums refused them and that the certificate could not in relation to any of such items be relied on, by the Defendants, as binding.

RECORD.

In the Superior Court.

No. 186. Defendants' Exhibit at trial B36, Dated 19th Aug. 1886. *continued*—

14. The Defendants after the final completion of the works recognized and admitted that the engineers were by reason of personal interest disqualified and incompetent to determine the amounts due to the Plaintiffs, and thereupon proposed to the latter to refer matters in dispute between them to the decision of the Dominion Arbitrators, to which the Defendants agreed and an award was actually made thereon by the Arbitrators in favor of the Plaintiffs. The Defendants however declined to be bound by or to conform to this award and wholly denied its validity on legal and technical grounds.

15. The works done and materials furnished by the Plaintiffs in the execution of the said contract and the orders by them received, all which have long since been accepted by the Defendants, amount to the sum of $820,240.85, upon which there stills remains due to the Plaintiffs the sum of $176,241.26, currency, with interest from the first day of November 1881, together with a further sum of $8,000 for interest upon the sums paid since the delivery and acceptance of said works.

Wherefore the Plaintiffs pray:—

(1) That the said certificate in so far as the various items heretofore set forth are concerned be declared false and contrary to the agreement and to the truth, and this to the knowledge of the Defendants and the engineers, and fraudulent and partial.

(2) That the engineers be declared by reason of their personal pecuniary interest hereinbefore alleged were disqualified and incompetent to pronounce between the parties on matters in dispute, or to grant a final certificate binding on the Plaintiffs.

(3) That the certificate in so far as above stated be rejected and set aside.

(4) That it be declared that the Plaintiffs have in the execution of the said contract and orders executed, performed and furnished the various works and materials set out in the said statement herewith produced and that by reason thereof they are entitled to be paid the various sums mentioned therein, and:

(5) That the Defendants be in consequence thereof adjuged and condemned to pay to the Plaintiffs the said sum of one hundred and eighty-four thousand two hundred and forty-one dollars and twenty-six cents with interest on one hundred and seventy-six thousand two hundred and forty-one dollars and twenty-six cents from the first day of November 1881, and on the balance from this day, the whole with costs.

Quebec, 19th August, 1886.

JOSEPH G. BOSSÉ,
Atty. for Plffs.

(True Copy)
P. MALOUIN, D. P. S. C.

RECORD.

In the Superior Court.

No. 186. Defendants' Exhibit at trial B36, Dated 19th Aug. 1886. *continued*—

CANADA,
PROVINCE OF QUEBEC,
District of Quebec.
No. 957.

In the Superior Court.

VICTORIA, *by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.*

To all and every the Bailiffs of Our Superior Court, for Our Province of Quebec, appointed for the District of Quebec—

GREETING:

We command you within the limits of Our District of Quebec, to summon The Quebec Harbour Commissioners, a body politic and corporate having their principal office and place of business in the City of Quebec to be and appear before Us, in Our Superior Court, in Our City of Quebec, in Our District of Quebec, on the first day of September next to answer Simon Peters, of the City of Quebec, Esquire, contractor, Edward Moore and Augustus Wright, both of Portland, in the State of Maine, one of the United States of America also contractors and all three carrying business in the City of Quebec, in partnership under the name and style of Peters, Moore & Wright of the *demande* contained in the annexed Declaration; and further, to do and receive what, in Our said said Court, bufore Us, in this behalf shall be considered; and have then and there this Writ.

In witness whereof, We have caused the Seal of Our said Court to be hereunto affixed, at Quebec, the nineteenth day of August in the year of Our Lord, one thousand eight hundred and eighty-six and in the fiftieth year of Our Reign.

(Sgd) FISET, BURROUGHS & CAMPBELL,
P. S. C.

(True Copy)
P. MALOUIN, D. P. S. C.

(Endorsed).—Defendants' Exhibit at Enquête B36, filed 20 Jan. 1896.
P. M., D. P. S. C.

RECORD.

In the Superior Court.

No. 187, Report of Accountant, Dated 25th June, 1896.

CANADA,
PROVINCE OF QUEBEC,
District of Quebec.

Superior Court.

No. 2453.

PETERS,

vs.

MOORE *et al.*

TO THE HONORABLE MR. JUSTICE ROUTHIER:

I, the undersigned, Joseph Lacon Welch, Auditor and Accountant, duly appointed as such in this cause, have the honour to report:

1st. That I was, on the 18th day of June instant, in compliance with the judgment of my appointment, duly sworn, and did thereafter proceed to the investigation required of me under your instructions, in this cause.

2nd. That after a careful examination of all the papers, statements, accounts, certificates, cheques and other documents of record, and after diligent investigation and careful and protracted calculations, I am forced to conclude that it is not possible from the data furnished to make a complete and accurate statement shewing all the works done by each of the Contractors, those certified to have been performed by each of them and amounts paid to them respectively, nor the legitimate portions due to either of them in the sum deposited on the Union Bank of Canada.

Of course, many items of their respective claims are clearly established by the certificates, *partial and final*, issued by the Engineers; but as to many items of their accounts, the alterations made in the contract, the enormous additional works actually made, the works left undone and appearing to have been paid for, the conflicting statements and testimonies, the unsatisfactory proof of the special claims of the parties against each other subsequent to the achievement of the undertaking, make it impossible for me to furnish the precise and complete statement asked for.

I pray your Honour to believe me,

Your most obedient servant,

J. L. WELCH.

Quebec, 25th June, 1896.

RECORD.

In the Superior Court.

No. 188 Judgment of the Superior Court, 30th June 1896.

CANADA,
PROVINCE DE QUÉBEC,
District de Québec.

Dans la Cour Supérieure.

Le trentième jour de juin mil huit cent quatre-vingt-seize

PRÉSENT :—L'Honorable Juge A. B. ROUTHIER.

SIMON PETERS, ... Demandeur ;

No. 2453.

vs

EDWARD MOORE and AUGUSTUS R. WRIGHT, both of the City of Portland, in the State of Maine, one of the United States of America, Esquires, Contractors, and heretofore using trade in co-partnership under the name, style and firm of Moore & Wright, the said Edward Moore and Augustus R. Wright having property in this District, and the Union Bank of Canada, a body politic and corporate having its chief office in the City of Quebec, a party hereto for the purpose of taking cognizance of the judgment to be rendered herein and obey such order as the Court may make herein,

Défendeurs ;

AND

DAME ELIZA JANE LAMOUREUX, of the City of Quebec, widow of the late Simon Peters, Henry Joseph Peters, of the City of Montreal, Architect, and Albert Hyacinth and Joseph Bernard Peters, both of the City of Quebec, and Martial Chevalier of the City of Montreal, all of the said Petitioners in their qualities as Executors of the last will and testament of the said late Simon Peters and the said Dame Eliza Jane Lamoureux also in her quality as universal usufructuary Legatee of the said late Simon Peters,

Demandeurs en reprise d'instance.

La Cour ayant examiné la procédure et la preuve de record et entendu les parties par leurs avocats sur le mérite, la présente cause ayant été inscrite aux Enquêtes et Mérite en même temps ;

Considérant que le Demandeur a prouvé les allégations essentielles de son action, de manière à justifier un partage entre les parties de la somme de soixante et huit mille neuf cent soixante et douze piastres et quatre-vingt-quinze cents, déposée pour elles dans la *Union Bank of Canada ;*

Considérant que la dite somme est la balance payée aux parties en cette cause par les Commissaires du Hâvre sur le prix et la valeur de travaux considérables exécutés par elle *conjointement* dans le Hâvre de Québec :

Considérant qu'en vertu d'un contrat passé devant Mtre Angers, notaire, le deux mai mil huit cent soixante et dix-sept, les parties en cette cause s'étaient engagées *conjointement* d'exécuter les dits travaux pour le prix convenu de cinq cent vingt-neuf mille deux cent quatre-vingt-seize piastres et trente-un cents, et que le dit prix devait leur être payé *conjointement ;*

RECORD.

In the Superior Court.

No. 188. Judgment of the Superior Court, 30th June 1896. *continued*—

Considérant qu'en vertu d'un autre contrat passé le quatre mai mix huit cent soixante et dix-sept devant Mtre Strang, Notaire, les parties déclarèrent qu'elles n'entendaient pas cependant former une société, que le Demandeur exécuterait tous les ouvrages en bois et en fer, et que les Défendeurs exécuteraient les autres ouvrages ; que chaque partie serait payée pour l'ouvrage fait par elle suivant les termes et spécifications du contrat conjoint, d'après les cédules de prix convenus, et sur présentation de certificats délivrés par l'ingénieur résidant ; qu'après le règlement final avec les Commissaires du Hâvre les Défendeurs paieraient au Demandeur un bonus de cinq mille piastres, etc. ;

Considérant que dans l'exécution de l'entreprise le *contrat conjoint* fait avec les Commissaires a été modifié et augmenté dans une large mesure, si bien que les Commissaires du Hâvre ont dû payer aux contracteurs, parties en cette cause, près d'un quart de million de piastres en sus du prix convenu ;

Considérant qu'après l'achèvement des travaux les ingénieurs en chefs délivrèrent un *certificat final*, fixant *en bloc* et *sans aucuns détails* la balance due aux contracteurs à la somme de cinquante-deux mille onze piastres ; et que sur une instance portée jusqu'en Cour Suprême cette dernière Cour accorda de plus aux contracteurs une autre somme de trente-cinq mille quatre cent cinquante-sept piastres et cinquante cents, formant en tout quatre-vingt-sept mille quatre cent soixante-huit piastres et cinquante cents ;

Considérant que diverses sommes furent subséquemment payées par les Commissaires en déduction du dit montant, laissant une balance finale de soixante-huit mille neuf cent soixante-douze piastres et soixante et quinze cents, et que la dite balance a été déposée au crédit des parties en cette cause, et de leur agrément, dans la *Union Bank of Canada*, conformément à un écrit signé par elles le vingt-neuf octobre mil huit cent quatre-vingt-douze ;

Considérant qu'il s'agit en la présente cause de déterminer quelle est la part de chacune des deux parties dans la susdite balance déposée en banque, les Défendeurs la réclamant toute entière et soutenant que le Demandeur a déjà reçu plus que sa part et le Demandeur réclamant sa part, une balance de trente-huit mille cinq cent trente-deux piastres et cinquante-cinq cents ;

Considérant que pour déterminer d'après leur contrat la juste part de chacune des parties dans la susdite somme déposée en banque elles étaient tenues d'établir devant la Cour la proportion des ouvrages exécutés par chacune d'elles, dûment certifiés par les ingénieurs, et payés par les Commissaires ;

Considérant que la preuve requise pour faire suivant les termes de leur contrat le partage demandé n'a été faite en cette cause que dans une mesure incomplète, incertaine, contradictoire et insuffisante ;

Considérant que le *certificat final détaillé* produit en cette cause par les Défendeurs comme leur exhibit 1A, et signé par Kinipple, l'un des ingénieurs, en mil huit cent quatre-vingt-treize, n'offre aucune garantie d'exactitude, parçe qu'il a été préparé par Moore, l'un des Défendeurs, ou sous ses ordres, et parce que Kinipple n'était pas capable de vérifier les détails du dit certificat, et de leur véracité par ses connaissances personnelles ;

Considérant que les *estimés progressiffs* (*progress estimates*) et les *certificats* des ingénieurs ayant rapport aux dits *estimés* font une preuve légale des travaux exécutés, au fur et à mesure que l'entreprise progressait, mais ne constituent

malheureusement qu'une preuve incomplète, parce qu'ils n'embrassent pas *tous* les travaux exécutés, ni toutes les sommes payées aux contracteurs par les Commissaires, ni les rèclamations personnelles des parties, l'une contre l'autre, dans lesquelles les Commissaires n'avaient aucun intérêt ;

Considérant que les autres pièces des parties formant leur *preuve documentaire*, et se composant de comptes, de plans, de calculs, de lettres et d'autres documents, ne font pas non plus une preuve complète et satisfaisante des réclamations respectives des parties ;

Considérant que, vu la nature et les circonstances particulières de cette cause, la *preuve testimoniale* offerte par les parties n'offre guère elle-même de garantie, parce qu'elle est basée sur la *preuve documentaire* et participe plus ou moins de la même incertitude ;

Considérant que l'insuffisance générale de toute cette preuve, pour les fins d'un partage aux termes du contrat, ressort encore du rapport fait par J. L. Welch, comptable, nommé par cette Cour pour élucider les points obscurs de comptabilité en cette cause ;

Considérant que pour les raisons ci-dessus énoncées, la preuve des parties ne constate pas suffisamment et avec certitude : 1o quelle portion dans la totalité des travaux, a été exécutée par chaque partie ; 2o quelle portion des dits travaux a été approuvée, reconnue, certifié par les ingénieurs et payée par les Commissaires ; 3o quelle part doit-être assignée à chaque partie dans la somme déposée proportionnellement à ses travaux ;

Considérant qu'un tel état de chose est dû à la *faute commune* des deux parties qui paraissent avoir négligé de tenir des livres réguliers et communs contenant le détail de tous les travaux exécutés par chacune d'elles, des prix de ces travaux et des sommes reçues par chacune d'elles pour chacun des dits travaux ;

Considérant qu'à raison de cette faute commune les parties en cette cause se trouvent dans la même situation que des associés qui n'auraient pas stipulé quelle part appartiendrait à chacun dans les profits d'une exploitation faite conjointement, ou qui ayant stipulé un partage proportionnel à la mise de chacun seraient incapables d'établir le chiffre de leurs mises respectives ;

Considérant en conséquence que cette Cour a le droit de leur appliquer l'article dix-huit cent quarante-huit (1848) du Code Civil, et de partager également entre elles la somme déposée en banque ;

Considérant qu'un tel partage, par égales parts, est le seul juste et juridique que la preuve et la loi permettent, et qu'à raison de leur dite faute commune, il est également équitable que chaque partie paie ses frais ;

Maintient l'action en cette cause, et adjuge :

1o Que les Demandeurs—par reprise d'instance ont droit d'être payés sur les argents déposés dans la *Union Bank of Canada* de la somme de trente quatre mille quatre cent quatre-vingt-six piastres et quarante-sept cents et demi, étant la moitié du dit dépot, avec les intérêts accrus sur icelle moitié, et que l'autre moitié devra être payée aux Défendeurs avec les intérêts accrus sur icelle ;

2o Que les Défendeurs seront tenus sous quinze jours de la signification du présent jugement de signer en faveur des Demandeurs par reprise d'instance un chèque sur la dite Banque pour la susdite somme et intérêts ;

RECORD.

In the Superior Court.

No. 188. Judgment of the Superior Court. 30th June 1896. *continued*—

3o Que dans le cas de défaut de la part des Défendeurs de signer le dit chèque les Demandeurs par reprise d'instance sont autorisés à retirer, la dite somme de la dite Banque avec intérêts comme susdit, et il est ordonné à la dite Banque de payer alors la dite somme aux Demandeur par reprise d'instance avec intérêt sans préjudice au droit de la dite Banque de déduire d'icelle les argents qu'elle a pu payer depuis au dits Demandeurs;

4o Que le partage ainsi fait de la dite somme entre les parties tiendra lieu de paiement vis-à-vis l'une de l'aûtre de toutes les réclamations par elles produites en cette cause l'une contre l'autre—et que chacune des parties paiera ses frais dans la présente instance, et la Cour ordonne que les pièces des Défendeurs mises sous clef par ordre soient remises au dossier.

(Vraie copie) ED. L. BURROUGHS,
Dep. P. C. S.

No. 189. Mr. Justice Routhier's Reasons for Judgment 30th June 1896.

NOTES DE M. LE JUGE ROUTHIER.

L'action est une espèce d'action en partage. Le bien à partager est une somme d'argent de $68,972.75, déposée à la *Union Bank* par les Commissaires du Hâvre au crédit des parties en cette cause, et payable à leur *ordre conjoint.*

Cette somme leur a été allouée par la Cour Suprême après un long procès, comme balance de compte à eux due par les dits Commissaires pour *l'exécution conjointe* par eux des travaux considérables nécessités par la construction de ce qu'on appelle le *Bassin de la Princesse Louise.*

C'est en 1877 que le demandeur et les défendeurs ont entrepris *conjointement* cette construction suivant un contrat et des spécifications qui sont au dossier, datés du 2 mai 1877.

En se joignant ainsi dans cette vaste entreprise, les parties n'entendaient pas cependant *former une société :* et, par un acte daté du 4 mai 1877, elles se partagèrent l'entreprise.

Il y fut stipulé :

1. Que Peters le demandeur exécuterait "*All the timber and iron work and pitching of outer slopes and forming a roadway*, et que les défendeurs Moore & Wright exécuteraient *tous les travaux que Peters n'aurait pas entrepris de faire.*"

2. Que chaque partie serait payée pour l'ouvrage fait par elle suivant les termes et spécifications du *contrat conjoint* fait avec les commissaires—en conformité aux cédules des prix convenus—et sur présentation de certificats délivrés par *l'ingénieur résident.*

3. Que lors du règlement final avec les commissaires, les défendeurs paieraient au demandeur un bonus de $5,000.

Le contrat stipulait plusieurs autres choses, et, entre autres, les suivantes. (*Le juge cite ici quelques clauses du contrat.*)

Ces conventions arrêtées, les deux parties se mirent à l'œuvre. Mais dans l'exécution, le *contrat conjoint* fut considérablement modifié et augmenté. Non seulement les commissaires substituèrent, tel que convenu, le *revêtement en pierre au revêtement en bois, &c., &c.*, mais des additions considérables furent faites aux travaux.

Pour montrer jusqu'à quel point les travaux furent modifiés et augmentés, il suffit de dire qu'au lieu de $529,296.31, prix fixé, les commissaires ont payé $766,772.54, près d'un quart de million de plus.

Quand enfin l'entreprise fut terminée dans l'automne de 1881, chacun des contracteurs fit sa réclamation aux commissaires ; ces réclamations furent référées aux ingénieurs en chef, mais les deux parties refusèrent d'accepter ce que les ingénieurs avaient décidé de leur accorder.

L'affaire fut alors référée aux arbitres de la Puissance. Mais alors ce furent les commissaires qui refusèrent d'agréer la sentence arbitrale.

Les parties prirent alors leur *action conjointe* contre les commissaires. Ceux-ci plaidèrent que les ingénieurs en chef n'avaient pas délivré de certificat final, tel que pourvu par le contrat. C'était fatal. L'action fut retirée. Puis, après bien des démarches, un certificat final fut obtenu pour $152,011 de balance.

Nouvelle action alléguant des erreurs dans les calculs des ingénieurs en chef.

Et, finalement, la Cour Suprême ajouta $35,457.50 aux $52,011.

De ce total furent déduits quelques àcompte payés pendant l'instance, et il resta la somme de $68,972.75 qui fut déposée en banque et dont il s'agit de partager la balance, savoir : $64,972.

II

Mais, sur quelle base faut-il se placer pour déterminer la part revenant à chacun dans ce montant ?

C'est la principale difficulté ; et, malheureusement, sur ce premier point, qui est en réalité *le point de départ*, les parties ne s'accordent pas. Car les défendeurs veulent que le certificat final des ingénieurs, tel que détaillé par Kinipple, l'un d'eux, soit accepté par la Cour comme base des opérations du partage, tandis que le demandeur rejette ce certificat détaillé comme ayant été fait après coup, d'une manière arbitraire, et préparé en réalité par les défendeurs eux-mêmes en vue du partage.

En référant à divers états de compte qui sont au dossier, et surtout au compte produit par les deux parties lorsqu'elles ont poursuivi les commissaires, on voit qu'elles prétendent avoir fait des travaux pour un montant collectif de $969,457.40. Or, le montant qui leur a été alloué en tout est de $766,772.54. Il y a donc des travaux qu'elles ont faits qui ne leur ont pas été payés : et dès lors, on comprend que lorsqu'il s'agit de diviser entre elles la balance déposée, d'une manière parfaite, logique et juste, il faut surtout constater quels sont les travaux qui ont été alloués par les commissaires et quels sont ceux qui ne l'ont pas été.

C'est la prétention des défendeurs, et ils prétendent arriver à ce résultat au moyen du certificat détaillé des ingénieurs en chef 1A. Mais, en face de la preuve faite, pouvons-nous accepter ce certificat comme base du partage à faire ? Nous ne le croyons pas. 1. En ce qui concerne le prix du contrat, $529,296.31, ce certificat n'offre aucune garantie quelconque. Il a été préparé par le colonel Moore et transmis par lui à Kinniple en 1895, c'est-à-dire, près de douze ans après l'achèvement des travaux, et sept ans après le certificat final non détaillé. Kinipple ne connaissait personnellement que peu de chose des travaux ; car c'est Morris qui les avait dirigés. En certifiant cet état, Kinipple n'a pu rien vérifier,

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ni s'appuyer sur aucune connaissance personnelle des faits et des chiffres, ni sur des souvenirs actuels. Il a agi de confiance en Moore, et sans référer aux pièces faisant preuve.

2. Il est prouvé par la correspondance produite qu'à plusieurs reprises M. Kinipple s'est déclaré incapable de fournir les détails demandés. Morris était mort huit mois après la date du certificat final non détaillé. Beaucoup de ses papiers étaient détruits, et, même de son vivant, une lettre d'eux, du 19 avril 1886, prouve qu'ils n'étaient pas en état de détailler leur certificat final.

3. Les détails fournis en 1893 sont à peu près copiés du contrat, et l'on n'y tient aucun compte des changements faits.

Donc, ce certificat détaillé 1A ne peut faire une preuve suffisante.

III

Les détails du certificat final fournis par Moore, et certifiés par Kinipple, ne formant pas une preuve suffisante des items de l'entreprise alloués et payés par les commissaires, nous devons chercher dans les *progress estimates* certifiés par l'ingénieur résident Pilkington les preuves nécessaires pour déterminer quels travaux ont été réellement exécutés, certifiés et payés, et quelle est la part de chaque partie dans ces travaux.

Ces *progress estimates* dûment certifiés constataient les ouvrages faits au fur et à mesure que l'entreprise progressait et font une preuve satisfaisante pour autant. Sans doute ils n'étaient qu'approximatifs vis-à-vis des commissaires du Hâvre, et, après l'achèvement des travaux, les ingénieurs en chef, en préparant leur certificat final, pouvaient les modifier et les corriger à leur guise. Mais, entre les contracteurs eux-mêmes, ces estimés progressifs peuvent être considérés comme des admissions de leurs travaux respectifs. Ils étaient faits à leur demande par leur ingénieur Brown, et contenaient leurs réclamations respectives dans le contrat conjoint. Tous deux sont liés par ces états qui émanent d'eux-mêmes, et, en les soumettant pour certificat et paiement à l'ingénieur résident, chacun d'eux reconnaissait la part d'ouvrage faite par son co-contracteur. Dès lors rien ne serait plus juste, plus raisonnable et plus juridique, il nous semble, que d'accepter aussi pour vider leur différend les comptes qu'ils présentaient et qui leur ont été payés conjointement pendant l'exécution des travaux.

Il semble même que nous avons droit de présumer que ces estimés progressifs ont dû servir de base aux calculs de Kinipple & Morris pour fixer à $52,011.21 la balance de leur certifical final non détaillé du 4 février 1886.

Malheureusement, cette preuve dont la *valeur légale* me semble *incontestable* est tout à fait *incomplète*. Il y a trente-six de ces certificats de l'ingénieur résident dont les montant ont été respectivement payés a chacun des contracteurs suivant la somme d'ouvrage fait par chacun ; mais le total de ces montants ne s'élève qu'à $556,222.35, tandis que le total *alloué* pour ces travaux s'élèverait d'après le certificat final des ingénieurs à plus de $750,000.00

D'ailleurs les parties prétendent avoir l'une et l'autre d'autres réclamations en dehors du contrat, que les certificats ne pourraient pas faire apparaître, et, même dans les certificats, se trouvent certains montants dont la propriété est *douteuse*.

Donc, impossible de trouver dans les *progress estimates* certifiés une preuve suffisante pour assigner à chaque partie *sa part exacte* dans la *totalité des travaux exécutés* et dans *les sommes allouées.*

Cependant, il y a une preuve bien importante qui ressort de ces *estimés progressifs certifiés*: c'est que, relativement à divers ouvrages, le *contrat* a été considérablement *modifié* et que d'autres ouvrages leur ont été substitués; que notamment un *mur en pierre* a été substitué à un revêtement en bois (timber face). Ce changement avait été prévu par le contrat, c'est-à-dire que les commissaires avaient l'option entre les deux genres d'ouvrages, et dans le cas où ils choisiraient le *mur de pierre* (*stone wall*) les contracteurs recevraient un extra de $21,940.61 en sus du prix fixé pour le front en bois.

Mais les *estimés progressifs* démontrent que, pendant l'exécution, cette *stipulation* paraît avoir été *mise de côté* et le demandeur payé pour tous ses ouvrages de maçonnerie à soixante cents par pied cube. Il ne pouvait pas en être autrement; car toutes les quantités étaient changées et changeaient par là même les proportions d'ouvrage de chaque contracteur.

Appliquer autrement cette stipulation du contrat, dont les parties contractantes n'ont tenu aucun compte pendant l'exécution et lors des paiements progressiffs des ouvrages, ce serait arracher au demandeur le prix qu'il a reçu pour des ouvrages qu'il a réellement faits et le payer aux défendeurs pour des ouvrages qu'ils n'ont pas exécutés. Quand les parties elles-mêmes n'ont pas tenu compte de cette clause du contrat, sans doute parce qu'il en aurait résulté une souveraine injustice, nous ne serions pas justifiable de faire autremcnt qu'elles.

IV

Jusqu'ici, comme on le voit, nous ne trouvons que des preuves partielles, incomplètes, 1o. dans le certificat final détaillé sur lequel les défendeurs appuient leur défense; 2o. dans les estimés progressifs que le demandeur invoque comme établissant sa demande.

Quelles autres preuves les parties ont-elles produites de leurs réclamations respectives? Des comptes, des états, des plans, des calculs de toute espèce et de toutes dimension, une correspondance volumineuse, des contrats, des copies de certificats et de réclamations, et enfin des témoignages peu nombreux mais d'une longueur énorme.

Pendant une suite de jours, j'ai étudié ce formidable dossier, et j'ai vainement tenté d'y trouver les chaînons nécessaires pour compléter l'enchaînement des preuves qui devraient établir la part de travail de chaque partie et sa part de créance. Après de longs calculs, je rencontrais des lacunes que je ne pouvais combler, des états contradictoires, des chiffres incompatibles et sans dates, des avancés non contrôlés et sans dates, des réclamations non justifiées, et je n'arrivais qu'à des résultats incomplets.

Restait la preuve testimoniale; et je dois reconnaître que celle du demandeur est beaucoup plus forte que celle des défendeurs. En réalité, les deux fils du demandeur ont établi très approximativement sa demande.

Mais étant donnés la nature et les circonstances particulières de cette cause, il y a inévitablement beaucoup d'incertitude dans cette preuve testimoniale.

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Car après un tel laps de temps, et quand ce sont des chiffres qu'il s'agit de prouver, les témoins ne peuvent pas parler de mémoire; leurs témoignages sont basés sur des états de comptes, et si ces comptes eux-mêmes sont incertains ou irréguliers, leurs témoignages n'ont guère de poids. En même temps, les deux parties admettaient qu'une expertise n'était plus possible.

Il fallait donc toujours en revenir aux comptes et certificats, et tenter surtout de vérifier quels ouvrages ont été alloués par les ingénieurs et ont formé le total des argents payés et déposés. Alors, j'ai pensé qu'un comptable expérimenté verrait plus clair dans cette masse de chiffres et de calculs, et j'ai nommé un auditeur comptable pour m'assister. Je lui ai fait connaître toute la contestation entre les parties. Je lui ai expliqué quel travail j'attendais de lui, et, lui mettant en mains tous les documents nécessaires à ses calculs, je lui ai donné instruction d'en vérifier les détails et de me faire des états de comptes montrant les travaux exécutés par chacune des parties séparément, les somes allouées pour les dits travaux et payées, les travaux réclamés mais non reconnus comme faits et non payés, et enfin la part due à chacune des parties dans le montant déposé en banque. Or, après plusieurs jours de travail conformément à mes instructions, et sous ma direction, il m'a fait le rapport que voici:

(Le juge cite le rapport).

Maintenant, à qui la faute s'il n'est pas possible aujourd'hui de constater avec certitude, 1o. quelle portion dans la totalité des travaux a été exécutée par chaque partie; 2o. quelle portion a été approuvée, reconnue, certifiée par les ingénieurs en chef et payée?

Sur le 1er point, nous n'hésitons pas à dire que les deux parties sont en faute. Puisqu'elles n'entendaient pas former une société et puisque d'après leur contrat elles devaient être payées chacune dans la mesure des ouvrages faits par elles respectivement. elles auraient dû tenir des livres à cet effet, contenant: 1o. le compte exact et détaillé des ouvrages faits par chacune, et du prix de ces ouvrages; 2o. le compte des ouvrages approuvés et certifiés par les ingénieurs et payés par les commissaires.

Sur le second point, la faute n'est pas attribuable en entier aux parties; elles ont bien été en faute sur ce point jusqu'à la date du dernier paiement qui leur a été fait avec le certificat final préparé par les ingénieurs en chef; mais elles n'ont pu contrôler l'action de ces ingénieurs dans la préparation de ce certificat final, et conséquemment ce n'est pas leur faute si les ingénieurs n'ont délivré qu'un certificat final en block, sans aucuns détails.

Evidemment, nous n'avons rien à faire avec la faute des ingénieurs puisque le litige est entre les contracteurs seulement. Mais nous disons: malgré cette omission des ingénieurs, il aurait été probablement possible d'assigner à chaque partie sa juste part dans les argents à partager, si elles avaient tenu des livres tels qu'elles auraient dû. Dans tous les cas, nous pourrions certainement sinon suppléer au manque de détails du certificat final, au moins établir une proportion exacte des ouvrages faits par chaque partie, et diviser alors l'argent déposé dans la même proportion entre elles. Ni l'une ni l'autre de ces deux opérations n'est possible cependant et, nous le répétons, c'est la faute des deux parties.

Que devons-nous faire alors?

L'unique et la plus équitable solution de la difficulté nous paraît être un partage égal entre les parties, et voici comment nous raisonnons :

Les deux parties étaient convenues de se faire payer au fur et à mesure leurs travaux par les commissaires conjointement; mais entre elles, elles devaient diviser ces paiements successifs suivant la part de chacune dans les ouvrages faits. De fait, elles paraissent avoir partagé de cette manière une grande partie des argents qu'elles ont reçus pendant l'exécution de leur entreprise. Mais en ne tenant pas de livres réguliers, tels que ceux que j'ai mentionnés, elles se sont placées dans l'impossibilité de partager de la même manière la balance qui leur est due, et dès lors nous avons droit de les traiter, relativement à cette balance, comme des associés qui n'ont pas stipulé quelle part appartiendrait à chaque associé dans les bénéfices de la société, et de leur appliquer l'art. 1848 du C. C. Ou plutôt, ils sont devant la Cour comme des associés qui seraient convenus de partager les profits d'une exploitation proportionnellement à leurs mises respectives et qui n'auraient pu prouver le chiffre de leurs mises. Le partage par égales parts est le seul juridique en ce cas. Il n'y a là rien d'arbitraire. Ce sont les parties elles-mêmes qui se sont placées dans cette position, et nous leur appliquons la loi qui, dans notre opinion, doit régir leur situation juridique.

Le résultat qui en découle est beaucoup plus favorable aux prétentions du demandeur qu'à celles des défendeurs ; car ceux-ci prétendent tout avoir, tandis que le demandeur réclame $38,532 et obtient jugement pour $34,486.47½.

Je ne crois pas cependant que les défendeurs aient raison de s'en plaindre. Dès que le certificat final détaillé est déclaré une preuve insuffisante, et il doit l'être d'après les témoignages de Kinipple et de Moore lui-même, la preuve des défendeurs reste beaucoup plus faible que celle du demandeur. Ce dernier a certainement fait une forte preuve et l'état produit avec son factum dans lequel le demandeur établit sa réclamation à $35,228.71, n'est pas très loin d'être justifié.

Reste la question de frais, et nous croyons qu'elle doit être décidée d'après le même principe que le fond du litige. La faute des parties étant commune, chacune doit payer ses frais.

A. B. ROUTHIER.

RECORD.

In the Court of Queen's Bench.

No. 190. Transcript Proceedings in Superior Court from 16th Oct., 1893 to 4th July 1896.

CANADA,
PROVINCE OF QUEBEC,
District of Quebec.

In the Superior Court.

No. 2453.

Simon Peters, of the City of Quebec, Contractor, . . . Plaintiff.

vs.

Edward Moore and Augustus R. Wright, both of the City of Portland, in the State of Maine, one of the United States of America, Esquires, contractors and theretofore using trade in co-partnership under the name style and firm of "Moore & Wright," the said Edward Moore & Augustus R. Wright having property in this District, and the Union Bank of Canada, a body politic and corporate having its chief office in the City of Quebec a party hereto for the purpose of taking cognizance of the judgment to be rendered herein and obey such order as the Court may make herein, . . . Defendants.

16th October, 1893.

At the instance of the Plaintiff, by Messrs. Gibsone & Aylwin, his Attorney, a writ of Summons *ad respondendum* for the sum of thirty-eight thousand five hundred and thirty-two dollars and fifty-five cents in an action in the case, in this cause issues against the Defendants, returnable on the twenty-seventh instant.

27th October, 1893.

The process, *ad respondendum* in this cause issued is this day returned and entered.

28th October, 1893.

The Defendants Moore & Wright appear by Messrs. Caron, Pentland & Stuart, their Attorney.

8th November, 1893.

The Plaintiff files a list with Exhibits respectively marked numbers one, two, three, four, five and six.

25th November, 1893.

The Defendants the Union Bank of Canada appear by Messrs. W. & A. H Cook, their Attorney.

16th December, 1893.

The Defendants Moore & Wright file their pleas, one entitled "Defendants' Plea," and the other a "Défense au fonds en fait."

The Defendants Moore & Wright file a list with Exhibits respectively marked numbers one, two, three, four, five, six and seven.

5th June, 1894.

The Defendants Moore & Wright file a notice of inscription and an inscription upon the roll of Enquêtes and Merits at the same time for the twenty-second instant.

7th June, 1894.

The Plaintiff files a special answer to Defendants Moore & Wright's pleas.

The Plaintiff files with his special answer a list with Exhibits respectively marked numbers seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine and forty. (12 and 41 missing.)

8th June, 1894.

The Plintiff files his Exhibits respectively marked numbers twelve and forty-one.

19th June, 1894.

The Defendants Moore & Wright file a special replication to the Plaintiff's special answer.

22nd June, 1894.

The Defendants file a notice of Petition and a Petition for the issuing of a Commission Rogatoire to London, England, for the twenty-third instant.

Present:

The Honorable Mr. Justice L. B. CARON.

It is ordered that this cause for Enquêtes and Merits at the same time stand continued to the tenth September next.

23rd June, 1894.

The Plaintiff files an answer to Defendants' special replication.

Present:

The Honorable Mr. Justice F. W. ANDREWS.

It is ordered that the Petition for Commission Rogatoire to London stand continued to Monday next at ten of the clock in the forenoon.

25th June, 1894.

Present:

The Honorable Mr. Justice F. W. ANDREWS.

Mr. Gibsone appears for Plaintiff upon the Petition for Commission Rogatoire; and the issuing of a Commission Rogatoire to London is ordered.

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No. 190. Transcript Proceedings in Superior Court from 16th Oct., 1893 to 4th July 1896. *continued*—

31st August, 1894.

The Plaintiff files a list with Exhibit marked 2a (book.)

2nd April, 1895.

The Plaintiff's cross-interrogatories on Commission Rogatoire are filed.

Present:

The Honorable Mr. Justice A. B. ROUTHIER.

Après audition des partiee par leurs avocats et l'examen des transquestions proposées pour la Commission Rogatoire émanés en cette cause, la Cour déclare et adjuge ce qui suit:

1o. Les transquestions numéros 1, 2, 3, 4, 5, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 44, 45, 46, 47, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 68, 70, 71, 72, 75, 76, 78, 79, 80, 81, 82, 83, 84, 86, 87, sont permises;

2o. La transquestion 7 (sept) est permise en partie tel que motivé;

3o. Les transquestions neuf, treize et quatre-vingt-cinq sont rejetées;

4o. Les transquestions six, vingt-neuf, trente, trente-et-un, trente-deux, trente-trois, quarante-huit, cinquante, cinquante-et-un, cinquante-deux, soixante-et-quatre, soixante-et-cinq, soixante-et-six, soixante-sept, soixante-neuf, soixante-treize, soixante-quatorze, soixante-dix-sept sont permises, sous réserves des objections prises par les défendeurs, lesquelles seront décidées au mérite.

The Plaintiff's objections to the interrogatories six and seven proposed by the Defendants upon the Commission Rogatoire, are filed.

6th May, 1895.

Dame Eliza Jane Lamoureux, of the City of Quebec, widow of the late Simon Peters, Henry Joseph Peters, of the City of Montreal, architect, and Albert Hyacinthe and Joseph Bernard Peters, both of the City of Quebec, and Martial Chevalier, of the City of Montrel, all of the said Petitioners in their qualities as Executors of the last will and testament of the said late Simon Peters, and the said Dame Eliza Jane Lamoureux, also in her quality as universal usufructuary legatee of the said late Simon Peters, by Messrs. Gibsone & Aylwin, their Attorney, file a notice of Petition and a Petition *en reprise d'instance*, to take up the instance in lieu and stead of the late Plaintiff Simon Peters, husband of the said Dame Eliza Jane Lamoureux, together with a notice on the Defendants to plead to said Petition.

The aforesaid Petitioners file a list with Exhibits respectively marked A & B.

16th May, 1895.

The Petitioners *en reprise d'instance* file a demand of plea on Defendants, to their Petition.

21st May, 1895.

A certificate of no plea to the Petition *en reprise d'instance*, and demand of acte of foreclosure against the Defendants Moore & Wright granted by the Prothonotary, is filed.

22nd May, 1895.

The Petitioners *en reprise d'instance* file a notice of inscription and an inscription *ex parte* upon the roll of Enquêtes and Merits at the same time upon their said Petition, for the twenty-fifth instant.

25th May, 1895.

Present:

The Honorable Mr. Justice H. C. PELLETIER.

The Petitioners *en reprise d'instance*, by their Counsel, having been heard *ex parte* upon the merits of their Petition, at Enquêtes and Merits at the same time; *Curia advisari vult.*

CANADA,
Province of Quebec,
District of Quebec.
No. 2453.

In the Superior Court.

The twenty-seventh day of May, one thousand eight hundred and ninety-five.

The Honorable Mr. Justice H. C. PELLETIER.

Simon Peters, of the City of Quebec, Contractor, . . . Plaintiff.

vs.

Edward Moore and Augustus R. Wright, both of the City of Portland, in the State of Maine, one of the United States of America, Esquires, Contractors and heretofore using trade in co-partnership under the name style and firm of Moore & Wright, the said Edward Moore and Augustus R. Wright having property in this District, and the Union Bank of Canada, a body politic and corporate having its Chief Office in the City of Quebec, a party hereto for the purpose of taking cognizance of the judgment to be rendered herein and obey such order as the Court may make herein, . . . Defendants.

and

Dame Eliza Jane Lamoureux, of the City of Quebec, widow of the late Simon Peters, Henry Joseph Peters, of the City of Montreal, Architect, and Albert Hyacinthe and Joseph Bernard Peters, both of the City of Quebec, and Martial Chevalier, of the City of Montreal, all of the said Petitioners in their qualities as Executors of the last will and testament of said late Simon Peters and the said Dame Eliza Jane Lamoureux also in her quality as universal usufructuary legatee of the said late Simon Peters, ... Plaintiffs *en Reprise d'Instance.*

The Court, having seen and examined the proceedings and evidence of record and heard the Petitioners Dame Eliza Jane Lamoureux *et al*, by Counsel,

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In the Court of Queen's Bench.

Transcript Proceedings in Superior Court from 16th Oct., 1893 to 4th July 1896. *continued*—

upon the merits *ex parte* of their Petition *en reprise d'instance*, the present issue having been inscribed at Enquêtes and Mérits at the same time;

Doth grant the said Petition *en reprise d'instance*, and thereupon doth adjuge and permit the said Petitioners to appear and continue the present suit now pending in their aforesaid qualities and continue to prosecute the same to trial and judgment in due form of law, the whole with costs to abide the issue.

19th July, 1895.

Present:

The Honorable Mr. Justice JULES E. LARUE.

The Defendants, pursuant to notice, present a Petition that a *Commissioner* in London, England, be named, said Petition granted and Henry Goodwin Stephenson is named as such commissioner.

31st July, 1895.

Present:

The Honorable Mr. Justice L. B. CARON.

The interrogatories submitted by the Defendants upon *Commission Rogatoire* are filed, and the same are allowed.

Tho Defendants file their Exhibits respectively marked number one and oneA to be annexed to the *Commission Rogatoire.*

2nd August, 1895.

The Defendants file an Exception to the judgment allowing the cross-interrogatories, reserving their right to have the same struck from the record.

At the instance of the Defendants, by Messrs. Caron, Pentland & Stuart, their Attorney, a *Commission Rogatoire* to London, England, in this cause issues addressed to Henry Goodwin Stephenson, Solicitor, returnable without delay.

7th October, 1895.

The *Commission Rogatoire* in this cause issued is this day received (sealed)

8th October, 1895.

A consent of parties that the *Commission Rogatoire* be opened and published, is filed, and the same is by consent opened and published.

17th October, 1895.

Present:

The Honorable Chief Justice Sir LOUIS NAPOLEON CASAULT.

The Defendants move, pursuant to notice, that the *Commission Rogatoire* be opened and published, and said motion granted, costs to abide the issue.

8th November, 1895.

The Defendants file a notice of inscription and an inscription upon the roll of Enquêtes and Merits at the same time for the seventh December next.

19th November, 1895.

The account of Commissioner H. G. Stephenson amounting to fifty-two pounds ten shillings is filed.

27th November, 1895.

The Plaintiff files a notice on the Defendants to produce certain documents at Enquête.

29th November, 1895.

The Plaintiff files a notice on the Defendants to produce certain documents at Enquête.

6th December, 1895.

The Defendants file a notice on the Plaintiff to produce certain documents at Enquête.

7th December, 1895.

The oath of stenographer Morrison is filed.
The Plaintiff files one writ of subpœna.
The Defendants file two writs of subpœna.
The Honorable F. Langelier files an appearance as Counsel at Enquête for the Plaintiff.

9th December, 1895.

Present:

The Honorable Mr. Justice A. B. ROUTHIER.

The parties proceed with this cause at Enquêtes and Merits at the same time.

10th December, 1895.

Present:

The Honorable Mr. Justice A. B. ROUTHIER.

The parties proceed with this cause at Enquête and Merits at the same time.

11th December, 1895.

Present:

The Honorable Mr. Justice A. B. ROUTHIER.

The parties proceed with this cause at Enquêtes aud Merits at the same time.
An admission of facts by parties is filed.

12th December, 1895.

The oath of stenographer Belinge is filed.

Present:

The Honorable Mr. Justice A. B. ROUTHIER.

The parties proceed with this cause at Enquêtes and Merits at the same time.

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No. 190, Transcript Proceedings in Superior Court from 16th Oct., 1893 to 4th July 1896. *continued—*

13th December, 1895.

Present:

The Honorable Mr. Justice A. B. Routhier.

The parties proceed with this case at Enquêtes and Merits at the same time.

14th December, 1895.

The Plaintiff files two writs of subpœna.

Present:

The Honorable Mr. Justice A. B. Routhier.

It is ordered that the Plaintiff's Enquête be and the same is declared closed, and that the Enquête stand continued to the sixteenth instant.

16th December, 1895.

Present:

The Honorable Mr. Justice A. B. Routhier.

The parties proceed with this cause at Enquêtes and Merits at the same time, and it is ordered that the Defendants' Enquête be and the same is declared closed.

18th December, 1895.

Jos. Peters, Defendants' witness, not examined, is this day taxed at twenty dollars.

The Plaintiff files his Exhibit marked A44.

The Defendants file their Exhibit marked B11.

Present:

The Honorable Mr. Justice A. B. Routhier.

The Plaintiff moves that the two aforesaid Exhibits be impounded, and and *Curia Advisari Vult.*

It is ordered that the Enquête be and the same is declared closed generally, and that this cause for Enquêtes and Merits at the same time stand continued to the seventh January next for final hearing upon the merits.

8th January, 1896.

A list of Plaintiff's witnesses examined on the seventh December last, to wit: James Woods, St. G. Boswell, A. H. Verret; on the ninth December last, Ed. Moore, on the tenth December last, H. J. Peters, on the thirteenth December last, A. H. Peters, on the seventeenth December last, St. G. Boswell and H. J. Peters, and on the eighteenth December last, Albert Peters, is filed.

A list of Defendants' witnesses examined on the fourteenth December last, to wit: A. H. Jacobs and E. B. Cummings, on the sixteenth December last, E. Moore and on the seventeenth December last, P. Malouin, is filed.

16th January, 1896.

The Defendants file the evidence of the following witnefses severally sworn examined and taxed as follows, to wit: on the fourteenth December last, Alivn H. Jacobs taxed at sixty-six dollars and twenty cents, the Plaintiff objecting to taxation of hotel bill, and E. B. Cummings taxed at one hundred and one dollars and twenty-eight cents, on the sixteenth December last Ed. Moore, and on the seventeenth December last, P. Malouin.

Present:

The Honorable Mr. Justice A. B. ROUTHIER.

The Court seeing the motion made on the part of the Plaintiff to impound Defendants' Exhibit "B11" and Plaintiff's Exhibit "A"44;

Doth grant the said motion, the costs to abide the event of the present suit.

20th January, 1896.

The Defendants file at Enquête a list with Exhibits respectively marked B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B12, B13, B14, B15, B16, B17, B18, B18*a*, B19, B20, B21, B22, B23, B24, B25, B26, B28, B29, B30, B31, B32, B33, B34, B35 and B36.

25th January, 1896.

The Defendants file a re-inscription upon the roll of Enquêtes and Merits at the same time for the twenty-seventh instant.

27th January, 1896.

The Defendants file a notice of the aforesaid inscription.

Present:

The Honorable Mr. Justice A. B. ROUTHIER.

The parties, by Counsel respectively, having been heard upon the merits at Enquêtes and Merits at the same time; *Curia Advisari Vult* and factums to be filed within ten days.

11th February, 1896.

The Plaintiff files at Enquête a list with Exhibits respectively marked A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12, A13, A14, A15, A16, A19, A20, A21, A22, A23, A24, A25, A26, A27, A28, A29, A30, A31, A32, A33, A34, A35, A36, A37, A38, A39, A40, A40½, A41, A41, A42, A43, A45, A46, A47, A48, A49, A50, A51, A52, A53, A54, A55 and A56 only.

12th February, 1896.

The Plaintiff files the evidence of the following witnesses severally sworn, examined and taxed as follows, to wit: on the tenth December last H. J. Peters taxed at forty-two dollars and eighty cents; on the thirteenth December last A. H. Peters; on the seventeenth December last St. G. Boswell taxed at four dollars and sixty-six cents; on the eighteenth December last H. J. Peters taxed at thirty-six dollars and fourteen cents; and A. Peters, on the seventh December

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In the Court of Queen's Bench.

No. 190, Transcript Proceedings in Superior Court from 16th Oct., 1893 to 4th July 1896. *continued—*

last J. Woods taxed at two dollars and fifty cents; St. George Boswell taxed at thirty-two dollars and sixty-three cents; A. H. Verret taxed at two dollars; on the ninth December last Ed. Moore; on the twelfth December last F. Labbé, I. Flamand and Frs. Desruisseaux, the last three witnesses taxed at six dollars and seventy-five cents each.

25th February, 1896.

A list of Plaintiff's witnesses examined on the twelfth December last, to wit: F. Labbé, Jos. Flamand and F. Desruisseaux, is filed.

16th June, 1896.

Present:

The Honorable Mr. Justice A. B. ROUTHIER.

La Cour, ayant examiné la procédure et la preuve de record et entendu les parties par leurs avocats sur le mérite, la présente cause ayant été inscrite aux Enquêtes et Mérite en même temps;

Avant de faire droit sur les réclamations respectives des parties en cette cause, il ordonne que par un auditeur ou comptable, dont les parties conviendront, sinon nommé d'office, il sera procédé, après serment prêté à l'examen et vérification des comptes, états et autres documents et pièces du dossier, et aux opérations de comptabilité requises pour la décision de la présente cause lesquelles opérations seront faites par le dit comptable conformément aux instructions et sous la direction du juge chargé du délibéré de cette cause, et mises devant lui de manière que cette Cour puisse adjuger plus promptement et plus efficacement sur les droits respectifs des parties;

Et les parties n'étant convenues d'aucun nom, la Cour nomme auditeur et comptable aux fins susdites Joseph Lacon Welch, de Québec, teneur de livre.

18th June, 1896.

The oath of Accountant J. L. Welch, is filed.

30th June, 1896.

The report of the Accountant J. L. Welch, is filed.

(Judgment of Superior Court. This judgment is printed at p. 649.)

3rd July, 1896.

The Defendants Moore & Wright file a notice of inscription and an inscription to the Court of Queen's Bench, appeal side, from the aforesaid judgment, together with a notice of putting in security for costs in appeal for the fourth instant, per Messrs. G. R. Renfrew and J. H. Holt.

4th July, 1896.

A Bond, security for costs in appeal is this day put in by the Defendants Moore and Wright in favor of the Plaintiff for the sum of five hundred dollars per Messrs. Renfrew & Hold, and filed.

CANADA,
Province of Quebec,
District of Quebec.

In the Superior Court.

The tenth day of July, 1896.

We, the undersigned, Louis Joseph Cyprien Fiset, John Henry Ross Burroughs and Archibald Campbell, Joint Prothonotary of the Superior Court, for the District of Quebec, do hereby certify that the twenty-six preceeding pages contain a true and correct transcript of all the rules, orders and proceedings found in the records or registers of the said Superior Court, in a cause wherein :

Simon Peters, ... is Plaintiff.

No. 2453. vs.

Edward Moore *et al*, ... Defendants.

and

Eliza Jane Lamoureux *et al*, . . . Plaintiffs *en reprise d'instance.*

FISET, BURROUGHS & CAMPBELL,
P. S. C.

No. 191. Appellants' Factum, Dated 23rd Nov. 1896.

Canada,
Province of Quebec,
District of Quebec.

In the Court of Queen's Bench.
(Appeal Side)

Edward Moore *et al.*, (Defendants in the Superior Court), Appellants.

and

Simon Peters, ... (Plaintiff in the Superior Court.)

and

Eliza Jane Lamoureux, *et al.*, (Plaintiffs in Continuance of suit.) Respondents.

APPELLANTS' FACTUM.

The judgment of the Superior Court, now appealed from, rendered at Quebec, on the 30th June last, proceeded to divide a sum of $68,972.95 equally between the Appellants and the Respondents, on the ground that the evidence of record did not permit of the Court assigning to each the amount really belonging to them in such sum and that under the circumstances the Court was entitled to apply Art. 1948 of the Code.

The facts which have given rise to the present litigation are somewhat complicated and the questions at issue are not without difficulty, but we are a loss to understand the decision reached, as it appeared to us, and we think we can shew the Court without any great effort, that all that the case called for was a decision of one or two questions and that the remainder was work which any person skilled in figures could do.

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No. 191
Appellants' Factum,
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continued—

On the 2nd May 1877, the late Simon Peters and Messrs. Moore & Wright, the Appellants entered into a contract with the Quebec Harbour Commissioners for the construction of the Harbour Works at Quebec, works now known as the Princess Louise Dock, the contract was signed by them in the name of Peters, Moore & Wright.

By deed passed before Strang, Notary Public, on the 4th May 1877, (Apelpellants' Factum p. 129) it was stipulated between the Plaintiff on the one hand and the Appellants on the other, that notwithstanding the contract made by them under the name of Peters, Moore & Wright on the 2nd May 1877, for the construction of the works, no partnership existed between them, and they proceeded to apportion the works to be done by each as follows:

"Of which said works the said Simon Peters hereby undertakes to execute and perform all the timber and iron and pitching of outer slopes and forming of roadway," and the Defendants undertook to execute "all the works contracted for as aforesaid under the aforesaid deed, save and except those hereby specially undertaken by the said Simon Peters."

The parties bound themselves towards each other respectively to do the work specified in accordance with their joint contract with the Harbour Commissioners, and in accordance with future drawings which the Engineers of the Harbour works might supply: further to do each his part of the work within the specified time, in such manner that neither should be responsible towards the Commissioners for the work of the other: The provision as to payment was as follows:

"And it is hereby agreed by and between the said parties to these presents that they the said parties to these presents shall be paid by the said Quebec Harbour Commissioners for their aforesaid works as the same shall progress, in accordance with the schedules of prices annexed to the said Main Contract and upon the Certificates to be granted to the parties hereto by the Resident Engineer for the time being of the said Quebec Harbour Commissioners."

The Appellant undertook to pay to the Plaintiff on the day of the final settlement with the Commissioners, a sum of $5,000 as a bonus: each party was bound to supply at his own cost and expense all the plant which should be necessary for that portion of the works undertaken by each, save and except the temporary screens which should be required by Moore & Wright as to which it was provided: "That the said Simon Peters shall gratuitously furnish the suitable timber necessary to the construction of the said screens, which said screens however, shall be constructed at the expense of the said Moore & Wright, and the timber used in their construction or so much thereof as shall not have been lost, shall on the completion of the said works revert to the said Simon Peters and be considered as his property."

The contract further provides:—

"That with respect to any incidental expense unanticipated or unprovided for, the same shall be borne by the parties *pro rata* to the value of the amounts of works to be by them executed under the contract."

Finally the contract contains provisions with respect to the substitution of a stone face and coarse concrete to the timber face and fine concrete provided for in the original contract which are of so much importance, that we quote them at length:

"And whereas it has been stipulated in and by the said Main Contract that it shall be optional with the said Quebec Harbour Commissioners to demand that a certain wall mentioned in the specification lettered B, and annexed to the said Main Contract, be faced with stone, it is hereby agreed that should the Quebec Harbour Commissioners decide that the same shall be done the said Simon Peters shall execute the said work at the rates set forth in the said specification lettered "B," and annexed to the said Main Contract: but in the event of the said work being so performed or executed by the said Simon Peters, neither he the said Simon Peters nor the said Moore & Wright shall have any claim against each other respectively by reason of the deduction caused by such modification in the mode of constructing the said wall from the gross amount of the work by them respectively undertaken."

The Main Contract hereinafter referred to, contains the following provisions as to the payment for the stone face, namely: (Paper 5 of Record annexed to Commission.)

"In the event of the Commissioners determining to carry out the stone face to walls in lieu of the timber and concrete face, and should the contractor be called upon to dress the stone wall "Rough Bouchard" instead of "quarry faced" as mentioned in this specification, the contractor shall be paid an extra sum of two cents and three-quarters per cubic foot of wall beyond the sum of eighteen thousand three hundred and ninety-three dollars and fifty-eight cents or any proportionate part thereof for a less length of wall as agreed to be paid in the Main contract."

After the signing of the contracts referred to, the parties proceeded with their work—the Commissioners decided to substitute the stone face and coarse concrete for the timber face and fine concrete—large additions and deductions to the work of both parties were made by the Engineers, so extensive in character, as practically to amount to new works, according to the contention of both parties to the present litigation: and finally the works partly as contracted, partly as altered, and the additional work were terminated at the end of the season of 1881: upon the termination of the works each of the joint contractors made up his claim for work done and sent it in to the Commissioners.

The basis of this claim as shewn by the action instituted by the joint contractors referred to hereafter, was payment for all the work done according to Schedule prices in the contract, where applicable, irrespective and without taking into account the bulk sum provided for by the contract executed with the Commissioners.

These accounts were referred by the Commissioners to the Chief Engineers, and they, after going into them minutely, made an award which proved unsatisfactory to both parties: a reference was then made by agreement to the Dominion Arbitrators, and the whole of the claims with the joint contractors, were again fully investigated and an award in their favor made. The Harbour Commissioners refused to be bound by this award which thereby became inoperative. The joint contractors then instituted a suit against the Harbour Commissioners, copy of the declaration and of the bill of particulars is filed as Defendants' Exhibit at Enquête B 34. (Paper 140 of Record, folio 2).

This suit was instituted before the Chief Engineers had granted the final and closing certificate provided for by the 56 clause of the blue book.

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The Harbour Commissioners having pleaded the fact that no final certificate had yet been given, the joint contractors, feeling the strength of the plea, withdrew their action.

The joint contractors then applied all their energy to obtain from the Chief Engineers a satisfactory final certificate, and for this purpose, after consultations and meetings in Portland between them and Mr. Woodford Pilkington who had been the Resident Engineer at the time the works were being constructed, they sent Mr. Pilkington to England with statements prepared by the Contractors' Engineer, Mr. Brown, and after considerable delay the Chief Engineers issued a final certificate awarding to the contractors a sum of $52,011. By a letter of same date, as the certificate, namely 4th February 1886, the Chief Engineers stated that they had allowed payment for all work actually done but had deducted the amount known as the clerical error and the sum for the removal or levelling of sand on the embankment, and stated that the certificate was issued on the assumption that the contractors had been paid the sum of $645,799.00; Plaintiff's Exhibit at Enquête A10.

The judgment of the Supreme Court in the case instituted by the joint contractors, allowed to them the amount of the final certificate, $52,011 and added thereto $31,050, amount of the clerical error wrongfully deducted and $4,407.50 also wrongfully deducted for an alleged levelling of sand, disallowed by the Court, making a total addition to the final certificate of $35,457.50. (Paper 8 of Record ; 19 Canada Supreme Court Rep. p. 685.

This sum with interest from the date of the final certificate less deductions for rent and different amounts paid during the pendency of the proceedings, was paid into the Union Bank to the joint credit of the Plaintiff and Defendants, and a written contract (Appellants Factum p. 172), entered into between them, which recites among other things, that the parties interested in the judgment. "Have not yet determined their respective shares in the amount thereof and in the expenses and liabilities connected with the contract, and with the law suit in which such judgment was rendered." and agreed that the sum in question should "remain there (*i. e*, on deposit in the Union Bank), at interest at 4% as a special deposit until the respective shares of the parties to this agreement are finally established."

The parties having failed to agree upon a division of the sum deposited, the late Simon Peters instituted the present action for a partition of the money in question. The pretensions of the parties as contained in the pleadings are of sufficient importance to require an analysis of the issue presented to the Court.

The declaration (Appellant's factum p. 128) alleges. The contract of the 2nd May 1877 with the Quebec Harbour Commissioners, whereby they undertook the construction of the docks: the provision in that contract for the substitution of the stone face, the further provision with respect to the powers of the Engineers to alter, add to and deduct from the works: the contract of the 4th May 1877, between Peters, Moore & Wright: that the works were proceeded with by the contractors, but were largely modified and altered by the Engineers, whereby the contractors were compelled to construct works other than and in addition to those detailed in the contract: that the stone face with concrete backing was substituted for the wood face and fine concrete: the final certificate of the Engineers of 4th February 1896: the detail of the certificate: the action

brought by Peters, Moore & Wright against the Commissioners terminated by the judgment of the Supreme Court on the 17th January 1892, the agreement of the 29th October 1892, between Peters, Moore & Wright, providing for the deposit of the balance due by the Commissioners in the Bank; that Moore & Wright refused to consent to the payment to him of his share, that he had performed all the works and furnished all the materials in accordance with his contract with Moore & Wright of the 4th May 1877; that he the Plaintiff specially alleges that the stone wall above mentioned backed with concrete in lieu of timber face and fine concrete was wholly built by him and all materials furnished by him at a total cost of $77,378.50, as shewn in the statement herewith produced, and the Plaintiff also specially alleges that he did do and perform all the works mentioned in the items 4, 5, 6, 7, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20 and 39 of the detailed statement of the Engineers, etc., that Moore & Wright, were bound to pay him a bonus of $5,000 as per their agreement: that the Defendants had refused to pay this sum or the share of the deposit: that he was entitled to receive more than half the sum deposited viz: $38,532.85 as shewn by the details filed: That the Commissioners paid to Peters, Moore & Wright a sum of $732.367.86 as price of the works and $28,375.75, interest on $87,468 from the 4th February 1886 to 25th October 1892, of which the Plaintiff received $267,451.96, and Moore & Wright $420,347.48, the Commissioners retaining $4,871.26 for rent, taxes ; etc.

The conclusions are (Appelant's Factum p. 142.) That the Plaintiff's account be declared a true account of the works done by him.

That the Defendants be ordered to render an account of the works performed by them.

That the Defendants be declared to have been indebted from the 29th October 1892, to the Plaintiff for the bonus of $5000 with interest from that date.

That it be declared what sum the Plaintiff is entitled to out of the deposit, and that it be declared that he has a right to $38,532.55.

That in default of the Defendants signing a cheque for the sum which the Court shall name, that the Bank be ordered to pay such sum.

We desire to emphasise three points arising out of the declaration, the importance of which will appear hereafter.

That the stone face with coarse concrete backing was substituted for the wood face and fine concrete back: that the Plaintiff claims to have done and to be paid not alone for the stone face but for the concrete backing as well. That the Commissioners had paid for work done to Peters $267,451.96, to Moore & Wright $420,347.48, that is to say that Moore & Wright had done nearly twice as much work as Peters and finally that the action concludes for an order upon the Defendants to render an account of the work done by them as a preliminary to ascertaining the division of the sum on deposit.

The Defendants pleaded (Appellants Factum p. 144) admitting the contract of the 2nd May 1877 with the Commissioners, and that of the 4th May 1877 between the Contractors, which apportioned the work to be done, and alleged that they had performed all the work referred to in the Contract with the Quebec Harbour Commissioners, except the timber and iron work (the pitching of outer slopes and forming of roadway having been omitted by order of the Engineers) and the supplying of the stone and building of the masonry of the stone

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wall, and claimed that thereby they become entitled to all the moneys payable by the Commissioners in respect of the said works, save the moneys payable for the work done by the Plaintiff and they denied that they were bound to account in any manner to the Plaintiff for the moneys received by them:—the contract with the Commissioners contained the following stipulations: (Blue Book p. 12, § 48 and seq.)

§ 48—"The Commissioners or their Engineers, shall have power to make, from time to time, any additions or deductions from the dimensions specified or shewn on the Drawings, to add to or omit any of the works, or modify or alter the works and materials specified or shewn on the drawings, as circumstances shall appear to them to require it, without rendering void or in any respect vitiating the contract. The value of such additions, deductions, omissions, modifications, deviations, or alterations, is to be determined by the engineers, according to the rates and prices in the schedules, accompanying the tender, which prices are calculated for materials and workmanship as specified and measured in the work, and include all plant, labour, machinery, temporary works, shoring, scaffolding, carriage, freight, patterns, moulds, templates, preparing, fitting, fixing and setting the same, as before mentioned, together with all contingencies, superintendence and profit, but the contractor is not to diminish the strength of the works, nor to make any alteration in the mode of execution nor to use other materials than those specified without the consent in writing of the Engineer."

"In the event of any works being ordered for which the prices contained in the schedule do not apply, or are not therein contained, the Engineers shall measure, value, and price out such additions or omissions as they shall think reasonable, having due regard to the schedule of Rates for a proportionate value, and their decision as to such value shall be final and binding on all concerned."

§ 55—"All payments upon the Engineers' certificates will be regarded as approximate value only of works executed to the date of such certificates and will be made within a reasonable time after they have been handed to the Clerk to the Commissioners, and no certificate at any time will be granted for a less sum than nine thousand dollars ($9,000), that is, for ten thousand dollars worth of work executed, less ten per cent retained. No payments on general account shall be taken to be an admission of the due performance or settlement of the contract, or any part thereof, or of the accuracy of any claim, nor shall they conclude nor prejudice the powers of the Engineers, whether any certificates were granted by them upon the assumption that the works were properly executed or completed or not nor shall they determine the sum or sums, or balance of money to be paid to or received from the contractor, nor in any other way vary or affect the contract entered into by the contractor. All the accounts relating to this contract between the Commissioners and the contractor must be submitted to and adjusted and settled by the Engineers, and their certificate immediately hereinafter mentioned fixing the balance due to the contractor on the completion of the works shall be conclusive and binding on both parties without any appeal."

§ 56—"The Engineers, when the whole of the works shall have been properly and satisfactorily executed and completed, and all actions, suits, claims, penalties, liabilities, outstanding accounts, costs, expenses, injuries and demands whatsoever shall have been properly discharged, satisfied, paid or arranged for,

will grant to the contractor a certificate for the whole balance due to him of the contract price, and for extras, if any, less ten per cent to remain in the hands of the Commissioners without interest for a further period of twelve months after completion, or until the expiry of the term for maintenance. On the expiry of such period the ten per cent will be paid, provided a final certificate by the Engineers that the works have been upheld and maintained, in terms of the contract, and relative conditions and specification, is delivered to the Commissioners."

§ 57—"The contractor shall not be entitled to demand, and Commissioners shall not be bound to pay any sum of money, either for works in progress or completed, or for payment on account of the contract price, or for extras alleged or admitted, until a certificate shall be granted by the Engineers that such sum is due and payable."

continued—

§ 59—"All works as they progress will be measured from time to time by the Engineers, and proper accounts, bills of quantities, or pay-bills for main works, or accounts for jobbing work must be prepared, made up and priced out according to the rates and prices of the annexed Schedule, which include all extras for works completed. The measurements and pay-bills for advances are to be made solely for the information and satisfaction of the Commissioners or their Engineers, and they shall not be allowed to constitute any legal evidence as to the facts therein stated, or to be taken as a statement or rate of progress of the works at the time they were made but shall only be considered and taken as approximate estimates and guides to the Commissioners or their Engineers for regulating the amount of any advances."

That in execution of the contract the Chief Engineers issued their final certificate, which save as to deductions for clerical error in dredging and levelling sand, disallowed by the judgment of the Supreme Court, was declared by that Court binding upon the contractors and the Commissioners and is binding upon the Plaintiff and Defendants and finally regulates and settles their rights with respect to the sums payable to each.

That the final certificate likewise determines the sums payable to each of the parties and the Defendants brought into Court with their plea a copy of the detailed statement upon which such final certificate was based.

That the Plaintiff had performed work which had been allowed by the Engineer to a value of $242,723.65 while he had received $267,452.11 making a sum of $19,728.46, money belonging to the Defendants received by him, after giving him credit for the sum of $5,000 payable as bonus.

The Defendants further pleaded that the Plaintiff's account was untrue, made upon a wrong principle and did not agree with the certificate of the Engineers, and they pleaded in detail to many items of the account, admitting others. We omit here these details as we shall be obliged to go into them later.

That by their contract, it was stipulated that the incidental expenses, unanticipated or unprovided for should be borne *pro rata* to the value of the work, as established by the schedule of prices, respectively executed by them under the contract; that the main contract with the Commissioners was to be prepared at joint expense: that the contractors were bound to supply to the Engineers, offices, and to have contractors' offices upon the works: that the

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contractors should employ a competent agent, that the Commissioners charged to the contractors as their share of the expense of rent and taxes $1,799.56, which was deducted from the amount of the final certificate, and a part of which, proportioned to the value of the works done by him the Plaintiff was bound to bear.

That the Plaintiff was indebted for his proportion of expenses for engineering, engineer's office, heating, boatmen, etc., amounting in the whole to $53,485.65.

That he was further indebted in the sum of $8,427.38 amount of an account for labour, etc.

That the Plaintiff agreed by a Bond, (Defendants' Exhibit B7 Appellants' Factum p. 187) to repay any sum which it should be ascertained he had received in excess of what was due to him.

And the plea concludes: that the Plaintiff be held to have received all that was due to him: that the total amount on deposit be adjudged to the Defendants and that the Defendants' recourse be reserved for the balance.

SPECIAL ANSWER.—By Special answer the Plaintiff alleged:

(Appellant's Factum p. 154.)—That according to the schedule of prices forming part of the main contract the Plaintiff's work was estimated at $145,876.76 and the Defendants at $383,427.50.

That it was anticipated that the stone face would exceed in value the work for which it was substituted by $18,393.58, that the estimate of the cost of the stone was $73,831.89, which with the cost of rough boucharding brings the cost up to the sum of $77,378.40.

That by reason of the substituting of the stone wall the Defendants did not do fine concreting of an estimated value of $27,280.25.

That it was agreed by the contract of the 4th May 1877, that the parties should be paid for their work as the same should progress according to the schedule of the main contract, and upon the certificate of the Resident Engineer.

That by the progress estimates it appears that the stone wall cost the sum of $52,824.57 and by the synopsis of accounts brought down to the close of the year 1881—that the real cost was $82,834.82, which the Plaintiff should have been paid.

That the final certificate for $52,011.21 was issued by the Chief Engineers and added to by the Supreme Court, to the extent of $35,457.50 of which $31,050, represented the clerical error and $4,407.50 an erroneous deduction for sand.

That the certificate did not determine or affect to determine the rights of the contractors between themselves, which rights are regulated by the contract of the 4th May 1877.

That the detail of the final certificate Exhibit 1*a* was false: that the details, were only known to Morris, the Engineer; and not to Kinipple, as Kiniple himself admitted.

That the certificate is incompatible with the progress estimates and contains charges for works not done by the Defendants, of which details are given (pp. 161, 162.)

That there never was any real difficulty about the Plaintiff's work, but that the litigation was due to unfounded claims put forth by the Defendants.

There then follows a detailed discussion of the different items in dispute which would be wholly unintelligible if produced here, but to which we shall refer when discussing the details.

SPECIAL REPLICATION :—

The Defendants replied : That if they did not do the fine concreting provided by the original specification they did a much larger quantity of coarse concreting than was originally contemplated, and that the substitution was ordered by the Engineers :

That the progress estimates were binding neither on the Commissioners nor the contractors, but were subject to be dealt with by the Engineers, and that the Engineers did deal with them by the final certificate, which was based upon an entirely different principle than that upon which the progress estimates were made up, that the Chief Engineer having under the contract, for the execution of the works, full power to alter the said works and to determine the payment to be made for the works and for the additional and extra works, did so determine the said payment, and that inasmuch as the amount to be distributed between the Plaintiff and Defendants, is the amount so certified by the said Engineer, with the additions thereto made by the judgment of the Supreme Court of Canada, that the detail of the said certificate is the only true means by which the division of the said amount, in which the said parties were jointly interested, can be ascertained.

Upon these issues the parties went to trial and the judgment now appealed from was rendered, by which the learned Judge held that he could not, by reason of the unsatisfactory and incomplete evidence adduced decide the questions at issue between the parties and that such condition of things being due to the common fault of both, the parties find themselves in the same position as partners who had not stipulated as to the division of profits, or having stipulated a partition proportioned to the capital of each, had failed to establish the capital and that the Court had the right to apply Art. 1848 of the Code and make an equal division.

We submit there is error of fact and error of law-Error of fact in that a division betweet the parties of the amount on deposit, was, as we hope to shew the Court hereafter, a matter of comparative ease, as soon as a judgment was formed upon the few questions in dispute : error of law in that in view of the stipulations of the parties providing for a division of the price of the work, in accordance with the value of the work done by each—the clear and unambiguous division of the work between the parties, timber and iron work and stone wall to the Plaintiff—all other work to the Defendants—certificate of the Engineer, admitted and relied upon by both parties (*i. e.* the detail which accompanied the final certificate) shewing the value of the classes of work done by each, there could not be application of a rule expressly founded on the assumption of partnership without covenant as to the rights of the partners.

Even if the Superior Court found itself, either by reason of the intricacy of the questions involved, or the uncertainty or ambiguity of the evidence, compelled to reach the somewhat humiliating conclusion, that it was unable to form an opinion as to the respective rights of the parties, there could be no justification for an equal partition, in view of the allegations of the Plaintiff's declara-

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tion, in which he states that the work done and paid for on progress estimates amounted for the Plaintiff to the sum of $267,457.96 and for the Defendants to that of $420,347.48, (Appellants factum p. 142, l. 28) while of the work contemplated under the original specification of works the Plaintiff's share amounts to $145,876.76 and the Defendants to $383,427.50. Still less could there be any justification for the judgment in view of the statements furnished by the Plaintiff to the Defendants at different times shewing the amount claimed by him.

We shall have occasion to refer to these statements, in discussing the items of work in dispute, for the purposes of the present discussion it suffices to state the bulk sum claimed on the different occasions.

On the 20th February 1884 the Plaintiff wrote Colonel Moore. (Appellants factum p. 171, l. 15). "$23,442.84 is the amount due me on the award of arbitrators. There is not much margin for a rebate, on that small amount. You must bear in mind that I am very little better off than by Kinniple & Morris award. I have been kept out of a settlement fighting your battle, therefore dont ask me to make a further sacrifice that I really can't afford."

The award referred to was that of the Dominion Arbitrators, a far more favorable result to the contractors than the judgment of the Supreme Court. This letter was written after two trials, one before the Engineers and one before the Dominion Arbitrators, and after the first suit against the Commissioners had been instituted. No interest ran upon this claim until the final certificate was issued on the 27th January 1886: now the Plaintiff gives credit in the account sued on, for payments amounting to $30,000, without taking into consideration, the expenses charged by the Commissioners to the contractors for rent, etc., and the proportion of expenses paid to Judge Bossé and Mr. Cook. It is to be observed that the Appellants only consented to the payments to Peters, on obtaining a bond from him, agreeing to refund any amount in which he should have received more than he was entitled to.

On the 9th March 1887, the Plaintiff handed a detailed statement of the amount claimed by him.—(Appelants Factum p. 189) shewing a balance of $38,647.44. This statement contains an admitted error in cash received and not credited of $5,000 and contains most of the Plaintiff's most exaggerated contentions.—Since that statement was rendered, the Plaintiff admits receipt of $27,500 which with the $5,000 error makes $32,500 actual cash to be deducted. From this account no deductions for amounts due or payments to Counsel are made.

On the 8th January 1891 after the decision of the Supreme Court, the Plaintiff sent another statement. (Defendants Exhibit B4 Paper III of Record Folio II. Appellants Factum p. 184.) This statement shews a claim for a total sum of $36,410, from which must be deducted the payments credited in the account sued on amounting to $30,000.

We think these statements sufficiently shew the unreasonableness of the judgment and the outrageous injustice to the Appellants in giving, to a man, who claimed $36,410 in January 1892 (and claimed it without a large part being due as we can satisfactorily shew,) who acknowledges having received $30,000 not credited in this account, a sum of $34,486.47 with the interest allowed by the Bank from the 9th October 1892.

We think that the foregoing sufficiency rebuts the presumption of rightful

judgment, which by law attaches to all judgments of Courts, if this rule can be said to apply to a judgment avowedly based upon an inability to ascertain the rights of the parties.

We turn now to the merits of the case.

The first question which calls for decision by the Court, is the effect to be given to the detailed final certificate given by the Engineers and produced as Defendants Exhibit I a annexed to the Commission (Appellants Factum pp. 177—181.)

When the final certificate was granted by the Engineers on the 4th February 1886 (Appellants Factum p. 136) no details accompanied it, subsequently the detailed certificate set out in the declaration (Appellants Factum p. 137) was sent, but as this contained no indication of what part of the bulk sum contract was appropriated to the works done, either as provided by the contract or as added to and changed, it was and is of comparatively small value for the purpose of ascertaining what works were allowed for in whole or in part and what rejected.

After the termination of the work, the joint contractors started out with the contention that the contract had been so entirely departed from, that they were entitled to be paid for all the work done by them at schedule prices, where applicable, and according to the value of the work, where no schedule prices existed. This contention which is practically that repeated by the Plaintiff in his present suit, was successfully resisted by the Harbour Commissioners, and the certificate of the Chief Engineers with respect to all the work done, whether contract work or extra work, imposed upon both the Plaintiff and the Defendants—the additions made by the Supreme Court to the certificate were made upon the ground that the Chief Engineers had exceeded their jurisdiction in making the deductions for the clerical error, and as to the remaining sum, it was an error in computation, the amount added not having been really paid out by the Commissioners for levelling of sand at all.

According to the contention of both parties to the present litigation, they have been deprived by this judgment of sums legitimately due to them for work really done. Under these circumstances the Court cannot distribute the money awarded by the judgment otherwise than upon the basis of the award of the engineers.

The money which the Court is called upon to distribute, represents allowances made by the engineers for work done by one or other party; work claimed to have been done by both is not allowed for at all by the Engineers—if the Court take out of this sum, money to pay either of the joint contractors for work, payment for which has been refused by the Chief Engineers,—how shall the other party be paid for the work for which the Engineers have allowed him, and how for work for which payment has been refused by the Engineers. The detailed final certificate produced by the Defendants' Exhibit 1*a* (p. 177) distributes the sum allowed by the Engineers shewing whether the same be, in respect of wood and iron or in respect of other works. If this certificate be adopted by the Court, there will remain one point only for its decision, namely the application to one or other party, or the division between them of the several amounts allowed in respect of the stone wall and coarse concrete, substituted under the terms of the contract, for the fine concrete and timber face.

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The judgment appealed from states that the certificate 1 A cannot be relied upon, because it was prepared by one of the Defendants or under his instructions and that Kinipple was not able to verify the details of the certificate and to judge of their exactness by his personal knowledge.

This *considérant* of the judgment is erroneous in fact.

It is true that Colonel Moore says that he sent such a certificate to Mr. Kinipple (Respondents' Factum p.) but he says it was not prepared by him, or under his direction but by Mr. Vincent Brown the Engineer and agent of the joint contractors, that is to say by the cummon employee and agent of all the parties. Mr. Brown being dead, it has not been possible to get corroboration of this statement from him, but we have strong corroborative evidence in a letter written to the Quebec Harbour Commission, at the time the final certificate was sent to them. (Plaintiff's Exhibit A35, Paper 178.)

Mr. Kinipple, the surviving member of the firm and he who signed the detail set forth in this declaration, says, that it was based upon the result arrived at, at the time of the arbitration in Quebec.

As to its accuracy in all respects Mr. Kinipple's evidence is conclusive.

On direct examination he says—Appellants Factum p. 102.

6*th Interrogatory*:—Please take communication of the statement annexed hereto, and marked Defendants' Exhibit No. 1A, and state whether such statement is a true, full and detailed statement of the final certificate issued by you covering all works done by the contractors, and allowed by Kinipple & Morris, both under the contract and for extra work?

Answer—Exhibit No. 1A, is a full and detailed statement of the final certificate issued by my late firm and covers the whole of the work executed by the contractors and allowed by Kinipple & Morris both on the contract and for extra work.

7th Interrogatory:—Please state shortly the difference between the two details of the final certificate?

Answer—There is no difference in the total. One certificate gives the total in a lump sum of $529,296.31 under the contract and the other does not. Exhibit 1, starts with the original contract sum of $529,296.31. Exhibit 1A, sets out the details of that amount, the remaining items are alike in both certificates.

On cross examination p. 105.

11*th Cross-Interrogatory*:—Would you refer to the entries from which the details mentioned Defendants' Exhibit No. 1, are taken and state whether it is not true that the same were furnished by the Defendants or one of them or some party on their behalf?

Answer—I say that I am unable at present to refer to the entries from which the details mentioned in Defendants' Exhibit No. 1, were taken, but I say that it is not true that the same were furnished by the Defendants or one of them or some party on their behalf.

12*th Cross-Interrogatory*:—Who made the original entries of the details contained in Defendants' Exhibit No. 1, and at what times were these original entries made and by whom and where were the same made?

Answer—I cannot say definitely who were the persons who made the original entries of the said details but they were made by Mr. Morris, Mr. Pilkington,

myself and others engaged in connection with the works and acting under the directions of my firm and they were made from time to time as the progress of the works required and they were made partly on the works and partly at the Head Office in London.

P. 106 and Seq.—19*th Cross-Interrogatory:*—It is not true that the original final certificate dated on the 4th February 1886, and signed by the firm of Kinipple & Morris, was signed by your late partner Mr. Morris and that the same did not contain any details and is it not true that the said firm of Kinipple & Morris never at any time gave the Quebec Harbour Commissioners or the Plaintiff any details whatever of the said final certificate although the Quebec Harbour Commissioners wrote and ask the said firm of Kinnipple & Morris for said details, but that subsequently you received from Colonel Moore, or one of the Defendants the details of the additional works which appear in Defendants' Exhibit No. 1, and that availing yourself of these details you prepared said Defendants' Exhibit No. 1, and sent the same to Colonel Moore as appears by your letter to him of the 5th January 1887, a copy of which is contained in Plaintiffs' Exhibit No. 41?

Answer—It is true that the original final certificate dated 4th February 1886, and signed by the firm of Kinniple & Morris was signed by my late partner Mr. Morris and that the same did not contain any details. The said firm of Kinniple & Morris never at any time gave the Quebec Harbour Commissioners or save as hereinafter mentioned the Plaintiff, any details whatever of the said final certificate. I am not aware that the Quebec Harbour Commissioners ever wrote and asked my firm for said details. My firm subsequent to the 4th February 1886, at the request of Col. Moore and or his firm supplied to him or them details of the final certificate which said detail are represented by the Defendants' Exhibit No. 1. Neither I nor my firm subsequently or at any time received from Col. Moore or one of the Defendants the details of the additional work which appears in the Defendants' Exhibit No. 1, neither I nor my firm therefore could have availed ourselves of any such details in preparing the Exhibit No. 1. It would appear from the said letter of the 5th January 1887, copy of which is contained in the Plaintiffs' Exhibit No. 41, that I did send the details embodied in Defendants' Exhibit No. 1, to Col. Moore.

20*th Cross-Interrogatory:*—Is it not also true that the details of Defendants' Exhibit No. 1A, were sent to you by Colonel Moore or one of the Defendants and that you signed the same Kinipple & Jaffrey and subsequently sent the same to Colonel Moore or one of the Defendants without the knowledge or consent of the Plaintiff?

Answer—It is true that the details of Defendants' Exhibit No. 1 A, were sent to me by Col. Moore or one of the Defendants in or about the months of April or May 1893, and that I signed the same Kinipple & Jaffrey and subsequently sent the same to Col. Moore, or one of the Defendants without the knowledge or consent of the Plaintiff. Before signing the said copy Exhibit No. 1 A, I satisfied myself that the details on pages 1, 2 and 3 of Exhibit No. 1 A, correctly represented the $529,296.31, inserted at the top of the Defendants' Exhibit No. 1. The details of pages 1, 2 and 3 of Exhibit No. 1 A, were the figures in the original works contract, and further I satisfied myself that the remainder of

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the Exhibits No. 1 A, was a true copy of my firm's said certificate being Defendants' Exhibit No. 1.

P. 109—30*th Cross-Interrogatory :*—Is not true that said Defendants' Exhibit No. 1A is incompatible with every certificate and report that you know of that was given by your firm in relation to the said works ?

Answer—I say that it is not true that the said Defendants' Exhibit No. 1 A is incompatible with the certificate and report given by my firm in relation to the said works. On the contrary I say that Exhibit No. 1 A, is compatible in every respect with the certificate being the Defendants' Exhibit No. 1.

P. 117.—46*th Cross-Interrogatory :*—Is it not true that the Defendants' Exhibit No. 1A, is incompatible with the details given in the following Exhibits of the Plaintiff's to wit Exhibits Nos. 22, 24, 20, 28, 29 and 32 ?

Answer—I say that the details given in the Exhibits Nos. 22, 24, 20, 28, 29, 32, may or may not be incompatible with the Defendants' Exhibit No. 1 A, but I say that the Defendants' Exhibit No. 1 A, supercedes the other Exhibits referred to in the said Cross-Interrogatory.

PP. 125 and 126.—80*th Cross-Interrogatory :*—Is it not true also that there is an error in item No. 1A of the said Exhibit which allows for wood and iron work the sum of $43,389 whereas the true amount allowable as per bills of quantities was $44,877 making a difference of $1,458 ?

Answer—I say that in the final certificate all details were adjusted and that certificate is absolutely correct and I do not believe that there is an errror in item No. 1 A as in the said Cross-Interrogatory suggested.

81*st Cross-Interrogatory :*—Is it not a fact that there is an error in the sixth item of the said Exhibit No. 1 which allows $63,893.25 for wood and iron work whereas the true price as per bills of quantities was $67,344 making a difference of $3,451.50 ?

Answer—I say in the final certificate all details were adjusted and that there is no error in the 6th item of the said Exhibit 1 A.

82*nd Cross-Interrogatory :*—Look at item 11 and state whether there is not error in the sixth item which allows $4,184.21 instead of the sum of as per bills of quantities which amount to $6,838.44 namely error to the extent of $2,654.23 ?

Answer—I say that in the final certificate all details were adjusted and that certificate is absolutely correct. I do not believe that there is an error in item 11 of said Exhibit No. 1A.

83*rd Cross-Interrogatory :*—Look at item 12 of the said Exhibit and state whether there is not an error in the same to the extent of $190.12 the correct amount allowable being $2,895.84 instead of $2,705.02 ?

Answer—I say that in the final certificate all details were adjusted and that certficate is absolutely correct. I do not believe that there is an error in item 12 of said Exhibit No. 1A.

84*th Cross-Interrogatory :*—I there not also error of the said Exhibit to the extent of $216 the amount allowable as per bills of quantities being $6,644 instead of $6,428 as stated in said item ?

Answer—I say that in the final certificate all details were adjusted and that certificate is absolutely correct. I do not believe that there is an error in item 19 of said Exhibit No. 1A.

86*th Cross-Interrogatory*:—Will you swear the Defendants' Exhibit No. 1A is true and correct in all respect?

Answer—I swear to the best of my information, knowledge and belief that the Defendants' Exhibit No. 1A is true and correct in all respects.

87*th Cross-Interrogatory*:—Is it not true that the work actually done and performed by the contractors Peters, Moore & Wright was all taken into consideration, allowed for by the engineers, and all work not done by the contractors deducted as per contract?

Answer—I say that on the final adjustment everything that had been done and everything that had not been done was taken into consideration and dealt with.

Such evidence appears to us to carry conviction of the exactness of the certificate to all, but the Respondents object that the certificate differs from the progress estimates. Mr. Kinipple has answered this objection as the Plaintiff himself did in the statements already referred to, Defendants' Exhibit B4 and B8 furnished by him to the Appellants both of which, though inaccurate, do not profess to the based upon or to follow the progress estimates.

Mr. Kinipple at p. 109 says:

29*th Cross-Interrogatory*:—It is not true that the Defendants' Exhibit No. 1 is incompatible with and contradictory to all the progress estimates made of the work in question?

Answer—I say that all the progress estimates were only approximate statements of work done the Exhibit No. 1 A may possibly appear incompatible and contradictory with such estimates but I do not consider that that is a matter of the slightest importance.

32*nd Cross-Interrogatory*:—Is it not true that Plaintiff's Exhibit No. 9 contains a true copy of the details of all the said progress estimates certified to be correct by the authority of the engineers?

Answer—I cannot say whether Exhibit No. 9 contains a true copy of the details as in the said interrogatory asked, as the progress estimates were prepared and certified by the Resident Engineer and were only approximate in accordance with the terms of the contract.

36*th Cross-Interrogatory*:—Please refer to the said details of the said progress estimates Nos. 19, 20 and 23 from 1st October 1879 to 3rd December, 1879 and state whether it is not true that the sum of $\$7{,}593\frac{75}{100}$ is by the same allowed the contractors for portion of nine Crib Blocks (superstructure) in Masonry containing 12656 feet cube at 60 cts $7,593.75 and not for concrete erroneously stated in item second of the Defendants' Exhibit No. 1A?

Answer—I repeat my answer to Cross-Interrogatory No. 26 and I further repeat that as to the progress estimates the same were only approximate and prepared by the resident Engineer and that I am consequently unable to speak as to their degree of accuracy at the time they were made. Those progress estimates were taken into consideration and dealt with at the time the Defendants' Exhibit No. 1, was prepared.

43*rd Cross-Interrogatory*:—Is it not true that the said details of the said progress certificates are incompatible with and contradictory to the details contained in Defendants' Exhibit No. 1A, inasmuch as the said progress Estimates do

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not allow for the Timber face and fine or 4 × 1 concrete mentioned in Defendants' Exhibit No. 1, which work was not done, but on the contrary do allow for the work substituted in lieu of the same, and which was done?

Answer—I say that on the facts stated the progress estimates may on their face appear incompatible with and contradictory to the details contained in Defendants' Exhibit No. 1 A, but I say that such incompatibility or contradiction is immaterial inasmuch as the Exhibit No. 1 A, superceded all the progress estimates.

P. 118—49*th Cross-Interrogatory*:—Is it not true that the said estimates were made in good faith by the resident Engineers and were correct or as nearly so as it was possible to obtain at tho time?

Answer—I say that the estimates were made in good faith by the resident engineers but were only approximate.

We therefore submit that the money on deposit, which the present action is brought to divide, being the amount allowed by the Engineers for the work done by both the Contractors, with the addition of $35,457.50 made by the judgment of the Supreme Court (all which additions are admitted to belong to the Appellants share of the work), the only division which can fairly be made is to give to each the amount allowed for the work of each respectively by the Engineers. With the detailed certificate Exhibit 1*a* there remains but one question for the Court to determine, and that is the apportionment to one or other, or the division between them of the allowances made for the fine concrete in the superstructure.

Further on, in this factum, the Court will find statements of account shewing the amount allowed to each of the joint contractors according to the detailed certificate Exhibit 1A.

We ask the Court to refer to them after reading the discussion of the details of the items in dispute which we propose now to submit, following the order of the account sued on by the Plaintiff (Appellants Factum p. 174.)

The Appellants have admitted by their plea the 2nd, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd and 23rd items of this account, also the 26th, 42nd and 49th items. With respect to all the items admitted up to and including the 26th, they are so admitted, because they correspond in all respects with both final certificates, Defendants' Exhibits 1 and 1A annexed to the Commission, and they represent the sums allowed by the Chief Engineers for the work done by the Plaintiff.

The items 1, 3, 7 and 8 raise the most difficult question which the Court is called upon to decide.

They represent the amounts claimed by the Plaintiff for the cost of the wood and iron in the cribs, that is to say, in the wooden frames filled by the Defendants with concrete.

The contract with the Harbour Commissioners provided: "That the Harbour Commissioners should have a right to substitute a stone facing with eight to one Portland cement concrete to the quay walls—in lieu of fine Portland cement concrete and timber face—for the sum of $18,393.58, for the whole length of walls—to be considered as extra work and paid for as such."

The only interpretation which can be given to this contract is, that the joint contractors who had covenanted to do certain work for a bulk sum, covenanted further to replace a part of the work contracted for, namely the fine concrete and timber face by coarse concrete and the stone face for an additional sum of $18,393.58.

In determining the sums applicable to the work as changed, that is to the coarse concrete and stone face, the oaly sums which can be applied for the purpose are the amounts payable under the contract for the fine concrete and timber face with the extra sum.

As all the other works provided for by the contract are done under schedules of prices and quantities in detail, it is easy to ascertain the exact sum of money provided for in the original bills of quantities applicable to the change in the work. This has been done by the Chief Engineer in their certificate I A.

This also makes it easy to determine certain of the sums payable to the Plaintiff in respect of the substituted work, namely the Plaintiff is entitled to have all the timber and iron work which should have gone into the work, as originally contracted for, which is to be found in bills 1 and 4 of the blue book.

It is noticeable that the sums allowed by the Appellants in respect of both of these items are considerably in excess of the amounts claimed by the Plaintiff for the same items, the reason being that the Plaintiff has capriciously and without any apparent reason or system made arbitrary deduction from both the bills of quantities for works not done, and has replaced these items by a very much larger charge in respect of the stone wall, being the 8th item of his account.

The two accounts put side by side shew the differences :

Plantiff's Account—Page 174.		
1. Bill No. 1, as per details annexed.....		$36,955 44
2. do. No. 2, as per final certificate.....		328 61
3. do. No. 4, as per details annexed.....		48,565 73
4. do. No. 7, as per final certificate.....		6,838 44
5. do. No. 8, as per final certificate.....		2,895 14
6. do. No. 9, as per final certificate.....		307 25
		$95,790 61
ADDITIONAL WORK.		
7. 4 Cribs of 40 ft. each as per Bill No. 1 @ $1,368.72...	$5,474 88	
8. Stone wall as per details annexed.....	77,378 50	
		82,853 38
Total.....		$178,643 99

Defendants' Contention—Page 148.	
Bill No. 1.....	$43,389 00
Bill No. 2.....	386 61
Bill No. 4.....	63,893 25
Bill No. 7.....	4,184 21
Bill No. 8.....	2,705 02
And extra work, namely:	
Allowed for lumber and iron work in four extra 40 ft. crib block in substructure and superstructure.....	6,428 00
Stone wall as per contract including price for rough boucharding.....	21,940 61
Total.....	$142,926 70

The Defendants have proceeded upon the principle of allowing to the Plaintiff all tho wood and iron in bills 1 & 4, that is to say, all the wood and iron both in the work constructed and in that not constructed, but replaced by the coarse concrete and masonry. In addition to these, the Appellants have allowed to the Plaintiff $21,940.61, being the additional extra sum of $18,393.58, together with 2¾ cents per cubic foot of wall for the cost of rough boucharding, as provided for in specification B, of the main contract. The Plaintiff therefore receives upon these calculations the full amount provided for in the contract between the contractors and Harbour Commissioners, and the full amount provided for by the contract between the Plaintiff and the Appellants, already stated.

There remains the question of the fine concrete provided for in the original contract. This fine concrete was not put in, and the space which should have been occupied by it according to the original contract drawings, was actually filled, in the works, partly by the stone face which was thicker and filled more cubical space than the timber face, and partly by eight to one coarse concrete provided for by the contract.

We submit that under the terms of the contract between the Plaintiff and the Defendants, the Plaintiff was entitled to the wood and iron and the extra sum payable for the stone wall.

The Defendants were entitled to the fine concrete for two reasons:

1st. Because the space occupied by the fine concrete was in large part filled by coarse concrete, for which they are not otherwise paid, and 2nd. Because under the terms of the contract between them, the said Simon Peters undertook to accept in payment of the said wall—"The rates set forth in the specification lettered B," which specification letter "B," expressly provides that the sum which should be payable was the extra sum admitted to be $21,940.61.

The Plaintiff instead of making his claim for payment for the stone wall, in accordance with the terms of the contract with the Quebec Harbour Commissioners, has arbitrarily claimed as against the Appellants the sum which he contends the wall cost. We submit that the Plaintiff can only recover the sum allowed for the stone wall by the Engineers, in accordance with the terms of the contract. What that sum is can be arrived at with certainty from the detailed certificate 1 A annexed to the Commission.

By the bills of quantities and the original plan (Blue Book p. 50, item 6 " 8-1 Portland cement coarse concrete to wall and counterforts from 4 ft. above low water to coping level behind the fine concrete in the Tidal Harbour" and page 73 item 7 " 8 to 1 Portland cement coarse or Rubble concrete to wall and counterforts behind the face concrete from 3 feet above low water in the Wet Dock") the contractors were then allowed 10365 cubic yards of coarse concrete at $4.75 per cubic yard, and by item 5, page 50, and by item 6 page 73, Contract Blue Book for 4365 cubic yards of fine concrete in rear of the timber face, from four feet above low water to coping level for the superstructure of the 27 crib blocks in Bill No. 1 and the 4 extra crib blocks, all in the Tidal Basin, and in the 55 crib blocks of the West Dock Wall, from 3 feet above low water to coping level. The Engineers in dealing with the coarse concrete of the superstructure in their final certificate have deducted the full quantity and value of the 10,365 cubic yards, as allowed in the original bills of quantities for

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the rear of the timber face in the item of $116,104.32, as this part of the works was not done, under the amended plan for the masonry face, in the manner called for by the original contract drawing.

They have in their final certificate, Defendant's Exhibit 1, items 1, 30, 31 and 32, and in Defendant's Exhibit 1 A in Items 22, 49, 50 and 51, allowed to the contractors under the amended plan for the masonry face, as extra work, 13, 545 cubic yards for the coarse concrete backing to the Masonry Face of the superstructure of the Tidal Basin and Wet Dock Walls from 4 feet above low water to coping level. They have also allowed in accordance with the terms of the contract, the 4365 cubic yards of the fine concrete, which was, under the original contract drawing, to have been placed in rear of the Timber Face. The fine concrete in the original Bills of Quantities for the wet dock wall was computed from 3 feet above low water (page 28 § 101. "Behind the plankings of the South Tidal Harbour Walls and the front pilings of the face of the South Wet Dock Wall, there is to be a facing of Portland cement fine concrete from 4 feet and 3 feet above low water mark respectively, to copings etc." page 50, item 6, and page 73 of the Blue Book), while the masonry face was only built from 4 feet above low water: the Engineers in dealing with the 4365 cubic yds. of fine concrete have, in their final certificate, allowed to the contractors the value of 3994 cubic yards of the 4365 cubic yards allowed in the original Bills of Quantities. which, under the terms of the clause in the written contract, went in lieu of the masonry face and coarse concrete backing. The Engineers have, in their certificate, deducted from the value of the 4365 cubic yards, (see items 2, 7 and 21, Defendant's Exhibit 1A) 371 cubic yards, that being the portion of the 4365 cubic yards that remained, or was required under the amended plan, to bring the substructure of the Wet Dock Wall up to the same level with the substructure of the Tidal Basin Wall, (Letter of July 22, 1879, Defendants' Exhibit at Enquete B 13, paper 119 of Record.)

"In reference to the altered back section of the wall and counterforts of the Tidal Harbour and Wet Dock respectively, by working drawings supplied June 5th, which bring each offset of the superstructure on the same vertical and horizontal line throughout.—I have to state that the quantity in excess shewn in drawing will be computed and paid for according to the contract and schedule of rates." And Kinipple's answer to cross-interrogatories 26, 79, 80, 81, 82, 83, 84, 86 and 87 that is to say to 4 feet above low water.

The Engineers have proceeded upon the principle that the portion of the area occupied by the timber face and the fine concrete shown by the contract drawing to have been displaced under the amended plan by the masonry face is to go in lieu of, and form part payment for, the masonry face, and such portion of the area occupied by the fine concrete as shown by the contract drawing to have been displaced by the coarse concrete backing should go in lieu of, and form part payment for, the coarse concrete. Kinipple's answer to cross-interrogatories Nos. 25, 26 and 64.

The quantity of coarse concrete backing placed in rear of the masonry face from 4 feet above low water to coping level is proved to have been approximately 16079 yards, in evidence of Mr. Boswell, Mr. J. H. Peters, Colonel Moore and Exhibit B26. Mr. Cummings p. 83.

The Engineers in their final certificate have allowed to the contractors, items 1, 30, 31, 32, Defendants' Exhibit 1 and Defendants' Exhibit 1A, items 22, 49, 50 and 51, 13545 c. yds. in lieu of 16079 c. yds. of coarse concrete backing that was placed in rear of the masonry face of the Tidal Basin and Wet Dock Walls, from 4 feet above low water to coping level, or 2523 c. yds. less allowed than the quantity of the coarse concrete backing that was placed in rear of the masonry face of the wall by the contractors.

The engineers maintained that the 2523 c. yds. of coarse concrete placed in the works by the contractors in excess of the quantity allowed by the certificate was in lieu of so much of the fine concrete which went in payment for the excess of the coarse concrete backing.

The area occupied by the timber face as shown by the contract drawing and bills of quantities from 4 feet above low water to coping level, is 66636 cubic feet, or 2468 cubic yards or approximately, an average thickness of one foot for the entire face of the Tidal Basin and Wet Dock Walls.

The area occupied by the Portland cement fine concrete, as shown by the contract drawings, from 4 feet above low water to coping level in rear of timber face of the superstructure of the Tidal Basin and Wet Dock Walls was 107, 858 cubic feet, or 3,994 cubic yards or approximately an average thickness of one foot and seven inches over the entire face of the wall. The timber face and fine concrete combined occupied an area in the face of the wall of 174,474 cubic feet or 6462 cubic yards or an average thickness over the entire face of the wall of 2 feet 7 inches.

The Masonry Face as shown in the contract drawings and specification B, occupied an area in the superstructure of the walls from 4 feet above low water to coping level of 114,075 cubic feet, or 4,225 c. yds or approximately- an average thickness of one feet and eight inches over the entire face of the wall, thus showing that only 1757 c. yds. of the fine concrete was displaced by the masonry face, and that 2237 c. yds of the fine concrete was displaced by the coarse concrete backing, while the contractors have placed 2523 c. yds. of the coarse concrete backing in the walls in excess of the allowance of 13,545 c. yds. as made by the Engineers in the Final Certificate for the coarse concrete, and as stated by the Chief Engineer's answer to cross-interrogatory 26 : this quantity is paid for by so much of the fine concrete displaced by the coarse concrete backing.

Under the amended plan of June 5th, 1879, Plaintiff's Exhibit 24, being the small plan attached to the Commission, showing the Masonry face, and the letter of July 22, 1879, Defendant's Exhibit B 13, the Engineers increased the height of the substructure of the wet dock walls from three feet above low water to 4 feet above low water, at the same time doing away with all the work called for by the original plan from 3 feet above low water to coping level, and by the amended plan, required the contractors to raise the substructure one foot in height, 9 feet in width and 2310 feet in length, which area was filled with coarse concrete in excess of the allowance made for the fine concrete for the face of the works. They also increased the width of the whole substructure. The Engineers have allowed for this to the contractors, in their Final Certificate, under the authority of clause 48 as for extra work. This accounts for the

increase in the items of Defendant's Exhibit IA for the concrete over and above the quantities allowed in the bills of quantities for the same items as contained in the contract Blue Book.

The foregoing discussion on the subject of the concretes can only be made perfectly plain to the Court, on reference to a plan shewing the space occupied by the timber and fine concrete as originally contemplated to be done under the contract drawings, also the space occupied by stone and coarse concrete as the wall was actually built, such a plan we shall exhibit at the hearing.

We also annex a statement of the Plaintiff's account made up upon the basis of the allowance made by the Engineers, to which has been added an allowance for the actual space filled by the masonry wall which should have been filled by fine concrete under the original plan. By this allowance the Plaintiff gets $11,148.75 more than under the strict interpretation of the contract between the parties he would have been entitled to, and the Appellants get only the actual work done by them; according to the Plaintiff's contention, he claims payment for the work done by the Appellants in respect of which he does not even pretend to have executed any work. This statement shews that the Plaintiff has been over-paid a sum of $13,466.94, an over-payment guaranteed by his bond to the Defendants. (Defendants' Exhibit at Enquête B. 7.)

The Plaintiff throughout the trial has laid great stress upon the progress estimates made at different times by the Resident Engineer with respect to the different works, and would appear to rely upon a stipulation between the parties to the effect:—"That the said parties shall be paid by the Quebec Harbour Commissioners for their aforesaid works as the same shall progress in accordance with the Schedule of prices annexed to the main contract, and upon the certificates to be granted to the parties hereto by the Resident Engineer for the time being of the said Quebec Harbour Commissioners."

This stipulation appears to us to be free from all ambiguity. It provides that the parties are to be paid in accordance with the Schedule of prices annexed to the main contract. These payments, as the works progress, are to be made upon the certificates of the Resident Engineer.

How it is possible to found upon this paragraph of the contract a contention to the effect, that the decision or appropriation made by the Resident Engineer of the sums payable in respect of the contract, could affect or alter the rights of either of the parties, we are at a loss to understand. Certainly the parties have contracted in unambiguous and specific terms as to their respective rights, and as to the manner of payment of the works and have not left anything whatever to the decision of the Resident Engineer. In addition we refer the Court to clause 59, page 15 of the blue book already cited by which it is expressly covenanted that the progress estimates are merely approximate and are in no way binding upon the Engineers. By clauses 50, 54, 55 and 56 the Engineers were given full power upon the termination of the works to adjust all matters in dispute and to award such final sum as they considered the contractors were entitled to, without taking into consideration the progress estimates at all, and in fact this power the Engineers largely used to the prejudice, as the parties to the present litigation contended, of both of them. The evidence of Mr. Kinipple already quoted, establishes that the Engineers exercised the powers conferred

upon them by the contract of reviewing the whole of the accounts at the termination of the work, without taking the progress estimates into consideration.

To this may be added the evidence of Mr. Boswell the Assistant Engineer (Respondents Factum p. p. 191 and 192,) Examined as a witness for the Plaintiff.

Q. You were examined with respect to the progress estimates. In the first statement that was made by Mr. Morris, the chief engineer, from the statements prepared by the resident engineer and the contractors, were the progress estimates used at all?

A. Well, I don't really know how he made his statement.

Q. Were they made the basis at all of the statement which he ultimately made and handed in?

A. *They should have been, because there are details of changes and* extra work that only appear in the progress estimates. That is the only record.

Q. *Were they wanted in any part from that?*

A. *Certainly not.* If there had been no changes, they could say: here is your proportion of the bulk sum that you have completed.

Q. *And except in so far as they were a record or the only record of the changes in, or additions to the work, were they made use of at all?*

A. *No, that was their only use.*

The Plaintiff, when the first accounts were submitted to the Engineers after the close of the works, as provided by the contract, did claim payment of the stone wall in a lump sum, in the same manner as he has done by his present action. The Engineers having refused to entertain this position at all, the Plaintiff made his subsequent accounts upon the rational principle of following the provisions of the contract. This is the principle, upon which both the statements Exhibit B 4 and B 8 are made, though they are incorrect in detail.

Reverting to the Plaintiff's account p. 174 we state that items 1 and 3 are erroneous, and are made up on an entirely wrong principle, and that the true amounts which the Plaintiff is entitled to have, are the sums allowed in the statement filed in the case by the Appellants. In corroboration of this we refer the Court to the two statements made out by the Plaintiff, already referred to one dated the 9th March 1887. (Defendants' Exhibit B 8 p. 189), the other the 8th June 1891. (Defendants' Exhibit B 4. p. 184), both of which correspond with the sums allowed by the Defendants, the figures being different inasmuch as the four extra crib blocks claimed as extra work in the Defendants' statement, are included in the sums claimed under bills 1 and 4 in the statements B 4 and B 8.

Both these detailed statements were made after the Engineers had given their final certificate.

On the 4th March 1886, the Plaintiff wrote Col. Moore, one of the Appellants as follows: (Plaintiff's Exhibit A56, paper 197 of Record.)

RECORD.

In the Court of Queen's Bench.

No. 191.
Appellants' Factum, Dated 23rd Nov. 1896.
continued—

Quebec, 4th March 1886.

Dear Col. Moore,

Yours of the 26th ultimo came to hand only this morning, contents noted. Consequently I am addressing this to Ottawa in the hopes that you may receive it there. Since you left I have a copy of K. & M's. letter to Mr. Verret that accompanied their final certificate copy of which I enclose for your information.

We will find that they have allowed us for all work performed. The deductions are for clerical errors and removal of sand $11,000 as per statement mentioned in their letter.

You will therefore perceive that as my claims are allowed there is no reason why I should volunteer a deduction to obtain a settlement. You are well aware that from the beginning it was that alleged clerical error that blocked the way to a settlement.

I think that you are acting in your interest in going to Ottawa. Mr. Bossé leaves for there this evening. Owing to the Riel question, Valin and McGreevy will not be able to leave Ottawa to be here for the proposed meeting next Saturday

You should get Bossé and the Commissioners to assist you in making Sir Hector understand the unjustice of these deductions allowed.

We will be even with the award of the Dominion Arbitrators which award was just and fair.

Yours truly,

SIMON PETERS.

And on the 8th August 1887, the Plaintiff wrote to the Commissioners, while the last suit was pending, the following letter, (Plaintiff's Exhibit A51, paper 195 of Record.)

Quebec, 8th August, 1887.

To the Chairman and Board of Harbour Commissioners, Quebec.

Sirs,

Mr. Charles Samson to whom I owe between $14,000 and $15,000 is pressing me for a settlement and threatens me with very serious legal proceedings, unless he is paid—such proceeding would injure my business and credit to a ruinous extent. I am therefore reluctantly compelled to ask your Board to place me on the same footing as you have done my colleagues, Moore & Wright to whom you advanced $2000, to release them at the Union Bank.

The sum coming to me according to the certificate of Messrs. Kinipple & Morris, amounts to within a trifle of $34000. The amount to satisfy Mr. Samson will still leave a considerable balance in your hands.

I take this opportunity to state that I take no part in the action pending against the Commission, as I am individually satisfied with the Engineers' certificate.

I am, Sirs,

Your most obedient,

SIMON PETERS.

Item 2 of Plaintiff's account is admitted.

Item 4, being a claim in respect of bill 7, of the original contract works, is false. It is neither the amount allowed by the final certificate nor does it represent the true value of the work done by the Plaintiff, nor does it agree with his previous statements " B 4 " and " B 8." The claim is for the total amount of bill 7, of the original contract works, and no deductions are made for the fenders which should have been placed upon the masonry wall as shewn by the contract plans, but which were omitted.

This item is connected with the 26th item of the account " Engineers allowance for fenders $1038," which is explained by the fact that certain work was done and fenders prepared when it was decided not to put any fenders at all upon the stone face, the Engineers thereupon allowed the full cost of the work done, but not utilised, and they deducted from bills of quantities the total amount for fenders shewn in the bill.

The Plaintiff in this item claims payment for work which he admits he did not do, and which was deducted by the Engineers, though he is allowed as extra work full payment for the part of this work which was commenced and afterwards abandoned by order of the Engineers. In both the statements B4 and B8, the amount now over claimed is deducted.

Comment upon the honesty of such proceeding is unnecessary.

In the highly imaginative evidence given by the Plaintiff's witness and son, Albert H. Peters, (Respondents' Factum p. 69, l. 27) he says:

Q. Item No. 4. Bill No. 7.

A The whole amount of this bill was not done, but the whole amount of the value was allowed by the chief engineers, Kinipple & Morris, in their final certificate, Defendants' exhibit No. 1, annexed to the Commission, as a set off for other works done by Mr. Peters. I suppose that was the reason for allowing it.

P. 106—A There were certain works done by Mr. Peters from time to time. This work was done and Mr. Peters could not at the time make any claim for it; he could not ask them for any estimate; but under the contract he was obliged to do these. When the contract was finished the engineers took this into their...took this into consideration, and allowed Mr. Peters instead of making deductions off his bills, they allowed him his bills intact, and Mr. Peters did not press his claims for the different works.

Q Just tell us what work is allowed for in the certificate, which was not done by Mr. Peters?

A There was some of the fenders and bollards, some of the bollards. There was part of Bill No. 7 too. The claims which Mr. Peters had for work done during the progress of the work on the contract memos which he would hand to Mr. Pilkington, they were taken into consideration when the final certificate.... He gave Mr. Peters the full amount of what was coming to him.

Q I understand the fenders were not done?

A The fenders were not done, but there was work done in lieu. If the fenders were not done, they would have mentioned it in the final certificate. It was in their power to deduct it then, when they were giving the final certificate to the contractors, Peters, Moore & Wright.

Q So that your interpretation again of Defendants' exhibit No. 1 annexed

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In the Court of Queen's Bench.

No. 191
Appellants' Factum, Dated 23rd Nov. 1896.
continued—

to the Commission, is that you are entitled to the whole of the cost of the fenders, whether done or not; to the whole of the cost of the bollards, whether done or not; and, in addition, to an amount specifically allowed for fenders partly constructed?

A Yes, and for work that was done besides.

Q The work which was done, besides, does not appear in any way in the certificate?

A No; for the simple reason that they have not allowed any deduction off wood and iron work: they have allowed that intact. There is no deduction to be found anywhere on the final certificate for work not done by Simon Peters.

This witness being compelled to admit that the fenders and bollards were not put in has prepared a statement (Record Paper 193 Plaintiffs Exhibit A 49) by which he makes the following deductions:

Bill No. 1—Fenders and Bollards	$ 1,458 00
Bill No. 4—Fenders, Bollards and forming counterforts	3,451 50
Bill No. 9—Wood and Iron work	2,654 23
ADDITIONAL WORK	
Fenders and Bollards in 4 extra cribs	215 88
	$ 7,779 61

To attempt to excuse claiming payment for this work not done, he makes up a purely speculative and imaginary account for work done, which he claims to offset against this account without one word of evidence to justify the statement that the work was done, or if done allowed for, by the Engineers. All that by the exercise of a vigorous and not very scrupulous imagination he has been able to compile is a fictitious claim for $5,016.21.

Wood and Iron work done by Simon Peters as a sett off for deductions in Bills No. 1 and 7 and for extra cribs allowed by Kinipple & Morris in Final Certificate, Defendants Exhibit No. 1.

Bill No. 1—Excess of Timber and Bolting, and additional plank and scantling, &c. in 31 cribs.	@	$ 268 97	
Allowed by final certificate	@	264 07	
31 Cribs	@	4 90	$ 151 90
Bill No. 2.—Extra piling and bolting at Angle of Ballast wharf	@	1492 82	
Allowed in final certificate	@	1143 00	349 82
Bill No. 4.—273 screw bolts to elm capping, bolt nuts, washers, &c. 29484 lbs	@	5cts	1474 20
6 extra lengths on sheet piles and driving same 55 times	@	4 95	272 25
Additional entremise filling to face of sheet Piles		14 37	782 14
Bill No. 8—Extra superstructure			1232 90
Extra masonry $1254\frac{10}{100}$	@	60cts	752 90
			$ 5,016 21

Item 5, also differs from the amount allowed by the final certificate 1 A. The difference is small and is explained by deductions for work not done.

Item 6—This represents one-half of the amount allowed in the bills of quantities for temporary screens to protect trenches.

At the trial, the witnesses H. J. and Albert Peters, seeing that they could not hope to recover this sum in view of the terms of the contract between the Plaintiff and Defendants, by which it was stipulated " that Simon Peters should gratuitously furnish suitable timber necessary to the construction of the screens, which said screens however shall be constructed at the expense of the said Moore & Wright, and the timber used in their construction, or so much thereof as shall not have been lost, shall on the completion of the said works revert to the said Simon Peters and be considered as his property," contended that this represented the value of timber supplied by Peters and not returned.

This is so obviously an attempt to bolster an absolutely unjustifiable claim that it seems hardly necessary to point out that they have not proved that any part of this timber ever was converted by the Defendants to their own use; that the account which they have produced and to which Albert Peters has sworn, is a fabricated account. To have recovered at all any part of this sum it was essential that the Plaintiff should have shewn that the timber supplied by him under this contract, had not been used for the purpose for which it was intended, or had been converted by Moore & Wright to their own use after the protection to the trenches became unnecessary. Such evidence was not attempted, and Colonel Moore has told us that in addition to the timber supplied by Mr. Peters, he was obliged to purchase large quantities for the purpose of the screens and that no part was recovered or utilized by them. This sum therefore is justified neither by the terms of the contract between the Plaintiff and the Defendants nor by the evidence in the case.

The Evidence on this item of the account will be found at the following pages:

Respondents Evidence, A. H. Peters, p. 69, l. 34 and p. 70, l. 1, and on cross examination p. 115 l. 23.

The 7th item is for additional cribs.

The remarks which we have made with respect to the 1st and 3rd items apply in every respect to this.

The next item in dispute is the 24th, being for proportion of understated bills of quantities allowed by Engineers.

There is a short answer to this ridiculous contention, and it is, that the Engineers allowed no sum for understated bills of quantities, in respect of wood and iron work: they did allow by the certificate Exhibit 1, annexed to the Commission, which is admitted by both parties, " cubic yards of concrete in rear of stone wall wet dock understated in bills of quantities or error $4180 " (p. 194 item 32.)

As this allowance is in respect of the work done by the Appellants it would seem to be characteristic of the spirit in which the Plaintiff has conducted his litigation, that he should claim a part of it. It is also to be observed that in neither of the statements "B4 " nor " B8 " does this claim appear. The evidence of the two Peters' upon this item, throws much light on their claim—we quote part of it: H. J. Peters pp. 45 and 46, A. H. Peters, p. 74.

A. M. Peters having discovered discrepancies in the timber and iron, in the quantities of timber and iron in the Blue Book, drew the attention of the resident engineer and Mr. Morris, when he was out here, to the discrepancies. Plaintiff's Exhibit No. 18 is a true copy of these understated bills of wood and iron in the original bills of quantities. Item 25 is for pile or stub foundation. This work was done solely by Mr. Peters with his own machinery and his own timber, and by no other.

Q. Was that allowed?

A. *That is allowed in Defendants' exhibit No.* 1 *attached to the Commission.*

P. 98—Q. Will you refer to Defendants' exhibit No. 1 annexed to the Commission, being the final certificate, dated 5th January, 1887, and state whether in that final certificate you find the item 30, sheet 2, or Plaintiff's Exhibit No. 14, being: " Proportion of understated in bills of quantities, $2,309.21?

A. From data made out from the Blue Book and checked over by myself, and from Mr. Peters' own explanations of same, this claim of " Proportion of understated in bills of quantities " having been—The understated in bills of quantities or error that appears in the Blue Book in the different bills was drawn to the attention of the engineers by Mr. Peters, who has told me so time and time again, and it was nothing new for the engineers to know they were understated in bills of quantities by them. There was a clause in the contract saying there should be no claim made for it, but when there was a claim allowed for understated in bills of quantities or errors, Mr. Peters found errors in his bills of quantities to that extent, and his share of that $4,180.00 mentioned in Defendants' Exhibit No. 1 annexed to the Commission is what is mentioned in Plaintiff's Exhibit No. 14, $2,309.00.

Q. So that I understand your explanation to be that item 30, sheet 2, of Plaintiffs' exhibit No. 14, is your interpretation of this entry in Defendants' exhibit No. 1 annexed to the Commission: " Cubic yards in concrete in rear of stone wall in wet dock, understated in bills of quantities or error (1tem 32) $4,180.00."

A. That is what Mr. Peters claims was his proportion of that understated in bills of quantities or error.

Q. So that when you say that Plaintiffs' exhibit No. 14 is a true statement of the amount of work done by the contractors and allowed for under the certi ficate, Defendants' exhibit No. 1 annexed to the Commission, you mean that it is your interpretation of items allowed in so many words by the engineers to Moore & Wright, which you think ought to be allowed to Peters?

A. I didn't say there were allowed to Moore & Wright: I said that Mr. Peters has claim in that understated in bills of quantities or error.

Q. You have not answered my question, which is: So that when you say that Plaintiffs' exhibit No. 14 is a true statement of the amount of work done by the contractors and allowed for under the certificate, Defendants' exhibit No. 1 annexed to the Commission, you mean that it is your interpretation of items allowed in so many words by the engineers to Moore & Wright, which you think ought to be allowed to Peters?

A. I don't quite catch it.

Q. When you say that Plaintiffs' exhibit No. 14 is a true statement of the

work done by both the contractors and allowed for under this certificate, Defendants' exhibit No. 1 annexed to the Commission, you mean that if you find in Defendants' exhibit No. 1 allowances, which, in your own or in your late father's opinion, ought to have belonged to him, your appropriate them to him, whether the engineers have given them, in so many words, to Moore & Wright or not, is that so?

A. The final certificate, Defendants' exhibit No. 1, allows $4180.00 for understated in bills of quantities, and Mr. Peters has filed a list of these understated bills of quantities in wood and iron work to the amount of $2309.

Q. Let me attract your attention to items 30, 31 and 32, of Defendants' exhibit No. 1 annexed to the Commission, and state whether the $4180.00 allowed there is not allowed in so many words for cubic yards in concreting in rear of stone wall in wet dock, understated in bills of quantities or error.

Objected to: Objection overruled.

A. It appears so.

Q. Now, is there in the certificate, Defendants' exhibit No. 1 annexed to the Commission any other item in any way applicable to item 30, sheet 2 Plaintiffs' exhibit No. 14, being the understated bills of quantities in question?

A. The only item is No. 32, which mentions understated in bills of quantities or error.

We think this item may be considered as finally disposed of.

Item 25, this claim is for $4378.65, a sum allowed by the Engineers for pile or stub foundation. This work was not provided for in the original contract: the foundations for the cribs were to have been dredged and filled with stone. At the suggession of the Engineers and in view of the difficulty of levelling the bottom for the cribs; stub foundation was substituted. This consisted of short piles driven into the dredged channel at the required depth: the original work, namely that of dredging and stone foundation, was a part of that which the Appellants were required to do. When the substitution was made, the following correspondence took place between the joint contractors; under the agreement contained in these letters, the Plaintiff did the work for the Defendants, at their cost and risk, (Defendants Exhibits B 14, B 15, B 16, B 17, B 18 and B 18a. Papers 120 and following of Record) and sent them the account, also printed hereafter.

Quebec, September 2, 1878.

S. Peters, Esq.,

We find that the piles in rear of cribs No. 2 must be removed before we can fill the crib, and think that two or more guide piles should be driven so as to hold the crib in place before these are removed. The bottom for No. 4 is ready for the short piles, and we would like to have you give us a price per piece for furnishing and driving the same, so that we may know what this method of leveling the bottom is to cost.

Yours truly,

MOORE & WRIGHT

per Clerk.

RECORD.

In the Court of Queen's Bench.

No. 191. Appellants' Factum, Dated 23rd Nov. 1896. *continued*—

Quebec, September 2, 1878.

Messrs. Moore & Wright,

Dear Sirs,

In reply to your note of this morning, I would remind you that the Piles and Bracing behind No. 2 Crib, had to be put in, in consequence of the bottom not being properly levelled ; I don't think the guide piles you speak of, would be sufficient to keep this crib up at the back. It will require bracing reaching from the slope as low down as possible, to support the crib at top as at present.

I am pleased to note that the bottom for No. 4 crib is ready for the short Piles, as I have them all ready to drive.

I have to decline giving a stated price for this work, but at the same time will do it as economically as possible in your interest, without assuming responsibility.

Yours truly,

SIMON PETERS.

Office of Moore & Wright

Contractors on Quebec Harbour Improvements.

Quebec, Aug. 26th 1879.

Simon Peters Esq.

Dear Sir,

Please give us your lowest price for which you will furnish and drive the stub-piles per piece in the shoal trench for the shoal cribs to rest upon ; please send us an answer to-day, as we want to known the cost before we proceed with any more of the work.

Yours truly,

MOORE & WRIGHT,

per A. H. J.

Quebec, 26th August 1879.

Messrs. Moore & Wright,

Dear Sirs,

I am in receipt of yours of this date asking me to give you my lowest price for furnishing and driving the stub-piles for shoal cribs to rest upon. In reply, I must say that I have not the necessary data by which to make an estimate of this work. In the meantime, I will say, that my intention is, to charge you the bare cost of this work. I will get particulars from my Mr. Ross and let you know what it comes to.

I remain yours truly.

SIMON PETERS.

MESSRS. MOORE & WRIGHT,
To SIMON PETERS, Proprietor. *Dr.*

1898—Sundry Pile driving—Richard Young, Engineer on Pile driver, Time and material making one oak follower, including Iron fixtures. 1 piece oak, 41 x 14 x 14	$ 50	00
Driving 128 stub piles, including material and labor, Tidal Harbour—Crib No. 10 and 11 @ $2.83	748	80
1879—W. Ross, Engineer on Pile driver—Driving 28 stub piles, including material and labor, Tidal Harbour—Cribs No. 10 and 11 @ $5.85	163	80
Time and material new oak follower 1 piece 43 x 12 x 13	40	00
Driving 120 stub piles, including material and labor, Wet Dock @ $3.07	368	40
Removing and replacing one Gauge pile, broken by dredge, 42 ft. @ $35.00	14	70
1881—Ferdinand Labbé—Driving 100 stub piles, including material and labor, Wet Dock @ $3.07	307	00
E. & O. E.	$1,692	70

The Defendant, who is the only witness examined upon the point, says: "that this (the account B 18 A) is more than double the real value of the work done."

It is true that the Engineers have allowed $4378.65 for work which the Defendants contend is liberally paid at the sum of about $800, but it is to be borne in mind that the responsibility assumed by the Defendants in connection with this work was of the most serious character, and that if these foundations or anyone of them had given way at any time, the Appellants would have been obliged to do work at a cost which is practically incalculable: it would have necessitated the removal of the cribs filled with concrete and the replacing of them by new cribs freshly filled with concrete. In any event, whether the allowances made by the Engineers be great or small, it is an allowance in respect of work done by the Appellants, for the Plaintiff was a sub-contractor in this instance to the Defendants, and did the work in their interest, and upon their responsibility as stated in the correspondence. If no allowance had been made by the Engineers for this work, the Plaintiff would have been prompt enough to exact payment from the Defendants, of the cost of the work, but as the amount allowed by the Engineers exceeded very considerably the actual cost, he has conceived the ingenious scheme of attempting to appropriate this sum to himself on the ground that the work was actually done by him.

Item 26 of the Plaintiff's account, is, as already stated, admitted. It is the full allowance for the work done upon the fenders by the Plaintiff, which fenders not having been put upon the works, the total amount of the bill in respect thereof, was deducted by the Engineers, but the Plaintiff by his present action, not only claims payment for the extra allowance for fenders, but wants payment for the fenders not put in, thereby in effect taking payment twice for

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Appellants' Factum, Dated 23rd Nov. 1896.
continued--

the small part of the work done by him, and claiming a balance for work not done at all.

Item 40 is for a bonus of $5000 payable by the Defendants to the Plaintiff, upon the final settlement with the Harbour Commissioners. This item is of course admitted, and the Plaintiff is entitled to credit therefor, as of the date of the agreement between the parties, namely the twenty-ninth October 1892, which was the date of settlement with the Commissioners.

The foregoing items of the Plaintiff's account are those referring to the contract works, which call for detailed discussion, the remaining items which are not specifically admitted will be dealt with either in the tabulated statements of account printed hereafter or in the discussion of the Appellants' accounts, but there remain six accounts for work, etc: claimed to be due by the Appellants to the Respondents, which do not involve the division of the money on deposit but are in the nature of an ordinary claim for work done and money due, these are the items 41, 43, 44, 45, 46 and 47 of Plaintiff's Account. (Appellants Factum p. 176.) We shall discuss each of these items shortly.

Item 41 of the Plaintiff's account is a sum of $433.75 made up of different amounts for rent of offices and use of a part of the mill yard and premises belonging to the Plaintiff. The debt is claimed to have been incurred in the summer of 1877, and the account is dated 30th November 1877. It was first rendered to the Defendants in 1883 at a time when prescription had already accrued in respect of it, if the debt was due at all.

This account does not form part of the joint contract works but is claimed in respect of the construction by the Defendants of their plant. It therefore does not come under the provisions of the contract between the parties, which provided for a division of the incidental expenses in the proportion of their interest in the contract.

Further, we submit that the Plaintiff has entirely failed to prove any indebtedness whatever on the part of the Defendants to him. The only witnesses examined are Henry Peters and Albers Peters. Albert Peters' knowledge of the whole matter is confined to what was stated to him by his father, he was at that time a boy 14 years of age. Henry Peters is absolutely unable to give the slightest detail with respect to the account, and his evidence may be summarised by saying that he found the account upon the books, and he believes it to be due and to be reasonable.

Colonel Moore has testified that Mr. Peters asked him to build some of his plant there, and that he believes the hull of his dredge was built in the Plaintiff's yard.

At the time when the Plaintiff claims that the Defendants were occupying a considerable part of his premises, the Defendants has leased and were in the occupation of the whole of Cantin's ship yard including the dwelling house which was used as an office, and at this place was practically constructed the whole of the plant. Moreover, in the spring of 1879, a settlement of accounts for material, etc., was had between the Plaintiff and the Defendants, in which no reference whatever was made to the claim now put forth.

A glance at the evidence will establish how entirely fictitious this account is;

The witness, H. J. Peters, at p. 3 (Respondents' Factum) swears to the account without hesitation—at page 4, l. 39, he says:

Q. Then you know each and every item of that account to be true and correct?

A. I do.

On cross-examination p. 29, he says that his father was, in addition to the Harbour Works contract, carrying on his ordinary saw-milling and contracting business and adds:

Q. I suppose that his mill and mill-yard and wharves were used for the purposes of his ordinary work during the season of 1877-78?

A. They were.

Q. In the same manner as before?

A. They were.

He is unable to state how long the office for which five months rent is claimed was occupied, nor by whom (p. 30.)

In addition, he admits that shortly after the signing of the contract, the engineers required the contractors to have an office of the works, in accordance with the terms of the contract (Blue Book p. 7, clause 27), and that this office was occupied by Moore & Wright (p. 31.)

And finally says p. 32.

Q. So that when you say that Colonel Moore occupied part of the office you do not mean to say that he had the exclusive occupation of it?

A. Oh, no.

Q. Can you state that during 1877 Colonel Moore ever had any employee in your office, either continuously or for any length of time at all—any of his own?

A. I cannot remember.

Q. Neither Colonel Moore nor any person employed by him had a special desk at your father's office?

A. That I couldn't say either. All I can say is that there was no objection made by Colonel Moore, to my knowledge, at the time of the charge made for the use of the office.

The remaining items of this account, are equally fictitions and unsupported by evidence. We refer the Court to pages 34, 35 and 36 of H. J. Peters' testimony—After an adjournment of the Court, the witness' memory became singularly clear (he says p. 56.)

A. I have additional information with regard to the first account against Moore & Wright for the rent of the office for five months. I find that Moore & Wright used the entire three roomed brick office during that time. I find also that they constructed a large dredge and several scows in the pond, and that they used the middle wharf for certain machinery in connection with their dredge.

Q. Where did you get this information?

A. I got it from data taken at the time.

Q. Just produce it please?

A. A part from data; but referring to the things which took place at the time the whole thing came back freely to my mind, and, further, that office was used principally by Mr. Wright and Mr. Wright's father at the time. They were there constanly. I am referring now to my memory.

RECORD.

In the Court of Queen's Bench.

No. 191. Appellants' Factum, Dated 23rd Nov. 1896. *continued*—

And he further testifies (p. 64).

Q. Before the adjournment yesterday I asked you to produce the data which enabled you to speak with respect to the amount claimed for rent, etc.

A. I have not been able to place my hands upon it, but I can swear from memory that the office was occupied during that time by Moore & Wright.

Q. Now, Mr. Peters, when you were first cross-examined upon that question your memory did not permit you to give us any details whatever, and after the adjournment you came back and gave us from memory certain details as to what had occured, and you told us that you had refreshed your memory by means of data. I have askad you to produce this data, and you now tell me that you cannot do so. This data cannot have been mislaid between yesterday at noon and this morning. Where did you get the information?

A. I got it by referring to other papers connected with the work, and by bringing my memory back to that point. I brought my memory to bear upon that point, and I remember distinctly now the whole thing, that it was occupied by Moore & Wright during the occupancy of the yard and pond, while they were building their scows and dredges.

The witness A. H. Peters (p. 75 and 76,) says that these accounts are due. This youth had at this period arrived at the mature age of 14 years and was at school, at page 114, l. 40,—he says: "I had no knowledge of what was done that year 1877,"—and at p. 118, he says:

Q. Who occupied that office for Moore & Wright? Who were the persons that were there?

A. I rememember Mr. Wright and Mr. Wright's father. Mr. Wright's father used to be around there a great deal, and Mr. Curtis used to conduct the works there, the building operations which they had going on.

Q. Are you prepared to swear how long that office was occupied?

A. No, not the length of time, but Mr. Peters gave me that data, that they had that office for that time.

And being asked where be spent the summer of 1877 he says- (p. 120).

A. That is a thing I cannot just say for the moment. You have taken me by surprise, where I spent the summer of 1877, but I was away at the country for a time.

Finally this account is all for alleged services in 1877—it was not rendered till 1883. After many settlements of account had been had, between the parties in connection with matters of the same character (Appellants Evidence pp. 16, 17). Colonel Moore tells us that in 1877 he had Cantin's shipyard under lease, where he had ample place to build all his plant and that he built some parts of his plant in Peters' yard, at Peters' request for the purpose of giving him the advantage of supplying the wood and labour and on the distinct agreement that no charge should be made for the use of premises.

We submit that the Plaintiff has failed to prove that the Appellants are indebted to him in any part of the amount claimed by this account: that the presumption from the course of conduct followed by the Plaintiff is that he never intended to charge the Defendants for the use of any portion of his property which may have been occupied by them, and in any event all question is set at

rest by the application of the law of prescription, a law which as the account does not form any part of the contract accounts, would be applicable.

Item 43 of the Plaintiffs' account is a sum of $1424.26 claimed as being the cost of repairing damage to the Northern embankment caused by ice during the winter of 1878 and 1879 for want of sand filling.

The Plaintiff's witness Labbé (p. 153) says that about 5 or 6 cribs were moved by the ice in the winter of 1878-79 because they were not filled with sand and that he worked straightening the cribs for a couple of months, with about seven men, he says (p. 154) that the cribs which moved had had no sand put in them.

The witness Flamand (p. 155) gives testimony to the same purport in general terms.

The witness H. J. Peters who claims to prove the account, when asked to produce all correspondence failed to produce any. (Respondents Factum p. 61.)

There are two peremptory and conclusive answers to this account:

1st. By the contract providing for the division of the work, it was agreed that each should protect and maintain his own work: (Appellants Factum p. 133, l, 1.) moreover the Defendants were under no obligation contractual or otherwise to fill in sand for the purpose of protecting the Plaintiff's work: if the damage claimed really was suffered, which we much doubt, the Plaintiff alone was to blame in the matter.

2nd. Assuming for the sake of argument that the Appellants were obliged to fill in sand for the purpose of protecting these embankments, there was never at any time any *mis en demeure*, without which no claim for a breach of contract could be made good: on the contrary by a letter, which has been produced in the case, dated in the summer of 1880, the Plaintiff for the first time, in so far as the Record discloses, gave any notice whatever to the Defendants with respect to the filling in of the sand behind the crib work.

The Court will note that at the time this letter was written, the Plaintiff had contracted for the building of an ordinary crib work in lieu of the pitched slope provided for in the contract. In the winter of 1879, the Plaintiff using the firm name of Peters, Moore & Wright, had, without the authority or consent of the Appellants, contracted to construct the Northern crib work as it now exists. The Defendants appealed to, to ratify this arrangement, agreed to do so, provided no deductions from their works were made as a result. In fact the change did involve deductions from the Defendants' work, namely the placing of stone at the toe of the slope: notwitstanding this however the Defendants tacitly agreed to the change, but did not undertake at any time to fill in the enlarged embankment within any definite time. It is further to be observed that by the 107th clause of the Blue book (p. 30) the contractors were obliged to put the dredged material at the back of the masonry face, until a width of 50 feet was attained.

The evidence again with respect to this claim is of the flimsiest character.

Item 44 is a sum of $585.14 claimed for damage done to one of the cribs by reason of the bottom not having been prepared. The account is dated July 1878. The only testimony, (except that of H. J. Peters), is the evidence of Frank DesRuisseau who tells us that an accident did occur to one of the cribs in 1877, and that he took two days with about 15 men to remedy the injury, that is to say, it cost about $30.

RECORD.

In the Court of Queen's Bench.

No. 191 Appellants' Factum, Dated 23rd Nov. 1896. *continued--*

This last account is open to all objections which we have made against the one next preceding, want of notice, prescription, and it is, if possible, more absolutely unsubstantiated by evidence than the previous one.

The witness last named was not in the employ of the Plaintiff in 1878 when the work is claimed to have been done, but was at that time employed by the Appellants.

Item 45 is an account for materials furnished—it is unproved and would have been prescribed, if due, years ago.

Item 46 is also quite unproved and prescribed. Nevertheless the Defendants by their pleadings, have admitted the item of $14.70 cost of a broken guage pile.

Item 47 cost of a silver trowel used on the occasion of the inauguration of the works by the Princess Louise. The Appellants never undertook to pay any part of this expenditure which was entirely voluntary on the part of the Plaintiff : in addition the Appellants themselves incurred a very much larger expenditure in connection with this account for which they have made no counter claim against the Plaintiff.

We now turn to the Appellants Accounts.

The Appellants claim to be paid and allowed the Plaintiff's share in four accounts.

Defendants Exhibit No. 4 (Paper 18) amounting to $8471.48 and interest.

Defendants Exhibit No. 5 (Paper 19) amounting to $224.22 and interest.

Defendants Exhibit No 6 (Paper 20) amounting in principal and interest to $39.757.63.

Defendants Exhibit No. 7, amounting in principal and interest to $8427.38.

By the main contract with the Commissioners, the joint contractors were obliged (Blue Book pp. 7 and 8, clauses 26, 27, 29, 32) to provide an Office for the Engineer, to keep it heated, lighted and cleaned, to provide all necessary attendance, boats and boatmen, tools, instruments and stationery, they were also held to name an agent to represent them, who should remain at the office.

By the contract between the Appellants and the late S. Peters, it was agreed, that the incidental expenses attending the work, unprovided for, should be borne *pro rata* to the value of the works to be respectively executed under the contract.

Defendants Exhibit No. 4 is an account in detail of the Engineering Expenses connected with the carrying out of the contract—all of which were paid by the Appellants. This account also includes the salary paid to the Contractors Engineers, Mr. Navarre, Mr. Whitford and Mr. Brown. These were the Contractors' Agents as provided by the main contract—the whole expense was paid by the Appellants, except that the proportion of Mr. Navarre's salary for a part of first year was included in a settlement of accounts (Defendants' Exhibit B 19. Paper 126 of Record.)

Defendants Exhibit No. 5 is a detailed statement of expenses incurred by the Contractors' Engineer in the common interest of the contractors and is carried to an included in Defendants Exhibit No. 4. All these necessary expenses were paid by the Appellants.

Defendants Exhibit No. 6—is the large account—it consists of the sums paid by the Appelants in connection with the contract, the litigation which followed, etc, and the sums paid by joint cheque on the deposit account now in question. The whole account is proved by Colonel Moore ; it includes payments to Brown, for professional services in connection with the arbitration before the Dominion arbitrators, (Defendants exhibit B 30, Paper 134 of Record). Payments to Pilkington. the Resident Engineer. after he had left the employ of the Commissioners. About $8000 paid to Messrs. Cook in connection with the suit of Peters, Moore & Wright and the Quebec Harbour Commissioners—(as to which credit is given for $4000 only in the Plaintiff's account) Part of this sum was wholly paid by Messrs. Moore & Wright and part by joint cheque on the Union Bank deposit. Cost of sending Mr. Pilkington to London with the statement of the contractors' claims prepared by Mr. Brown, in the joint interest of the contractors and after consultation between the parties at Portland.

Defendants' Exhibit No. 7, is an account due by the Plaintiff to the Appellants, for services rendered, etc., during the course of the works.

We refer the Court to the evidence of Col. Moore, Appellants' factum pp. 19 to 29 with reference to all these accounts.

In striking the final balance we shall have occasion to refer to the amount of these several accounts and to the proportion payable by the Respondent, we simple would ask the Court to note that in the exaggerated claim put forth by the Respondents, credit is given for no part of the expense incidental to the contract and the litigation that followed, except part of Judge Bossé's account and about one-half Messrs. Cook's account, and that no part of the $1799.56 deducted by the Commissioners for rent and taxes—no part of the expenses of the contractor's Engineer and Agent—no part of the expense of maintenance of the chief Engineer's Office—nor of the boats and boatmen and assistance generally supplied to the chief Engineer, no part of the expenses of witnesses, commission, etc., is taken into account—and yet the Plaintiff includes in his account Exhibit No. 6—item 49 an account, against Peters, Moore & Wright, amounting to $192.42 for expenses incurred in the interest of the joint contractors.

While therefore the Plaintiff has charged and claimed and been allowed by the Appellants, the amount of incidental expenses paid by him, he refuses to contribute towards the payment of any part of the incidental expenses incurred by the Appellants.

We have prepared a tabular statement shewing and comparing the account sued on, the two detailed statements furnished by the Plaintiff to the Defendants and the allowances made by the detailed final certificate, in respect of those items which are in dispute.

Only two sums, as far as we can judge, have not been credited to the Plaintiff in the foregoing statement to which he could lay any claim viz : $800 value of the stub-piling and $260.41 proportion of Navarre's salaly credited by him on an account for material and labour due by the Appellants. These sums are far more than compensated by the very large amount due to the Appellants and for this reason have been omitted.

RECORD.

In the Court of Queen's Bench.

No. 191.
Appellants' Factum, Dated 23rd Nov. 1896.
continued—

STATEMENT of the amount of work done and cash received by Simon Peters under the terms of the Contract between the Quebec Harbour Commissioners and the Contract between Simon Peters, Edward Moore and A. R. Wright. On account of wood and Iron Work done under Main Contract and for extra allowances made by the Engineers to Mr. Peters on wood and Iron Work:

Bill No. 1.—Timber and iron work in substructure and superstructure of 27 crib Blocks, South Tidal Harbour	$ 43,389 00	
Bill No. 2.—Timber and Iron work in Angular Block.....	386 61	
Bill No. 3.—Two square 40 feet Blocks. The full amount of this bill 17,486.34 has been deducted by the Engineers in the item of $116,104.32, as the work was not done.		
Bill No. 4.—Timber and Iron Work in substructure and superstructure of 55 Wet Dock Crib Blocks.....	63,893 25	
Bill No. 6.—Timber and Iron Work for Bridge opening of 80 ft. 6 in. span. The full amount of this bill $3,505.48 has been deducted in the item of $116,104.32 as the work was not done.....		
Bill No. 7.—Timber and Iron work in open crib work to outer slope of the embankment next to the Ballast Wharf	4,184 21	
Bill No. 8.—Timber and Iron work in open crib work, in the outer slope of the embankment, at Gas House Wharf	2,705 02	
	$114,558 09	
Bill No. 9.—Screens to protect the dredged channelways and trenches. Transferred to Moore & Wright under the written contract between Simon Peters and Moore & Wright.....		
Bill No. 10.—Timber and Iron Work in the low open crib work across 80 foot entrance. The full amount of this bill $365.68 has been deducted in the item of $116,104.32 as the work was not done.....		
Bill No. 11.—Timber and Iron Work in four Ladders to the north wall of the South Tidal Harbour. The full amount of this bill $94.12 has been deducted in the item $116,104.32, as the work was not done.....		
Bill No. 12.—Timber and Iron Work in eight Ladders to the north wall of the South Wet Dock. The full amount of this bill $198.40 has been deducted in the item of $116,204.32 as the work was not done.....		
Bill No. 13.—For labor of pitching to outer slope and the forming of the roadway on the Northern Embankment. This work was to have been done by Mr. Peters under the terms of the written contract between Simon Peters and Edward Moore and A. R. Wright. The full amount of this bill $5,180.50 has been deducted in the item of $116,104.32, as the work was not done.....		

	PLAINTIFF'S ACCOUNT SUED ON EXHIBIT 6—Page 174.		PLAINTIFFS' STATEMENT DATED 9TH MARCH, 1887. DEFENDANTS' EXHIBIT B 8, Page 189		PLAINTIFFS' STATEMENT DATED 8TH JANUARY, 1891, DEFENDANTS' EXHIBIT B 4, p. 184.		DETAILED FINAL CERTIFICATE DEFENDANTS' EXHIBIT 1 A ANNEXED TO COMMISSION—Page 177.		REMARKS.
1	Bill No. 1, as per details annexed	$86955 44	Bill No. 1—31-40 ft. Blocks at $1661	$51491 00	Bill No. 1—31-40 ft. Blocks at $1661	$51491 00	Bill No. 1—Allowed for timber and iron work in substructure and superstructure of 27 Crib Blocks, South Tidal Harbour, as per amended plan	$43389 00	Bill No. 1—The contract provided for 27 cribs—31 were built—the 4 additional are claimed by item 7, Exhibit No. 6, and allowed by the Engineers in Exhibit 1 A in items 1 and 20, at a total sum of $49817. In Exhibits B 4 and B 8, Peters claimed $51490. The difference, between this sum and the allowance by the Engineers is $1674, and is accounted for by deductions for fenders not put in, (Plaintiffs' Exhibit A 49, items 1 and 4). By Exhibit No. 6, items 1 and 7, Peters claims $42,430.32. This is accounted for by the claim for the Stone Wall, item 8, $77,378.50 which first makes its appearance in the statement sued on.
							Bill No. 1—Allowed for fine or 4x1 concrete rear of timber face of the superstructure of 27 Crib Blocks, South Tidal Harbour	7593 75	
							Bill No. 1—Allowed for coarse or 8 x 1 concrete in 27 Crib Blocks, South Tidal Harbour, in substructure and superstructure as per amended plan	79467 65	
2	Bill No. 2, as per final certificate	328 61	Bill No. 2—Angular Block	328 61	Bill No. 2—Angular Block	328 61	Bill No. 2—Allowed for timber and iron work in angular block	386 61	Bill No. 2 is not in dispute. Bill No. 3 was wholly deducted, is not in question and does not appear in this account.
3	Bill No. 4, as per details annexed	48465 73	Bill No. 4—55-42 ft. Wet Dock Wall at $1228.45	67567 50	Bill No. 4—55-42 ft. Wet Dock Wall at $1228.45	67567 50	Bill No. 4—Allowed for timber and iron work in substructure and superstructure of 55 Wet Dock Crib Blocks as per amended plan	63,893 25	Bill No. 4—The Plaintiff in this case as in that of Bill No. 1, has claimed less than he has been allowed, but more than compensates by his stone wall item. In Exhibits B 4 and B 8 he claims $67,567.50—he is allowed by the Engineers $63,893.25. There is a double error in Plaintiffs claim—he includes in his calculation the concrete in the bollard boxes. The total of wood and iron in Bill No. 4 is $67,344.75, from which must be deducted $4,451.50 admitted not to have been done, leaving $63,893.25, exact amount allowed.
							Bill No. 4—Allowed for fine or 4x1 concrete, rear of timber face of the superstructure of Wet Dock Crib Block, as per amended plan of 5th June, 1895	16,239 30	
							Bill No. 4—Allowed for coarse or 8 x 1 concrete in 55 Wet Dock Crib Blocks in the substructure from foundation to 4 feet above low water datum and in the superstructure in rear of the masonry wall, as per amended plan of 5th June 1879	103,669 90	
4	Bill No. 7, as per final certificate	6838 44	Bill No. 7—Crib Work at Ballast Wharf	4319 27	Bill No. 7—Crib Work at Ballast Wharf	4582 21	Bill No. 7—Allowed for timber and iron work in open crib work to outer slope of the embankment next to the Ballast Wharf, as per amended plan	4,184 21	Bill No. 7—Exhibit No. 6 claims $2,654.23 more than is allowed by the Engineers—more than is admitted to have been done by Exhibit A 49, deducting the amount admitted we reach the exact sum allowed in Exhibit 1 A. There is but a small difference between the amount allowed and that previously claimed in Exhibit B 4 and B 8.
5	Bill No. 8, as per final certificate	2895 14	Bill No. 8—Crib Work at Gas Wharf	2895 14	Bill No. 8—Crib Work at Gas Wharf	2895 14	Bill No. 8 - Allowed for timber and iron work in the outer slope of the embankment at Gas House Wharf as per amended plan	2,705 02	Bill No. 8—There is a difference of $190.12 unaccounted for unless for fenders not put on the works.
6	Bill No. 9, as per final certificate	307 25	Bill No. 9—Half Breast work and Screen	307 25	Bill No. 9—Half Breast work and screen	307 25	Bill No. 9—Screens to protect the North side of the dredged channel ways and trenches	614 50	Bill No. 9—This is the allowance for screens which the Plaintiff was bound to supply. No part belongs to the Plaintiff.
	ADDITIONAL WORK.						ADDITIONAL WORK.		
7	4 Cribs of 40 ft. each, as per Bill No. 1, at $1368.72	5474 88							Additional Work—This item is included in the allowance for Bill No. 1.
8	Stone Wall, as per details	77378 50	Stone Wall	21940 19	Stone Wall	21940 19	(Paper 179 item 19) allowed for timber and iron work in the substructure and superstructure of 4 extra 40 ft. Crib Blocks, South Tidal Harbour	6,428 00	Stone Wall—The Plaintiff claims by his action $77,378.50. By his statements B 4 and B 8 he claims $21,940.19 and $27,531.25, together with the allowance for wood and iron not done in Bills 1 and 4. The Defendants admit that he is entitled to $21,940.19, additional sum stated in the contract—all allowances in Bills 1 and 4 for wood and iron and (though not strictly entitled, they consent that he receive) the price of the fine concrete not put in, occupied by the stone face. Now these sums are as follows:—that part of $43,389.00 and $63,893.13 not represented by wood and iron work done. That part of the 4 x 1 concrete occupied by the masonry wall. Total 4 x 1 concrete in rear of stone wall from 3 ft. above low water $27,281.25. The wall was built from 4 ft. above low water—transferring 1 ft. in height in the Wet Dock to the substructure—there was therefore $2,323.20, 4 x 1 concrete to be deducted from $27,281.25, leaving $24,958.05 value 4 x 1 concrete displaced by stone wall and 8 x 1 concrete—of this amount 1783½ cubic yards of concrete was taken by the stone wall, making $11,148.75 applicable to Plaintiffs' work
			Deduction on fine concrete applicable to cost of Stone Wall	27531 25	Deduction on fine concrete applicable to cost of Stone Wall	27531 25			
	Items 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 are admitted.								
24	Proportion of understated Bill of quantities allowed by Engineers as per details annexed to certificate	2309 21	Not Claimed.		Not claimed.		No allowance was made for this by the Engineers. In Exhibit 1 annexed to the commission, the whole allowance is in respect of concrete.		
25	Pile or Sheet foundation allowed by Engineers as per final certificate	4378 65	Not Claimed.		Not claimed.		Allowed for stub piling under the South Tidal Harbour and Wet Dock Cribs, in lieu of stone and clay filling, as per amended plan	4,378 65	This work replaced M. & W's. work and was done for them by Peters—see correspondence reproduced in factum.
26	Admitted.								

EXTRAS ALLOWED BY THE ENGINEERS FOR WOOD AND IRON WORK.

Timber and Iron Work in the four extra crib blocks of the substructure and superstructure of the Tidal Basin	$ 6,428	00
Extra Allowance as per the terms of the written contract between the Quebec Harbour Commissioners and Peters, Moore & Wright for building the masonry face to the walls	21,940	61
Timber and Iron Work in the angular crib at ballast wharf	89	56
Two Tablet Stones	300	00
Excess of Timber and Iron Work in the 31 Tidal Harbour Crib Blocks, Bill No. 1	8,186	17
Excess of Timber and Iron Work in the 55 Wet Dock Cribs, Bill No 4	3,822	50
Widening and bolting piles to Wet Dock Cribs	1,846	35
Extra Timber and Iron Work connected with cribs, Bill No. 7, at ballast wharf	5,219	56
Entremise filling between fenders	194	03
Gas House Crib Work and Excavation in connection with Bill No. 8	1,232	90
Timber and Iron Work in substructure between Ballast and Gas House Wharf	16,088	90
Timber and Iron Work in superstructure of northern crib work	58,059	53
Piling at Angle Ballast Wharf	1,143	07
Piling at change of slope	624	65
Crib and piling at return and Wet Dock	304	27
Timber and Iron Work connected with 85 Bollard Boxes	1,617	12
Allowance for Fenders and Iron Work partly constructed	1,038	00
25 Barrels of Portland Cement	88	75
Allowance by Moore & Wright to Mr. Peters, for 1783$\frac{1}{5}$ cubic yards of fine concrete as applicable towards the payment for the masonry face of the Wet Dock and Tidal Basin Walls, at $6.25 per cubic yard	11,148	75
	$253,930	81
By Cash received to Feb. 4th 1886	237,452	11
	$16,478	70
Interest on $16,478.70 from Feb. 4th 1886 to March 9th 1887, 1 year, 1 month and 5 days at 6%	1,084	78
	$17,563	48
March 9th 1887, By cash on account	2,500	00
	$15,063	48
Interest on $15,063.48 from March 9th 1887 to Septemher 13th 1887, 6 months and 4 days at 6%	461	86
	$15,525	34

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In the Court of Queen's Bench.

No. 191
Appellants' Factum, Dated 23rd Nov. 1896.
continued--

Forward..		$15,525 34
September 13th 1887, By cash on account.....		12,500 00
		$3,025 34
Interest on $3,025.34 from September 13th 1887, to July 25th 1892, 4 years, 10 months and 12 days at 6%.....		883 16
Interest on $3,024.94 from July 25th 1892, to October 25th 1892, 3 months at 4%.....		30 25
		$3,938 75
October 25th 1892, By cash paid on orders to Samson Estate and Bank of Montreal.....		15,000 00
Total amount overdrawn from the Quebec Harbour Commissioners by Mr. Peters.....		$11,061 25
Deduct bonus from overdraft.....		5,000 00
		$6,061 25
Account.....	$14 11	
Broken guage pile.....	14 70	
Peters' account—incidental expenses against Peters, Moore & Wright $192.42, say ⅓ against S. Peters and ⅔ against Moore & Wright.....	128 26	
Atalaya—Moorage ⅓, $22.....	7 33	off 164 40
	$164 40	
Due to Moore & Wright.....		$5,896 85

This account shews a sum of $5,896.00, overdrawn by the Plaintiff, but contains no charge against him for his proportion of the following accounts:

Deducted by Quebec Harbour Commissioners for rent, taxes, etc.....		$ 1,799 56
Amount paid Judge Bossé.....		4,108 65
Amount paid Messrs. W. & A. H. Cook.....		7,240 00
Engineering acccount.....		1,093 63
		8,471 48
Labour account in interest of joint contracts.....		385 62
	⅓	$22,709 29
		$7,569 09
Total overdraft by S. Peters.....		5,896 85
		$13,466 94

STATEMENT of the amount of work done by cash received by Moore & Wright under the terms of the contracts between the Quebec Harbour Commissioners and the contract between Simon Peters, Edward Moore and A. R. Wright.

Bill No. 1.—Allowed for fine, or 4 x 1 concrete rear of timber face of the superstructure of 27 crib Blocks, South Tidal Harbour	7,593	75
Bill No. 1.—Allowed for coarse or 8 x 1 concrete in 27 crib Blocks, South Tidal Harbour, in substructure and superstructure. as per amended plan	79,467	65
Bill No. 4.—Allowed for fine or 4 x 1 concrete, rear of Timber face of the superstructure of Wet Dock crib Blocks, as per amended plan of June 5th, 1879	16,239	30
Bill No. 4.—Allowed for coarse or 8 x 1 concrete, in 55 Wet Dock crib Blocks in the substructure from foundation to 4 feet above low water datum and in the superstructure in rear of the masonry wall, as per amended plan of June 5th, 1879	103,669	90
Bill No. 5.—Dredging 638,700 c. yds. Situ measurement in the channelways and trenches, and depositing the dredged material in the embankment	159,675	00
Bill No. 9.—Screens to protect the North side of the dredged channelways and trenches as per agreement between Simon Peters and Moore & Wright	614	50
Bill No. 14.—Allowed for levelling clayey material and bringing top surface of the ballast trenches to a uniform level at a depth of 24 feet below low water and for labor depositing Stone Ballast in the walls of the Wet Dock and Tidal Basin	8,255	30

NOTE.—The full amount of this bill, as stated in the contract, is $20,349.30 from which amount the Engineers have deducted in the item of $116,104.32 for work not done, $12,094.00.

ADDITIONAL WORK.

Allowed for fine or 4 to 1 concrete in rear of Timber face of the superstructure of the 4 extra 40 ft. Crib Blocks	1,125	00
Allowed for coarse 8 x 1 concrete in the substructure and the superstructure of the 4 extra crib 40 foot Blocks, as per amended plan, June 5, 1879	11,771	00

DREDGING AND CONCRETE WORK.

241,723 c. yds. of extra dredging in Tidal basin	60,430	81
2,925 c. yds. of extra dredging for crib work, and Ballast Wharf.	731	25
For stone, clay and fine ballast as per contract	38,083	05
Concrete for foundations Shoal Crib 16 to 1	11,485	80

RECORD.

In the Court of Queen's Bench.

No. 191.
Appellants' Factum, Dated 23rd Nov. 1896.
continued—

Concrete from deep to shoal crib		1,068 35
Concrete at return end Wet Dock substructure		713 50
Concrete at return end Wet Dock superstructure		402 04
Concrete in Angular Block, Ballast Wharf		500 00
Extra dredging and labor making return and Wet Dock Wall		100 00
Allowed for coarse concrete as per original Bill of Quantities, superstructure, Tidal Basin Wall		22,041 00
Allowed for coarse concrete as per original Bill of Quantities, superstructure, Wet Dock Wall		35,556 40
Allowed for coarse concrete understated in the original Bill of Quantities as per contract plan		4,180 00
Allowed for washings in sand and dredging outside of channelways and trenches at Angle Ballast Wharf		5,000 00
Allowed for Boulders placed at toe of slope		375 00
Allowed for use of dredge, testing foundations		500 00
Allowed for labor and disbursements by Moore & Wright in preparing for reception of Princess Louise in laying the Tablet Stone		750 00
Allowed for concrete hoarding in South Tidal Harbour and Wet Dock Walls in lieu of clay stanks		5,000 00
Allowed for stub piling under the South Tidal Harbour and Wet Dock cribs in lieu of stone and clay filling as per amended plan		4,378 65
		$579,707 25

DEDUCTIONS.

Less clerical error and dredging under Tidal Cribs		$ 34,472 00
		$545,235 25
Less 3645 cubic yards concrete per Bill No. 1 in rear of masonry face, superstructure 27 Cribs Tidal Harbour, $17,313.75 and less in pockets (concrete in Tidal Harbour) 104 cubic yards at $4.75 per 31 blocks, $15,314.00. These two items form part of the $116,104.32		32,627 75
		$512,707 50
Less 6710 cubic yards 8 to 1 concrete rear Wet Dock superstructure	$31,872 50	
And less in pockets concrete in Wet Dock 45 cubic yards at $4.75 per 55 Blocks	11,756 25	
		43,628 75
These two items form part of the	116,104 32	
		$468,978 75
Bill No. 5 dredging in Wet Dock channel 5000 cubic yards at 20 cts		1,000 00
This item forms part of the $116,104.22.		
		$467,978 75

Forward..	$467,978 75	
Less removal of sand left on the embankment.....	13,326 00	
	$454,652 75	
Addition by error and sand item allowed by Supreme Court.....	35,457 50	
	$490,110 25	
Cash payments Quebec, March 26th 1885	405,347 48	
	$84,762 77	
Less 1787 cubic yards at $6.25 of the fine concrete allowed in the original bills of quantities in rear of timber face as shown in items 1, 7 and 21 of Defendant's Exhibit 1 A. The 3994 cubic yards of fine concrete allowed in these items was displaced, under the amended plan, by the masonry and coarse concrete backing, but the contract price for the same went towards the payment of the Masonry and coarse concrete. 1787 cubic yards of the area, occupied, by the fine concrete, was occupied by masonry, and the balance by coarse concrete. The value of this concrete is transferred to the account of Mr. Peters.....	11,148 75	
	$73.614 02	
Interest on $73,614.02 from February 4th 1886 to March 16th 1888 at 6%.....	9,348 87	
	82,962 89	
By cash March 16th 1888.....	15,000 00	
	$67,962 89	
Interest from March 16th, 1888 to July 25th, 1892 on $67,962.89 6%	17,908 05	
	$85,870 94	
Interest on $67,962.89 from July 1892 to October 25th 1892 at 4%	678 87	
Balance due Moore & Wright.....	$86,549 81	
ADD ONE-THIRD OF THE FOLLOWING ACCOUNTS.		
Amount of Rent and Taxes deducted by the Quebec Harbour Commissioners and charged to joint contractors.....	$1799 56	
Amount paid Judge Bossé.....	4108 65	
Amount paid W. & A. H. Cook.....	7240 00	
Engineers, Account.....	1093 63 8471 48	
Labour Account.....	385 62	
Labour and boatmen—Contractors Engineer.....	1038 19	
Paid Mr. Cook, Q. C.....	500 00	
Paid J. V. Brown, Expenses and services during arbitration.....	300 00	

continued—

RECORD.

In the Court of Queen's Bench.

No. 191
Appellants' Factum, Dated 23rd Nov. 1896.
continued--

Paid Pilkington		500 00
" J. V. Brown, witness		333 00
" E. B. Cummings		146 50
" A. H. Jacobs		96 56
Commission to Portland		591 00
Witnesses in Suit		229 50
	⅓	26833 69
		8944 56
		86549 81
Total due M. & W		$95494 37

We therefore reach this conclusion that the Plaintiff has been overpaid—overpaid by a sum exceeding $13,466.94. We say exceeding this amount because in fixing at this amount the overdraft, the Plaintiff has not been charged, with his share of many expenses paid by Moore & Wright in the interest of the joint contractors and because no interest on the Appellants very heavy disbursement has been paid.

The Appellants, on the contrary, by the foregoing statement of account, shew that he is really entitled to obtain payment of the whole of the deposit, and that the Plaintiff will remain indebted to them.

We respectfully pray the allowance of the appeal and the reversal of the judgment with costs and we pray that the Court may declare that the Plaintiffs have been overpaid, that the Appellants are entitled to the whole sum on deposit, with the accrued interest: that the recourse of the Appellants against the estate of the late S. Peters be reserved and that the Respondents be condemned in the costs both in Appeal and in the Superior Court.

CARON, PENTLAND & STUART,
Attys. for Appellants.

Quebec 23rd November 1896.

CANADA,
PROVINCE DE QUÉBEC,
District de Québec.

Cour du Banc de la Reine.
(En Appel.)

Edward Moore *et al.*, . . Défendeurs en première instance,
Appelants.

No. 57. vs.

Dame Eliza-Jane Lamoureux *et al.*,
Reprenant l'instance de feu S. Peters,
Demandeur en première instance,
Intimés.

RECORD.

In the Court of Queen's Bench.

No. 192
Respondent's Factum,
Dated 27th Nov. 1896

FACTUM DES INTIMES

FAITS DE LA CAUSE

En 1877, les Commissaires du Hâvre de Québec avaient décidé la construction de ce qui est aujourd'hui connu sous le nom de BASSIN LOUISE. Ils firent préparer des plans et devis des travaux projetés. Ils firent aussi préparer un état quantitatif détaillé indiquant la quantité d'ouvrages de chaque espèce qu'il y aurait à exécuter. Cet état fut imprimé et distribué à tous ceux qui se proposaient d'entreprendre les travaux, pour les aider à se renseigner. Il est connu dans le dossier en cette cause sous le nom de *Blue Book*, et est divisé en 14 parties dont chacune donne les quantités d'une espèce d'ouvrage.

Tous ces plans, devis et états de quantités étant prêts, les Commissaires du Hâvre demandèrent des soumissions. Les soumissionnaires devaient fixer un prix en bloc pour l'exécution de tous les travaux, mais ils devaient, en même temps, indiquer en détail les prix qu'ils avaient mis sur chaque espèce d'ouvrage pour arriver à ce prix en bloc. Ainsi, par exemple, ils devaient dire combien la verge ils demandaient pour le béton fin, combien la verge pour le béton grossier, dont le nombre de verges était indiqué dans l'état quantitatif ou *Blue Book* ci-dessus mentionné. Comme on peut le voir, le prix total demandé par un soumissionnaire devait représenter l'addition de tous les prix particuliers demandés pour les diverses espèces d'ouvrages. On verra plus loin l'importance de cela dans la cause.

M. Peters étant le plus bas soumissionnaire, les Commissaires décidèrent de lui donner l'entreprise, mais ils consentirent à ce qu'il s'associât pour l'exécuter les appelants. Ceux-ci lui donnaient une prime de $5,000 pour les associer ainsi à son entreprise.

Par acte passé à Québec, devant Mtre Angers, notaire, les Commissaires du Hâvre donnèrent l'entreprise à M. Peters et aux appelants, au prix de la soumission de M. Peters. Ce prix, en apparence de $554,242.36, n'était, en réalité, que de $529,296.31, parce qu'il fallait en déduire $25,000 pour certaines fins mentionnées dans les devis, à la page 5. Ce prix devait être payé par versements faits de temps en temps au cours de l'exécution des travaux, suivant leur degré d'avancement, sur des certificats donnés par l'ingénieur résident des ingénieurs chargés de diriger les travaux pour les Commissaires. Ces derniers ingénieurs étaient MM. Kinipple & Morris, de Londres. Pour donner ces certificats,

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l'ingénieur résident devait se baser sur la quantité d'ouvrage fait, calculée aux prix mentionnés dans l'échelle de prix que les entrepreneurs avaient dû donner, et sur laquelle ils étaient censés avoir basé leur prix total. Sur le montant de chaque certificat, il devait être fait une retenue de 10 par cent, laquelle ne devait être payé que lors du parachèvement des travaux.

Comme on prévoyait bien que les estimations ainsi faites au cours des travaux ne couvriraient pas tous les travaux exécutés, et que, par conséquent, il y aurait à la fin des travaux une balance dûe aux entrepreneurs, il fut stipulée que cette balance serait payée sur un certificat final donné par les ingénieurs, constatant que les travaux étaient complètement terminés et la balance finale dûe aux entrepreneurs.

Par ce contrat, les Commissaires se réservaient le droit de supprimer des travaux projetés, ou d'en faire exécuter d'autres. Ces travaux, ainsi supprimés ou ajoutés, devaient être calculés d'après l'échelle de prix mentionnée dans la soumission de M. Peters.

Les devis pourvoyaient à la construction d'un quai en bois pour soutenir le terre-plein Louise à l'intérieur du bassin, mais le contrat autorisait les Commissaires à substituer à ce quai en bois un mur en pierre.

Deux jours après la passation de ce contrat entre les Commissaires, d'une part, et M. Peters et les appelants, d'autre part, les entrepreneurs passèrent entre eux un autre contrat ou contre lettre, devant Mtre Strang, notaire. Nous croyons devoir donner le résumé de ses principales dispositions, parce que, comme la cour va le voir, c'est sur l'interprétation de ce contrat que roule toute la présente cause.

D'abord, il est convenu que les entrepreneurs, bien qu'associés en apparence, en face des Commissaires, ne seront pas censés associés entre eux. M. Peters doit faire quelques-uns des travaux compris dans l'entreprise commune, et, les appelants doivent faire le reste. Les travaux mis spécialement dans le lot de M. Peters sont les ouvrages en bois et en fer l'arrangement du talus au nord du terre-plein Louise, et la confection des chemins sur ce terre-plein. Les appelants doivent faire le reste, c'est-à-dire, tous les travaux de draguage et de béton. Si comme on a vu que les Commissaires s'en étaient réservé le droit, un mur en pierre est substitué au quai en bois de l'intérieur du bassin, c'est M. Peters qui doit le construire. M. Peters doit recevoir tout ce qui est payé par les Commissaires pour les ouvrages qu'il fait, et les appelants tout ce qui est payé pour ceux qu'ils exécutent. Chaque fois que des paiements à compte seront faits, M. Peters doit recevoir la partie qui est allouée pour ce qu'il a fait, et les appelants pour les travaux qu'ils ont exécutés. La même règle doit être suivie pour la distribution entre les entrepreneurs de la balance finale.

Aussitôt ces contrats passés, les entrepreneurs se mirent à l'ouvrage, et poursuivirent les travaux jusqu'à leur parachèvement dans l'automne de 1881. De grands changements furent faits dans les plans et devis, entre autres, un mur en pierre fut substitué au parement en bois et au béton fin qui devait être mis en arrière de ce parement extérieur. Comme le contrat y pourvoyait, des paiements à compte furent faits de temps en temps. Chaque fois qu'un de ces paiements avait lieu, il était fait deux chèques : un pour le prix des travaux exécutés par M. Peters, et un autre pour le paiement de ceux exécutés par les appelants.

Ces chèques étaient à l'ordre des entrepreneurs conjointement, mais étaient ensuite endossés par les entrepreneurs conjoints en faveur de celui d'entre eux auquel l'argent devait revenir. Cinq ans après le parachèvement des travaux, le 4 février 1886, un certificat final fut donné par les ingénieurs. Ce certificat portait à $52,011.21 la balance revenant aux entrepreneurs.

Les entrepreneurs prétendirent que ce certificat était erroné, et refusèrent d'accepter le montant ainsi certifié. Ils prirent une action contre les Commissaires pour la balance qu'ils prétendaient leur être dûe. Cette action passa par toutes les jurisdictions, et, finalement, par un jugement de la Cour Suprême du Canada, en date du 17 janvier 1892, il fut décidé que la vraie balance qui revenait aux entrepreneurs était, non pas de $52,011.21, mais de $87,468.71, avec intérêt à six par cent du 4 février 1886.

Comme la cour peut le voir, le jugement de la Cour Suprême a ajouté $35,397.50 au montant constaté par le certificat des ingénieurs. Déduction faite de certaines sommes payées par les Commissaires aux entrepreneurs ou pour eux, il restait une somme de $68,972.95 que les entrepreneurs avaient à se partager. Ne pouvant s'entendre sur la part revenant à chacun, ils convinrent de déposer cette somme à la Banque d'Union du Canada. Par un écrit en date du 29 octobre 1892, il fut stipulé que la banque garderait cette somme en dépôt, à 4 par cent, jusqu'à ce que les parts respectives des intéressés furent établies. Le dépôt ne devait pouvoir être retiré que sur des chèques signés par toutes les parties.

ACTION ET PLAIDOYERS DANS LA CAUSE.

Les parties n'ayant pu s'entendre pour se partager à l'amiable la somme ainsi déposée, M. Peters a pris contre les intimés l'action qui a donné lieu au présent appel. Par cette action, M. Peters demandait que le compte qu'il produisait, et qui indiquait les travaux faits par lui fût déclaré exact; qu'il fût déclaré par la cour qu'il avait droit à $38,532.55 sur l'argent déposé à la Banque Union; que les appelants fussent condamnés à lui donner un chèque pour ce montant, et qu'à défaut par eux de ce faire, la Banque Union, mise en cause pour assister au jugement, reçût ordre de le lui payer.

Les appelants ont répondu à cette action par une défense en fait et par une exception. Ce dernier plaidoyer est très long, mais, en substance, il revient à dire ceci: par le contrat du 2 mai 1877, les entrepreneurs ne pouvaient rien recevoir que sur les certificats des ingénieurs des Commissaires, et la balance finale ne pouvait aussi leur être payée que sur un certificat final des mêmes ingénieurs; ce contrat du 2 mai règle, non-seulement les relations des entrepreneurs avec les Commissaires, mais aussi celles des entrepreneurs entre eux; les ingénieurs des Commissaires ont donné ce certificat final et, d'après ce certificat, qui fait loi entre les parties, non-seulement M. Peters n'a droit à rien, mais il a reçu déjà trop d'argent, et les appelants réservent leur recours pour ce surplus.

M. Peters a produit une réponse spéciale qui dit, en substance, ceci: d'après le contrat primitif du 2 mai 1877, s'il n'eût pas été modifié, moi, Peters, j'aurais eu droit à $145,876.76, et vous auriez eu droit à $343,875.50; mais ce contrat a été profondément modifié, tel qu'il était pourvu; entre autres modifications, un parement en pierre a été substitué au parement en bois; cela a supprimé du béton

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fin que vous deviez faire, pour une somme de $27,531.25 ; tous les paiements au cours des travaux ont été faits sur des certificats des ingénieurs fondés sur cette donnée, et ces certificats ont été approuvés par vous, les appelants, comme par moi ; les ingénieurs des Commissaires n'avaient pas le droit de faire, comme l'a fait M. Kinipple en 1893, le partage de ce qui revenait aux entrepreneurs lors du parachèvement des travaux, et les détails par lui donnés sont faux.

A cette réponse spéciale les appelants ont fait une réplique spéciale disant ceci : si nous n'avons pas fait le béton fin qui est devenu inutile par la substitution du mur en pierre au parement en bois, nous avons fait d'autres travaux à la place, et nous avons droit à la somme que ces travaux auraient coûtés ; les évaluations de l'ingénieur résident, au cours des travaux, ne sont qu'approximatives, et ne peuvent servir de base au partage, entre les entrepreneurs, de l'argent reçu des Commissaires : le certificat final seul fait autorité entre eux.

Après une très longue enquête, M. le juge Routhier a, le 30 juin dernier, rendu un jugement accordant à chacune des parties la moitié de la somme déposée. Il slest appuyé pour cela sur le fait que. comme la preuve ne lui permettait pas de dire quelle était la part de chacun, il devait leur appliquer l'article 1848 du Code Civil.

Ainsi que la cour peut le voir par l'exposé qui vient d'en être fait, l'action qui a donné lieu au présent appel, bien qu'elle n'ait pas été qualifiée de ce nom par M. Peters lorsqu'il l'a intentée, est en réalité une action en reddition de compte, M. Peters l'a si bien compris qu'avec son action il a produit un compte, et, par l'action même, il en a demandé un aux appellants.

La plus grande partie, presque la totalité, de ce que réclame M. Peters, est pour sa part dans ce qui a été payé à lui et aux appelants par les Commissaires du Hâvre. Le reste est étranger au contrat que M. Peters et les appelants avaient avec les Commissaires.

Quant à ce que M. Peters réclamait comme sa part dans ce qui provenait de l'exécution du contrat en question, il est bon de noter que, comme chacun des entrepreneurs devait se contenter de ce qui était payé pour sa part des travaux, et n'avait aucun recours contre l'autre pour ce que les ingénieurs des Commissaires refusaient de certifier, il s'en suit que chacune des parties a droit à tout ce qui a été payé pour les ouvrages exécutés par elles, et n'a droit à rien pour les ouvrages qu'elle a exécutés, mais que les inégnieurs n'ont pas certifiés. Si donc, sur un ouvrage compris dans le lot d'une des parties, les Commissaires ont payé pour une quantité plus grande que celle exécutée, tant mieux pour elle. Si, au contraire, les Commissaires ont payé pour une quantité moindre que celle exécutée, tant pis pour cette partie. Par exemple, M. Peters aurait dû recevoir au-delà de $82,000 pour le parement en pierre substitué au parement en bois et au béton fin, mais les injénseurs n'ont certifié et les Commissaires n'ont payé pour ce mur que $77,378.50 ; M. Peters doit se contenter de cette somme. D'un autre côté, les Commissaires ont payé pour du draguage $34,472 de trop ; les appellants doivent avoir le bénéfice de cette erreur, parce que, encore une fois, chacune des parties doit avoir ce qu'aurait eu un entrepreneur qui seul aurait entrepris tous les ouvrages compris dans sa partie.

It est inutile de discuter ce point, car les deux parties sont d'accord là-dessus. Dans leurs plaidoyers, les appelants eux-mêmes disent que chaque partie doit

recevoir ce qui a été payé pour sa part des ouvrages entrepris en commun, et rien de plus. La seule question que la cour ait à examiner est donc de savoir ce qui a été payé pour des ouvrages compris dans la partie attribuée à M. Peters, et ce qui a été payé pour des ouvrages compris dans le lot des appelants.

Le volume du dossier en cette cause pourrait faire croire à la cour que cette question de fait est d'une élucidation très difficile, mais nous espérons la convaincre qu'il n'en est rien.

PREUVE PAR LES ESTIMATIONS AU COURS (PROGRESS ESTIMATES)

Si la cour veut bien examiner la pièce 14 des intimés, elle verra que c'est un état complet indiquant, suivant les intimés, de quelle manière doivent être distribuées les sommes reçues des Commissaires, allouant à chaque partie ce qui a été payé pour des travaux compris dans son lot, qu'elle les ait faits ou non, et que la quantité qui en a été payée soit trop grande ou trop petite.

Maintenant, cet état est-il exact? est-il justifié par la preuve? Il faut se rappeler la manière dont se faisaient les paiements au cours des travaux: M. Brown, l'ingénieur commun des entrepreneurs, préparait un état estimatif, pour les entrepreneurs, et ceux-ci le soumettaient à l'ingénieur résident des Commissaires, M. Pilkington ; celui-ci l'approuvait, et donnait aux entrepreneurs un certificat établissant qu'ils avaient exécuté les travaux ainsi indiqués. C'était sur ce certificat que les entrepreneur étaient payés par les Commissaires. Il ne faut pas oublier que ces certificats devaient estimer les travaux aux prix indiqués dans la soumission des entrepreneurs.

Ces certificats de l'ingénieur résident, qui forment les pièces 9 et 10 des intimés, couvrent tout ce qui a été payé aux entrepreneurs, moins les $52,011 mentionnées dans le certificat final des ingénieurs, chargés de surveiller les travaux pour les Commissaires, et ce qui a été ajouté par le jugement de la Cour Suprême.

Il est évident que ces certificats constituent une preuve péremptoire entre les parties quant à tout ce qu'ils couvrent. En effet, non seulement ils sont basés sur des estimations préparées par M. Brown, qui était l'employé de M. Peters et des appelants, mais ils ont été approuvés par les appelants eux-mêmes, et ils donnent le détail de la quantité d'ouvrages exécutée par chacune des parties.

Ce n'est pas tout encore : lorsque les Commissaires payaient sur le certificat de l'ingénieur résident, basé sur ces estimations de M. Brown, ils payaient en deux chèques, l'un pour les travaux de M. Peters, l'autre pour ceux des appelants. Pourquoi ces deux chèques au lieu d'un seul? C'est parce que chacune des parties voulait avoir de suite et directement la part qui lui revenait dans ce que payaient les Commissaires. On ne prétendra pas que ce partage était fait dans l'intérêt des Commissaires eux-mêmes, car, pour ceux-ci, il n'y avait pas de parts, et le tout était censé payé à des entrepreneurs associés. Si les Commissaires faisaient cette division dans leurs paiements, c'était à la demande des entrepreneurs, et pour les obliger. La division ainsi faite par ces certificats est donc une preuve irréfragable entre les parties.

Il y a une autre raison qui donne encore plus de valeur à cette division. Dans le contrat du 4 mai, entre les entrepreneurs, il est stipulé que les paiements

à compte, qui seront faits par les Commissaires au cours des travaux, seront partagés entre les parties d'après la quantité de travaux compris dans le lot de chacune telle que constatée par les certificats de l'ingénieur résident.

Il est facile de comprendre pourquoi les entrepreneurs ont ainsi voulu que la division ou partage des sommes payées par les Commissaires au cours des travaux fût faite d'après ces certificats de l'ingénieur résident. Ces certificats étaient, on l'a vu, fondés sur des estimations préparés par l'ingénieur des parties, M. Brown. Celui-ci faisait ces estimations au moment où les travaux venaient d'être exécutés, et où, par conséquent, si une erreur eût été commise, il était facile aux parties de la signaler et de la démontrer. Cela aurait été complètement impossible après le parachèvement des travaux. Comment, par exemple, dire le nombre de pieds de bois ou de livres de fer que M. Peters avait mise dans le fond d'un quai, après de ce quai était construit à une hauteur de 20 pieds ? Comment, dire le nombre de verges de béton fin, ou grossier que les appelants avaient mis dans le fond d'un quai lorsqu'il était terminé, ou le nombre de verges de draguage exécutées par eux, lorsqu'on ne savait plus dans quel état était le fond du bassin avant ces travaux ?

Encore une fois donc, il ne peut y avoir de doute que, quant à tous les travaux couverts par les 36 certificats donnés par l'ingénienr résident au cours des travaux, ces certificats font entre les parties une preuve inattaquable.

En vain les appelants viendront dire, comme ils le font dans leur plaidoyer, que ces certificats ne donnaient que des quantités approximatives. Ceci est vrai entre les Commissaires et les entrepreneurs, parceque le contrat du 2 mai 1877 le dit. Mais rien de tel ne se trouve dans le contrat du 4 mai entre les entrepreneurs eux-mêmes : il dit, au contraire, en toutes lettres, que les sommes qui seront payées par les Commissaires cours des travaux seront partagées entre eux suivant ces certificats. L'acte ne dit pas que ce partage ne sera que provisoire et ne prouvera rien entre les parties. Il indique bien, au contraire, que c'est un partage définitif entre elles, et il n'y avait pas de raison pour qu'il ne le fût pas, puisque, comme nous l'avons vu, ce partage se trouvait fait précisément au moment où il était le plus facile de savoir ce que chaque partie avait fait d'ouvrages.

Preuve quant au certificat final.

Il ne nous reste donc à examiner que la question de savoir comment doit être partagée entre les parties la somme accordée par le certificat final, tel que complété par le jugement de la Cour Suprême. Quelle part revenait à M. Peters dans les travaux constatés par le certificat ? Le certificat lui-même, comme nous le verrons, n'en dit rien, parce qu'il n'est pas détaillé comme les certificats donnés par l'ingénieur résident. Lui et le jugement de la Cour ne donnent qu'une somme en bloc.

Combien du montant ainsi constaté par le jugement de la Cour Suprême doit revenir à M. Peters ? Pour répondre à cette question, il faut distinguer entre les travaux compris dans le contrat primitif du 2 mai 1877, et les ouvrages extras. Quant aux ouvrages compris dans le contrat, la quantité en est indiquée dans le *Blue Book*. En retranchant les parties d'ouvrages compris dans le lot de M. Peters déjà certifiées par l'ingénieur résident, on saura ce qui en restait à

certifier à la fin des travaux. On n'a donc qu'à appliquer à la quantité qui reste les prix portés dans la soumission, et l'on a ce qui revenait à M. Peters dans le montant établi par le certificat final.

Il ne reste donc qu'à établir le montant payé pour des travaux extras compris dans le lot de M. Peters. La chose est très facile : M. Peters n'a pas fait d'autre ouvrage extra que le parement en pierre. Combien a été payé aux entrepreneurs pour cet ouvrage ? $77,378.50. Ceci est si surabondemment établi dans la cause, que ce serait prendre inutilement le temps de la cour que de lui en indiquer toutes les preuves. Combien M. Peters avait-il reçu sur cette somme en vertu des certificats de l'ingénieur résident ? Il suffit de lire ces certificats, pièces 9 et 10 des intimés, pour le voir. La différence entre ces montants et les $77,378.50 constitue donc ce qui revenait à M. Peters sur cet ouvrage.

Le prix de ce mur en pierre est indiqué dans le contrat du 2 mai 1877 ; il était le 60 cents du pied cube, plus 2¾ cents par pied pour le bouchardage de gros. Tous les paiements à compte sont sur cette base. Les appelants ne peuvent donc aujourd'hui la mettre en question.

Il y a encore un autre moyen d'arriver au même résultat. Si la cour examine la pièce A40 des intimés, elle verra que c'est le compte final préparé par les ingénieurs, et indiquant les ouvrages qui n'avaient pas encore été certifiées. Or, la pièce A48 indique, en se basant là-dessus, ce que doit couvrir le certificat final pour $52,011 donné en bloc par les ingénieurs.

PREUVE DU COMPTE DES INTIMÉS

Le compte des intimés peut s'établir aussi de la manière suivante : Ce compte se compose de 49 items, mais le plus grand nombre sont admis par les appelants, et plusieurs de ceux qui ne sont pas expressément admis n'ont pas besoin d'être prouvés, parce qu'ils se composent ou bien de sommes dont M. Peters se débite, ou bien d'intérêts sur diverses sommes d'argent, desquels intérêts il n'y a qu'à faire le calcul. Voyons ces items en détail.

Non-seulement les sept premiers, qui sont les plus élevés, sont admis par les appelants, mais ceux-ci admettent que, sous les chefs qu'ils couvrent, les intimés ont droit à des sommes beaucoup plus élevées que celles réclamées par le compte. Le montant admis dépasse de $18,709.47 celui réclamé sous ces items. L'explication de ce fait extraordinaire se trouve dans la manière différente dont les parties interprètent le contrat du 4 mai 1877.

Les appelants comptent, non seulement les travaux faits par M. Peters mais ceux qu'il devait faire en vertu du contrat primitif du 2 mai, alors même que ces travaux ont été abandonnés par les Commissaires du Hâvre. Les appelants, au contraire, ne chargent que les travaux faits.

L'item 8, pour le prix du mur en pierre, est admis par les appelants jusqu'à concurrence de $21,940.60, mais il est prouvé pour le tout par M. Albert Peters (pages 71, 72 et 73 de la preuve des intimés) ainsi que par M. H. J. Peters, (pages 12, 13 et 14 de la même preuve.)

Les items 9 à 23 inclusivement sont admis par les appelants.

L'item 24 est pour la part de M. Peters dans ce qui a été accordé par les ingénieurs pour sous-évaluation des quantités de certains ouvrages. Cet item est

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prouvé par les témoignages de messieurs Albert et H. J. Peters (pages 17 et 74 de la preuve des intimés).

L'item 25, pour le *stub piling*, s'explique comme suit : les appelants devaient mettre une fondation en glaise sous les quais en bois. M. Peters leur suggéra de la remplacer par une fondation en pilotis. C'est ce que veut dire l'expression ci-dessus. Les appelants lui demandèrent de la construire; M. Peters y consentit, mais comme on ne savait pas si les ingénieurs l'approuveraient ou non, et comme il s'agissait de remplacer un ouvrage dont les appelants seuls étaient chargés, M. Peters ne voulut pas courir le risque de n'être payé pour cet ouvrage que si le coût en était alloué par les ingénieurs, et il déclara qu'il le ferait, mais aux risques et périls des appelants. Seulement, si ceux-ci n'en étaient pas payés, il s'engageait à ne leur en faire payer que le prix qu'il lui coûterait à lui-même. Les ingéniours, non seulement ont approuvé la substitution du *stub piling* au béton, mais ils ont alloué ponr ce *stub piling* exactement le montant réclamé dans cet item. Les appelants admettent cela, mais ils disent que, comme M. Peters n'a pas voulu courir de risques, il ne doit pas avoir de profits, et qu'il ne doit recevoir que ce que lui a coûté l'ouvrage. Cette interprétation de la convention des parties à ce sujet ne nous paraît pas conforme à leur intention. Remarquons que M. Peters n'avait aucun intérêt dans l'exécution de cet ouvrage; il le faisait pour aider les appelants à sortir d'une difficulté. On conçoit très bien que, dans ces circonstances, il leur ait dit : je ne veux courir aucun risque, et je veux être payé de mon ouvrage, mais si les ingénieurs ne veulent pas le payer, je ne chargerai que ce qu'il me coûtera. Mais on ne conçoit pas que M. Peters ait voulu dire : je vais avoir tout le trouble de faire exécuter cet ouvrage pour moi, mais je n'entends en tirer aucun profit, et même si les ingénieurs vous en allouent la pleine valeur, je ne veux avoir que le prix coûtant.

Mais, même si les intimés ne doivent avoir que juste ce que cet ouvrage à coûté à M. Peters, ils doivent avoir plus que n'admettent les appelants, car l'ouvrage a réellement coûté $1632 environ à M. Peters.

L'item 26 est admis par les appelants, et nous n'avons pas besoin de nous en occuper davantage.

Les items 27, 28, 29, 30, 32, 34, 37, 38, 39, sont des sommes dont les intimés se débitent, et ne demandent aucune explication, puisqu'ils sont au profit des appelants.

Les items 31, 33, 35, 36 sont des intérêts sur diverses sommes.. Ils ne demandent aucune preuve, parce que, du moment que ces sommes étaient dûes à M. Peters, elle portaient intérêt comme il le demande, et il suffit de faire le calcul de ces intérêts.

L'item 40 est le bonus que les appelants s'étaient engagés à payer à M. Peters pour leur avoir donné une part de son entreprise. Comme on l'a déjà vu ce bonus est expressément stipulé dans l'acte du 4 mai 1877, et, partant, ne demande aucune discussion.

L'item 42 est admis.

Les autres items qui ne sont pas admis par les appelants sont parfaitement prouvés. Par exemple, il y en a un pour le redressement d'un quai qui avait été dérangé par les glaces parce que les appelants qui devaient le remplir de sable ne l'avaient pas suffisamment rempli. Il y en a un autre pour réparations à un

autre quai qui s'était ouvert parce que les appelants, obligés de niveler les fondations ne l'avaient pas fait convenablement, et avaient laissé une espèce de dos de cheval, ce qui a eu pour conséquence que, lorsque le quai a été déposé sur ce fonds mal nivelé, il s'est cassé. Ces items sont prouvés par les témoins H. J. Peters, A. Peters, Labbé, Flamand et Desruisseaux. Il y en a un troisième pour avoir enfoncé un pilotis. Les appelants l'admettent pour $14.70. Il est prouvé par A. J. Peters, (page 9,) par A. Peters, (page 76). Les items 48 et 49 sont admis.

Le compte produit avec l'action de M. Peters est donc complètement admis ou prouvé.

Il y a encore un autre moyen de prouver que les intimés ont droit au montant qui leur est accordé par le jugement soumis à cette cour. Au fond, le véritable point en litige entre les parties, consiste à savoir si M. Peters avait droit à tout ce qui a été alloué par les ingénieurs, et payé par les Commissaires, pour le mur en pierre dont il a été si souvent question (item 8 du compte pièce No. 6 des intimés.) Les appelants prétendent que M. Peters n'avait droit qu'aux $21,940.61, qui ont été accordées comme extra pour la construction de ce mur. Les intimés soutiennent, au contraire, que M. Peters avait droit au total des $77,376.50 qui ont été payées pour le construire. On va voir que toute la cause, ou à peu près, se trouve dans cette divergence de vues entre les parties.

La vraie question en litige entre les parties.

Cela revient à dire que la question réellement en litige entre les parties c'est, au fond, de savoir si c'est l'acte du 2 mai 1877 qui doit régler leurs relations, ou si c'est l'acte du 4 mai ; et, si c'est l'acte du 4 mai, quel en est le sens. La prétention des appelants est, en substance, que c'est l'acte du 2 mai, et celle des intimés, que cet acte n'a rien à voir dans la cause, et que c'est l'acte du 4 mai qui seul doit faire la loi entre les parties.

Voici sur quoi s'appuient les intimés pour dire que c'est l'acte du 4 mai qui doit régler leur relations. Ce contrat du 4 mai constitue entre les parties une espèce de contre-lettre destinée à détruire, ou, du moins, à modifier entre eux le contrat du 2 mai. Or, il est de règle que lorsque deux personnes font entre elles une contre-lettre, c'est celle-ci qui constitue leur vrai contrat, et non le contrat qu'elle a pour objet de modifier ou d'annuler (19 Laurent, page 194 ; 8 Aubry & Rau, page 266). Le contrat du 2 mai entre les entrepreneurs d'une part et les Commissaires du Hâvre d'autre part, ne renferme aucune convention entre les entrepreneurs eux-mêmes.

Maintenant, quel est le sens du contrat du 4 mai ? C'est évidemment celui-ci : entre les entrepreneurs eux-mêmes, les choses vont être traitées comme si chacun d'eux avait avec les Commissaires un contrat distinct et indépendant pour les ouvrages dont il doit être chargé. Lui seul sera tenu de les faire, lui seul aura la responsabilité de leur confection, lui seul aura droit à ce qui sera payé pour leur confection. Si quelques-uns de ces ouvrages sont supprimés par les Commissaires, en vertu du pouvoir que leur donne le contrat du 2 mai, celui des entrepreneurs qui devait les exécuter n'aura aucun recours contre l'autre pour les profits qu'il aurait pu faire sur leur exécution. Et, d'un autre côté, si les Com-

missaires augmentent les travaux compris dans son lot, lui seul aura droit à l'excédant de prix payé pour ce surcroit de travaux. Comme les Commissaires paient sans égard à ces arrangements entre les entrepreneurs, il est convenu entre ceux-ci que les paiements à compte, faite au cours des travaux, seront partagés entre eux d'après la quantité d'ouvrage faite par chacun, telle que constatée par l'ingénieur résident des Commissaires. Enfin les appelants s'engagent à payer à M. Peters $5,000 comme prime pour les avoir associés dans son entreprise.

Il n'y a pas dans ce contrat un seul mot pour dire que les entrepreneurs se partageront l'argent payé d'après ce que dira le certificat final des ingénieurs des Commissaires. Il n'y a pas un mot dans le contrat du 4 mai qui puisse fournir la moindre justification à cette prétention des appelants. Les ingénieurs chargés de la surveillance des travaux par les Commissaires ne sont mentionnés, dans ce contrat du 4 mai, que pour dire qu'ils pourront faire des plans de détail des travaux à exécuter, et que les entrepreneurs devront s'y conformer dans les ouvrages dont ils sont chargés, sans que l'un ait de recours contre l'autre, et que les paiements à compte faits au cours des travaux, seront partagés entre eux d'après les certificats de l'ingénieur résident constatant la quantité d'ouvrage faite par chacun d'eux, calculée suivant l'échelle de prix sur laquelle le prix en bloc avait été fixé. Il n'y a pas un mot dans ce contrat du 4 mai pour dire que le certificat final des ingénieurs liera les parties entre elles. Il est inutile d'insister sur l'importance de ce point, car il va de soi qu'on ne peut, sans une stipulation expresse et formelle, constituer une personne juge en dernier ressort des difficultés qui pourront s'élever entre deux autres personnes.

L'interprétation que nous donnons à l'acte du 4 mai s'impose tellement que les appelants n'ont pu s'empêcher de l'adopter dans une partie de leurs plaidoyers. Voici ce que nous y lisons : The Plaintiff and Defendants under the terms " of the said agreement became and were entitled, each to the moneys paid by " the Quebec Harbour Commissioners in respect of the work done by each res- " pectively, and to no other or greater sum." (*Case* des appelants, page 145). Et plus loin " The Defendants became entitled to all the moneys payable by the " Quebec Harbour Commissioners in respect of said works, save and except " those payable in respect of the works performed by the Plaintiff under his " contract."

Nous devons signaler une inexactitude dans cette dernière citation : elle fait dire au contrat du 4 mai que les appelants doivent avoir tout l'argent payé par les Commissaires, si les intimés ne prouvent pas qu'il leur appartient. Ce n'est pas ce que dit l'acte en question ; ce qu'il déclare, c'est qu'à l'exception de certains ouvrages indiqués, comme le bois, le fer, tous les autres travaux à exécuter par les entrepreneurs le seront par les appelants. Il y a toute la différence du monde entre ces deux expressions. Ce que l'acte du 4 mai dit au sujet des sommes payées aux entrepreneurs par les Commissaires, c'est que chacune des parties en aura la portion correspondant aux ouvrages faits par elle, évalués d'après l'échelle qui a servi de base au prix total. En d'autres termes, chaque partie doit être payée pour ce qu'elle fera, et pas pour ce qui sera fait par l'autre.

Cela paraît si simple, qu'on est amené à se demander ce qui a pu suggérer aux appelants la prétention qu'ils soutiennent dans cette clause, que le certificat final des ingénieurs des Commissaires doit avoir entre les parties l'effet d'un

jugement sans appel. Voici probablement ce qui la leur a fait concevoir. Nous avons vu que, le 4 février 1886, les ingénieurs qui avaient surveillé les travaux pour les Commissaires avaient donné un certificat final fixant à $52,000 la balance qui revenait aux entrepreneurs. Ce certificat ne donnait aucun détail (*Case* des appelants, pages 106 et 107, témoignage de Kinipple). En 1892, la Cour Suprême rendit le jugement dont il a été question plus haut, qui accordait aux entrepreneurs $35,000 de plus que ne donnait ce certificat. C'est alors que les appelants eurent l'idée de s'approprier les $69,000 qui avaient été déposées à la Banque Union. M. Morris, qui seul avait dirigé les travaux pour les Commissaires, et qui seul les connaissait, était décédé. Mr. Kinipple, qui n'était venu à Québec qu'une fois, alors que les travaux tiraient à leur fin, n'en connaissait absolument rien. Il n'avait, non plus, aucun moyen d'en rien connaître, puisque les documents qui auraient pu le renseigner étaient détruits, et que, les travaux étant terminés, il était devenu impossible de voir la quantité de chaque espèce d'ouvrage qui y était entrée. Comment dire, par exemple, combien de verges de béton fin et de béton grossier y étaient entrées, combien de verges de draguage, combien de verges de remplissage il y avait? Moore, l'un des appelants, sachant cela, prépara en 1893 un état détaillé des quantités d'ouvrages de chaque espèce qui était entrée dans l'exécution de l'entreprise. Kinipple le certifia, le signa du nom de sa nouvelle société Kinipple & Jaffrey, et le data du 27 janvier 1886 pour faire croire qu'il avait été préparé en même temps que le certificat final du 4 février 1886. (*Case* des appelants, témoignage de Kinipple, page 107.) Tout cela se faisait derrière le dos de M. Peters, qui n'en avait pas entendu parler. Quand tout fut prêt, et que M. Moore crut que le tour était joué, il présenta ce document à M. Peters, et lui dit: voici un jugement sans appel qui décide à combien chacun de nous a droit.

Quand même le certificat des ingénieurs devrait faire loi, entre les entrepreneurs eux-mêmes comme entre eux et les commissaires du Hâvre, celui-là ne pourrait faire autorité pour les raisons suivantes:

1. D'abord ce document est signé Kinipple & Jeffrey, et jamais cette société d'ingénieurs n'a été chargée de surveiller les travaux exécutés par les Commissaires du Hâvre de Québec.

2. Kinipple & Morris, comme nous l'avons déjà dit, n'ont jamais été choisis par les entrepreneurs comme juge entre eux de ce qui devait revenir à chacun. Ils n'ont pas même été chargés de dire la part que chacun aurait dans les paiements faits au cours des travaux; c'est l'ingénieur résident qui a reçu cette mission.

3. Si les ingénieurs avaient été choisis par les entrepreneurs comme juges entre eux, leur jurisdiction était épuisée par le certificat final du 4 février 1886.

4. Si les ingénieurs étaient juges entre les parties, ils devaient procéder comme un juge qui a le moindre sentiment de la justice, et ne rien faire qu'après avoir mis les deux parties intéressées en position de faire valoir leurs prétentions. Au lieu de cela, M. Kinipple a prononcé ce prétendu jugement sans avoir entendu M. Peters, sans même lui laisser soupçonner qu'il s'occupait de l'affaire, et en se contentant de copier le projet préparé par une des parties intéressées, par les appelants.

5. Ce prétendu certificat est fondé sur une donnée erronée et contraire au contrat du 4 mai 1877. Il prétend donner les détails des travaux exécutés par

chacune des parties, non pas d'après les travaux exécutés en réalité, mais d'après ceux projetés par les Commissaires. On a vu plus haut que les Commissaires pouvaient faire toutes les modifications qu'ils jugeraient nécessaires. Ils en ont fait de si importantes, que des 14 chefs ou *Bills*, en lesquels les travaux sont divisés dans le *Blue Book*, 6 ont été entièrement abandonnés, et un autre a été abandonné en partie. (Preuve des intimés, témoignage d'Albert Peters, pages 71 et 72). Ces travaux abandonnés ont été remplacés par d'autres ouvrages. Par exemple, ainsi qu'on l'a vu plus haut, le parement extérieur en bois adossé contre du béton fin, qui a été remplacé par un parement en pierre adossé contre du béton grossier. Cela a eu pour conséquence de supprimer pour $27,531.25 de béton fin, et pour $37,907.06 de bois et de fer. Ce mur en pierre, qui a été payé par les Commissaires $77,378.50, n'a entraîné que $21,940.61 d'extra. Le reste de ce qu'il a coûté aux Commissaires a été payé à même les déductions qui viennent d'être mentionnées. Comme c'est M. Peters seul qui l'a construit, il doit avoir seul tout ce qui a été payé pour sa construction, et les appelants ne doivent obtenir aucune partie du prix du béton fin que la construction de ce mur a fait supprimer, (même témoignage d'Albert Peters, pages 71 et 72 ; témoignage de Kinipple, pages 108 et 109 de la preuve des appelants.)

Kinipple admet que $27,531.25 de béton fin n'ont pas été faites, mais il ajoute que c'est indifférent parce que d'autres ouvrages ont été faits à la place. Nous admettons que c'est indifférent pour les Commissaires, mais la Cour comprendra facilement que ce n'est pas indifférent pour les intimés, puisque cela aurait pour effet de les empêcher d'êtres payés de $27,531.25 d'ouvrage qui a été fait par M. Peters, et cela ferait payer aux appelants cette somme pour de l'ouvrage qu'ils n'ont pas fait. Or, comme on l'a vu, d'après le contrat du 4 mai 1877, chacune des parties doit être payée pour les ouvrages qu'elle fait, et elle n'a droit de rien recevoir sur ce qui est payé pour des travaux faits par l'autre partie.

Il est évident que, d'après ce contrat du 4 mai, M, Peters seul a droit à tout le prix du mur en pierre, puisqu'il l'a construit seul, et les appelants n'ont droit à rien de ce chef, puisqu'ils n'y ont pas travaillé. Les appelants doivent perdre le prix du béton fin qu'ils n'ont pas fait, et les intimés celui du bois et du fer qu'ils n'ont pas exécutés.

La prétention des appelants, au contraire, est que, bien que ce béton fin n'ait pas été fait, comme il est représenté par un égal montant de mur en pierre, il doivent en être payés. Il n'y a rien dans le contrat du 4 mai qui puisse justifier cette prétention : au contraire, chacun doit, d'après ce contrat, être payé pour les travaux qu'il fait réellement, et non pour ceux qu'il ne fait pas, quand même ils seraient représentés par d'autres.

Ce point est de la plus haute importance ; on peut même dire que c'est toute la cause. Les appelants arrivent au résultat indiqué dans leur plaidoyer en s'attribuant les $27,531.25 payées pour du béton fin qu'ils n'ont pas fait, parce qu'il a été remplacé par le mur en pierre. Les intimés prétendent, au contraire, que ce sont eux qui doivent avoir cette somme. Cela fait presque toute la différence qu'il y a entre leurs prétentions respectives. Car si, au lieu de donner ces $27,531.25 aux appelants, nous les donnons aux intimés, cela fait une différence de $55,062.50, et toute la cause est décidée. En effet, si après avoir

retranché ces $27,531.25 aux appelants, nous les donnons aux intimés, et si nous ajoutons à cela les $5,000 de bonus que les appelants admettent devoir aux intimés, plus les sommes suivantes qu'ils admettent aussi devoir aux intimés, savoir : $300 pour une planche en marbre, $846.35 pour le *stub piling*, et $1038 pour les *fenders*, nous arrivons à un total de $34,715.60. C'est $229.13 de plus que ne donne aux intimés le jugement de M. le juge Routhier. Comme les intimés n'ont pas pris de contre-appel, ils ne peuvent pas réclamer cet excédant, mais ils ont droit d'avoir tout le montant accordé par ce jugement.

Quant aux comptes produits par les appelants, évidemment ils ne sont pas sérieux, et ils n'en ont fait aucune preuve légale.

Pour toutes ces raisons les intimés ont confiance que cette cour confirmera avec dépens le jugement qui lui est soumis.

Québec, 27 novembre 1896.

MONTAMBAULT, LANGELIER & LANGELIER,

Avocats des intimés.

Canada, Province of Quebec, District of Quebec.

In the Court of Queen's Bench. (Appeal Side)

No. 193. Judgment of Court of Queen's Bench, 29th Mar., 1897.

Quebec, Monday, the twenty-ninth day of March, one thousand eight hundred and ninety-seven.

Present:

The Honorable Sir A. LACOSTE, Knight, Chief Justice.
" " Mr. Justice BLANCHET,
" " " " HALL,
" " " " WURTELE.
" " " " OUIMET.

Edward Moore and Augustus R. Wright, both of the City of Portland, in the State of Maine, one of the United States of America, Esquires, Contractors and heretofore using trade in co-partnership under the name style and firm of Moore & Wright, the said Edward Moore and Augustus R. Wright having property in this District, and the Union Bank of Canada, a body politic and corporate having its Chief Office in the City of Quebec, a party hereto for the purpose of taking cognizance of the judgment to be rendered herein and obey such order as the Court may make herein, . . Defendants, Appellants.

vs.

Simon Peters, of the City of Quebec, Contractor, . . . Plaintiff.

and

Dame Eliza Jane Lamoureux, of the City of Quebec, widow of the late Simon Peters, Henry Joseph Peters, of the City of

RECORD.

In the Court of Queen's Bench.

No. 193
Judgment of Court of Queen's Bench, 29th Mar., 1897.
continued---

Montreal, Architect, and Albert Hyacinthe and Joseph Bernard Peters, both of the City of Quebec, and Martial Chevalier, of the City of Montreal, all of the said Petitioners in their qualities as Executors of the last will and testament of said late Simon Peters and the said Dame Eliza Jane Lamoureux also in her quality as universal usufructuary legatee of the said late Simon Peters, . . Plaintiffs *en Reprise d'Instance*, Respondents.

The Court of Our Lady the Queen, now here, having heard the Appellants and Respondents by their Counsel respectively, examined as well the record and proceedings in the Court below, as the record in Appeal, and mature deliberation on the whole being had:

Whereas the Appellants and the late Simon Peters entered into a contract with the Quebec Harbour Commissioners in May 1877, for the construction of certain works in the Harbour of Quebec, at a fixed price, but subject to the right reserved to the said Harbour Commissioners to make such changes in said work as they might desire.

Whereas immediately after the execution of said contract, the said Appellants and the said Simon Peters executed a certain supplementary contract between themselves, dividing the work to be done, and declaring that no partnership existed or should be held to exist between them in the prosecution of said work.

Whereas various changes were ordered to be made in said work by the said Harbour Commissioners, and the works, as changed, were eventually completed by said Appellants, said Simon Peters, and payments made from time to time under the terms of their contract:

Whereas as a result of the completion of said work and of certain litigation which took place between said contractors and said Harbour Commissioners, a balance of $68,972.70 was agreed upon as due by said Harbour Commissioners which by consent of said Appellants and of said Simon Peters was deposited in the Union Bank of Canada at Quebec, on the 29th day of October, eighteen hundred and ninety-two, at four per cent interest per annum, until its division could be determined between the said Contractors: and seeing the impossibility of such a division by private agreement, the said Simon Peters instituted the present action against the Appellants presenting his own account and calling upon said Appellants to produce a corresponding statement of the work done and payments received by them and asking that it be declared that he was entitled to be paid out of said deposit the sum of $38,532.55 with interest, and that the said Union Bank of Canada *mise en cause* be ordered to pay over to him said sum and interest.

Whereas the said Appellants contested said action and alleged that they were not liable to render any accounts to said Simon Peters and that he said Peters had been paid and overpaid for all the work he had done under said contract and that they were in consequence, entitled to the whole of said amount deposited as aforesaid.

Considering that under the issues raised by the parties, the court is left no other alternative that to grant the conclusions of said Plaintiff's action to the

extent of the value at schedule rates of work proved to have been done by him, or for additional allowances made by said Harbour Commissioners upon said items, as the equivalent for other work done by said Plaintiff under the direction of the Commissioners' Engineers, and not otherwise paid for, inasmuch as it appears that the whole contract allowance for the completion of said work has been paid by the said Harbour Commissioners, less certain deductions which do not apply to the branch of said works undertaken and performed by said Plaintiff.

Considering that in the judgment of the Superior Court, appealed from, based upon an equal division between the contesting parties, of the balance paid by the Harbour Commissioners and deposited to the joint credit of said parties as aforesaid, there is error. Doth maintain the present appeal and doth set aside and annul said judgment and proceeding to render the judgment which said Superior Court should have rendered;

Considering that good and sufficient proof has been adduced or admissions made to establish that the original Plaintiff Simon Peters, represented by the present Respondents, was entitled as between himself and the Defendants upon the following named items of his account sued upon to the amounts hereafter set forth, to wit:

Upon the item	No. 1	the sum of.....	$	36,955 44
" "	No. 2	"		328 61
" "	No. 3	"		48,465 73
" "	No. 4	"		6,838 44
" "	No. 5	"		2,895 14
" "	No. 7	"		5,474 88
" "	No. 8	"		77,378 50
" "	No. 9 to 23	inclusive admitted.....		98,817 30
" "	No. 25	the sum of.....		1,692 70
" "	No. 26	"		1,038 00
" "	No. 29	"		32 64
" "	No. 30	"		42
" "	No. 40	"		5,000 00
" "	No. 42	"		14 11
" "	No. 46	"		14 70
" "	No. 47	"		26 63
" "	No. 48	"		7 11
" "	No. 49	"		113 85
amounting in all to the sum of.....			$	285,094 20

two hundred and eighty-five thousand and ninety-four dollars and twenty cents.

From which is to be deducted the sum of two hundred and thirty-seven thousand four hundred and fifty-one dollars and ninety-six cents paid in cash to said Simon Peters prior to the fourth day of February 1886, and the further sum of $490.48 admitted by said Simon Peters as his proportion of a sum of $1200, paid by Appellants to Hon. J. G. Bossé, prior to said last named date, the sum of $2500, paid on 9th March 1887, $12,500, paid on 13th September 1887, $15,000 paid on 29th October 1892, $764.95 admitted by said Peters as his proportion of a sum of $1,870.50 paid by Appellants to said Hon. J. G. Bossé,

RECORD.

In the Court of Queen's Bench.

No. 193. Judgment of Court of Queen's Bench, 29th Mar., 1897. *continued*—

$1,634.94 admitted by said Peters as his proportion of a sum of $4,000 paid by Appellants to W. Cook and $599.85 being Plaintiff's proportion of a sum of $1,799.56 deducted by said Harbour Commissioners for rent and taxes admitted by said parties, the last three items to be credited and deducted as of the 29th October 1892, amounting in all to two hundred and seventy thousand, nine hundred and forty-two dollars and eighteen cents $270,942.18 leaving a balance of $14,152.02 to which is to be added interest at the rate of six per cent from the fourth day of February 1886 until the 9th day of March 1887 upon the sum of $41,975.42 and at the same rate upon the sum of $42,235.44 from the 9th March 1887, until the 13th September 1887 and at the same rate upon the sum of $31,080.27 from the 13th September 1887, until 25th July 1892 and at four per cent interest per annum for a term of three months on the sum of $40,090.23 amounting said several items of interest to the sum of $13,515.71 making a total of $27,667.73 as the amount for which said Plaintiffs, *par reprise d'instance*, have established their claim in and to the funds deposited to the joint account of said parties hereto as hereinbefore set forth;

Considering that the remaining items included in Plaintiff's action are unproved or prescribed by limitation of time;

Considering that the items of account urged by said Defendants in offset and deduction of Plaintiff's said claim are either unproved or prescribed by limitation of time and can only be allowed to the extent admitted by said Plaintiffs as hereinbefore set forth;

Doth declare the said Respondents entitled to the said sum of $27,667.73 out of the deposit at the said Union Bank of Canada with interest thereon at the rate of four per cent per annum from the 29th of October 1892 and the said Appellants are adjuged and condemned within 15 days from the service upon them of the present judgment to join said Respondents in making and signing a cheque upon the said Union Bank of Canada for the said sum of $27,667.73 and interest as aforesaid and in default of said Appellants signing said cheque, the said Respondents are hereby authorised to withdrawn the said sum and interest from said Bank, and the said Bank *mise en cause* is ordered and authorized to pay said sum and interests to said Respondents, and further the said Appellants are condemned to pay to Respondents their costs of suit in the Superior Court, and the said Respondents are condemned to pay to Appellants the costs of the present appeal.

And it is ordered that the record be remitted to the Superior Court at Quebec.

(Vraie copie,)

Greffe des Appels.

Québec, 7 août 1897.

JOS. NADEAU,

Dép. G. des Appels.

LACOSTE, J. en C. :—L'objet de ce procès est de distribuer aux parties la balance du prix de la construction du Bassin Louise, déposée par les commissaires du havre de Québec, dans la banque Union du Canada. du consentement des parties.

Le demandeur, Peters, que représentent les intimés, par reprise d'instance, et les défendeurs Moore & Wright avaient entrepris, en commun, la construction de ce Bassin—En même temps, ils ont stipulé qu'il n'existerait entre eux aucune société, que Peters ferait l'ouvrage en bois et en fer et Moore & Wright tout ce qui resterait. Le certificat final de l'ingénieur en chef des commissaires du havre a fixé la balance due sur le prix de la construction à $52,011.21. Les constructeurs, n'etant pas satisfaits de ce rapport, l'ont contesté, devant les tribunaux, et la Cour Suprême a ajouté aux $52,011.21, la somme de $35,457.50, formant un total de $87,468.71.

La cour de première instance n'a pas trouvé, dans le dossier, une preuve qui lui permit de faire la distribution, elle a alors appliqué l'art. 1848 C. C. qui déclare que le partage se fera également entre les associés lorsque l'acte des conventions sociales n'établit pas la part de chacun dans la société.

Nous croyons ce jugement erroné. L'art. 1848 C. C. ne s'applique qu'au cas de société. Or, dans l'espèce, les parties ont stipulé qu'il n'y aurait pas de société entre elles. Il nous a donc fallu étudier le dossier afin d'établir les droits respectifs des parties. Il est à regretter que cette cause n'ait pas été référée à des experts ou à des arbitres qui peut-être auraient pu rendre justice plus complète.

L'action est basée sur le contrat du 2 mai 1877, fait entre les commissaires du hâvre et Peters, Moore & Wright et sur celui du 4 mai 1877 déterminant la part de chacune des parties dans les travaux de construction. Peters énumère les ouvrages qu'il a faits et il réclame les sommes qui lui ont été allouées pour ces ouvrages. déduction faite des paiements qu'il a reçus. De plus, il invite Moore & Wright à donner un compte des travaux qu'eux-mêmes ont exécutés. L'action contient en outre certaines réclamations sur comptes et le demandeur conclut à ce que, sur les deniers déposés en banque, il soit payé de somme de $38,532.55 représentant sa part du dépot.

Les défendeurs refusent de rendre compte, disant qu'ils ont droit au prix de tous les ouvrages, déduction faite de celui des ouvrages en bois et en fer et de l'extra de $21,940.61 accordé par les commissaires pour la construction d'un mur de pierre. Ils admettent certains des comptes réclamés, nient les autres, plaident prescription à quelques uns d'entre eux et offrent un compte de $58,845.46 en compensation.

Dans sa réponse, le demandeur nie le compte des défendeurs et invoque la prescription.

RECORD.

In the Court of Queen's Bench.

No. 194
Chief Justice Sir A. Lacoste's Reasons for Judgment *continued*—

D'après les plaidoiries, le démandeur se trouvait dans l'obligation de prouver son compte et les montants accordés par les commissaires pour les ouvrages qu'il a faits. D'un autre côté du moment que cette preuve nous paraissait satisfaisante nous n'étions pas obligés de constater si les défendeurs se trouvaient payés en entier du montant de leurs ouvrages.

Avant de discuter le compte nous devons faire mention de certaines lettres du demandeur et d'états préparés par lui antérieurement à l'action et que les défendeurs invoquent comme constituant des admissions qui lui sont fatales. Ces lettres et ces états paraissent, de prime abord, contredire plus ou moins la position que le demandeur prend dans cette action : toutefois cette contradiction, n'est pas aussi importante qu'elle le paraît. Ainsi les comptes B. 4 et B. 8 ne diffèrent de la réclamation produite, par le demandeur dans cette cause, que d'environ $2,000. Aucunes de ces lettres ou états n'établissent un règlement de comptes entre les parties. Ils constituent des éléments dans la preuve que nous avons dû apprécier, mais ils n'établissent aucune renonciation au droit d'exiger un règlement des appelants, renonciation que nous ne devons pas présumer. Si l'examen du dossier nous convainc que ces états et lettres sont erronés, nous devons nous en tenir à la preuve faite dans la cause, sans les admettre comme fin de non recevoir.

Un autre point que nous avons du considérer préliminairement est la valeur probante du certificat final donné par l'ingénieur en chef des commissaires du havre. Dans le contrat du 2 mai, il est dit que les entrepreneurs seront payés sur des états estimatifs faits au cours de l'ouvrage par l'ingénieur résident, mais que ces états ne seront pas considérés comme définitifs et ne lieront pas l'ingénieur en chef, chargé de donner le certificat final et que ce dernier serait la base de la responsabilité des commissaires du havre vis-à-vis des constructeurs. Nous croyons que cette disposition du contrat principal liait les parties et que si l'ingénieur en chef eut refusé injustement à Peters un certain montant, ce dernier n'aurait eu aucun recours contre Moore & Wright pour le recouvrement de la perte qu'il se serait trouvé à subir et *vice versa* et que son seul remède aurait été de contester devant les tribunaux l'exactitude du certificat final, comme d'ailleurs les parties l'ont fait. Mais malheureusement ce certificat final ne contient pas de détail. Il alloue aux constructeurs une somme en bloc $529,296.31 qui est le prix du contrat. C'est là une des raisons de l'embarras que nous avons éprouvé dans l'étude du dossier.

Il est vrai que les défendeurs ont produit un certificat signé par Kiniple l'un des ingénieurs en chef, en date du mois de mai 1893. Ce certificat donne certains détails qui nous auraient été de quelque utilité, mais nous n'avons pas cru devoir y ajouter foi. Les ingénieurs en chef étaient la société Kinipple & Morris de Londres. Le certificat final a d'abord été donné en 1886. Morris est décédé peu de temps après. C'est lui qui avait surveillé l'ouvrage. Les parties anxieuses d'avoir des détails se sont adressées à Kinipple. Les lettres de ce dernier de 1886 et 1887, nous disent qu'il était dans l'impossibilité de donner les détails demandés. Les choses en restèrent là jusqu'en 1893, alors Moore prépara lui-même un état détaillé sur des données, dit-il, de Brown, ingénieur des parties dans la présente cause, alors décédé, et sans le communiquer à Peters. il l'envoya à Kinipple et obtint sa signature. Il nous paraitrait injuste, dans ces

circonstances d'ajouter une foi entière à cet état détaillé et de règler les droits des parties en se basant sur ses données. D'ailleurs une lettre de Kinipple de 1895 nous prouve que l'état n'est pas conforme aux faits. Il avoue dans cette lettre que certaines sommes qui paraissent avoir été accordées, pour béton fin devaient servir à solder le cout du mur de pierre.

Les principales sources de preuve ont été pour nous : 1. le contrat du 2 mai 1877, entre les commissaires du havre et les constructeurs, avec les plans et dévis—2. le contrat du 4 mai 1877, établissent les conventions des parties entre elles—3. les états estimatifs faits au cours de l'ouvrage—4. le certificat final de 1886, qui est admis par les parties, enfin—5. un état détaillé des déductions faites par les commissaires du consentement des parties s'élèvant à $116.104.32.

Le contrat entre les commissaires du havre et les constructeurs nous donne un état détaillé des ouvrages à faire, celui entre les parties établit la part d'ouvrage de chacune d'elles dans la construction. Les états estimatifs nous donnent le détail des ouvrages faits et de la distribution que les parties ont faite entre elles des argents reçus des commissaires. Ces états estimatifs ont une force probante complète sur bien des points. Ainsi ils établissent relativement à la construction du mur le prix que Peters devait recevoir, d'après l'intention commune et des commissaires du havre et des constructeurs Peters, Moore & Wright. Le certificat final de 1886, nous dit que le prix entier stipulé au contrat a été accordé avec certaines sommes additionnelles qui y sont mentionnées, sauf certaines déductions contenues dans l'état des $116,104.32, Nous passons maintenant à la difficulté principale qui est celle relative à la construction du mur de pierre. Dans le contrat du 2 mai, il est dit que les commissaires pourront changer et modifier les plans et dévis et les ouvrages, notamment, qu'il leur sera loisible de substituer, au mur de revètement en bois à être fait le long du quai et au béton fin mentionné dans le dévis comme devant être posé en arrière de ce revètement, un mur de pierre du béton commun ou grossier, et qu'au cas ou ce changement serait effectué, ils ne seraient tenus de payer aux constructeurs qu'une somme additionnelle de $18,393.58 plus $3,547.03 pour *rough bouchard* à raison de 02¾ cts. per pd formant en tout une somme extra de $21,940.61. Dans l'acte du 4 mai, les parties sont convenues que Peters ferait ce mur de pierre. La prétention des défendeurs est que Peters ne devait être payé pour ce mur, en sus de ces ouvrages en bois et en fer que de la somme de $21,940.61, stipulée dans le contrat du 2 mai comme extra et ils appuient leur prétention sur une clause du contrat du 4 mai qui se lit comme suit: "And whereas it has been stipulated in and " by the said main contract that it shall be optional with the said Quebec Harbour " Commissioners to demand that a certain wall mentioned in the specification " lettered B. and annexed to the said Main contract, be faced with stone, it is " hereby agreed that should the Quebec Harbour Commissioners decide that the " same shall be done the said Simon Peters shall execute the said work at the " rates set forth in the said specification lettered " B," and annexed to the said " Main contract, but in the event of the said work being so performed or executed " by the said Simon Peters, neither he, the said Simon Peters nor the said Moore " & Wright shall have any claim against each other respectively by reason of " the deduction caused by such modification in the mode of constructing the said " wall from the gross amount of the work by them respectively undertaken."

RECORD.

In the Court of Queen's Bench.

No. 194

Chief Justice Sir A. Lacoste's Reasons for Judgment *continued.*

On voit, par la lecture de la clause, que le mur doit être fait aux taux mentionnés dans la cédule B annexée au contrat principal. Or, en référant à cette cédule, on trouve que les seuls taux mentionnés sont les 2¾ pour *rough bouchard* et l'extra de $18,393.58 soit en tout $21,940.61. Suivant la lettre de la clause du contrat du 4 mai, il faudrait donc conclure que le mur devait être construit pour $21,940.61 ce qui vous paraîtrait absurde.

Les défendeurs nous disent qu'il faut ajouter à cette dernière somme le coût de l'ouvrage en bois que le mur de pierre devait remplacer. La clause ne le dit pas. Nous savons bien que telle était l'intention des parties, mais il est à remarquer que le mur de pierre ne remplaçait pas seulement l'ouvrage en bois, mais aussi tout le béton fin, et pourquoi ne dirait-on pas que le coût du béton fin, tout comme l'ouvrage en bois qui se trouvait à disparaître, devait servir à solder le prix du mur de pierre. La fin de la clause précitée démontre que Moore prévoyait une diminution dans l'ouvrage qu'il aurait à faire au cas ou le changement serait effectué. Il y est dit que les parties n'useront d'aucun recours l'une contre l'autre à raison de la diminution que le changement apporterait dans le montant total qu'elles recevraient des commissaires du hâvre. La clause n'est pas satisfaisante et n'établit certainement pas quel montant que Peters devait recevoir pour la construction du mur de pierre et nous avons dû chercher ailleurs la preuve de l'intention des parties et de l'arrangement qu'elles ont fait entre elles.

Nous avons trouvé la preuve de leur convention dans un état de Hy Peters fait avant le commencement des travaux soumis aux entrepreneurs et qui leur a servi de base pour estimer la valeur du mur de pierre. D'après cet état, nous trouvons que le prix de l'ouvrage en bois remplacé par le mur de pierre devait s'élever à $27,906, que le béton fin qui disparaissait s'élevait à $27,531, et que ces deux montants avec l'extra de $21,940 formaient un total de $77,378 précisement le montant que réclame Peters pour la construction du mur de pierre. Cet état est confirmé par un autre de Browne, l'ingénieur des parties, lors de la construction, le quel porte le coût du mur à $77,378, aussi par une lettre de Pilkington, l'ingénieur des commissaires du hâvre, datée de 1877 qui nous dit que le prix du béton fin doit être employé à solder la construction du mur de pierre. Depuis la construction, Hy. Peters a préparé un nouvel état semblable au premier, seulement, dans le premier, le béton fin était déduit des *Bills* Nos. 1, 3, 4 des dévis, et, dans le second, le Bill 3 est omis, mais un montant égal de béton y est déduit de l'ouvrage de 4 cribs additionnels que les commissaires avaient substitués au *Bill* No. 3. Nous trouvons également la preuve du prix du mur dans les états estimatifs faits au cours de l'ouvrage. Les commissaires ont payé le mur à raison de $0.60 par pied, ce qui porte le prix du mur à $77,000 et le 9 octobre 1881 Moore & Wright s'unissaient à Peters pour réclamer la balance qui était alors dûe. Il n'y a donc pas de doute que, dans l'intention des parties et d'après leur arrangement, Peters devait recevoir cette somme de $77,378.50 pour le prix du mur.

Les défendeurs nous ont fait remarquer que la conclusion à laquelle nous arrivons leur fait perdre le béton grossier substitué au béton fin qu'ils étaient tenus de mettre en arrière du mur. Peut-être. Il est fort possible qu'on ait oublié le béton grossier dans les calculs. Si se rendant à l'invitation que le demandeur leur a faite, les défendeurs nous eussent donné le détail des ouvrages

qu'ils avaient faits, nous aurions pu corriger cette erreur, s'il y avait lieu, il est cependant douteux que les défendeurs n'aient pas été payés, car nous trouvons, dans le certificat final de 1886, 3 items pour béton grossier extra, s'élevant à $61,-771. Dans tous les cas l'arrangement est prouvé et nous devons donner au demandeur le bénéfice de l'entente à laquelle les parties en sont arrivées. Les défendeurs nous ont dit que cette réclamation relative au mur de pierre était de date récente. Nous la trouvons dans les comptes antérieurs sous une forme différente. Ainsi au lieu de réclamer $77,378, l'intimé réclame tous les ouvrages en bois plus le béton et " *l'extra*, " ce qui revient au même.

Ces remarques faites, je passe maintenant aux conclusions auxquelles nous sommes arrivés sur les différents items du compte de Peters.

L'item No. 1 est pour ouvrages faits par Peters et compris dans le dévis sous le titre de Bill No. 1, déduction faite toutefois de ceux de ces ouvrages qui étaient remplacés par le mur de pierre. Aucune déduction sur cet item n'est faite dans les $116,104.32 dont nous avons parlé plus haut. La preuve établit que certains des ouvrages compris dans le B. No. 1, ont été remplacés par d'autres et quelques-uns n'ont pas été faits. Toutefois le montant entier ayant été accordé par les commissaires du havre, il n'est que juste qu'il soit payé à Peters. Moore & Wright eux-mêmes ont reçu des sommes considérables pour ouvrages qui n'avaient pas été faits, mais qui ont été accordés comme s'ils eussent été faits. Nous sommes donc d'opinion que cet item doit être accordé.

L'item No. 3 est accordé, le montant alloué était de $386.61, mais comme il n'est reclamé que $328.61, nous ne donnons à Peters que cette dernière somme.

L'item No. 3, B. 4, même remarque que pour B 1. L'item No. 4. B. 7, alloué.

L'item No. 5, B. 8 alloué.

Item No. 6, B. 9. *Screens.* Ce sont des ouvrages de protection. Peters, par le contrat du 4 mai, s'est obligé à les faire gratuitement pour Moore & Wright, seulement il a été convenu que ce qui en resterait à la fin des travaux lui serait remis. Peters n'a pas établit bien clairement la quantité qu'il a livré et Moore jure qu'il n'est rien resté, le tout ayant été détruit par la tempête, dans l'automne de 1877. Nous refusons d'accorder cet item.

Item No. 7, " 4 *Cribs* " Le certificat final de 1886 accorde $6,428. Peters a déduit le béton et l'ouvrage en bois remplacé par le mur de pierre. Nous lui accordons cet item.

Item No. 8, mur de pierre, accordé.

Items 9 à 23, admis.

Item 24, " *Understated Bills* ". Le certificat final de 1886 n'accorde d'augmentations que pour le béton. En conséquence, Peters ne peut rien réclamer. Refusé.

Item No. 25, " *Piles Stub foundations* ". Peters s'est obligé à faire cet ouvrage pour Moore & Wright au prix coutant. Nous lui accordons ce qu'il a prouvé être le prix coutant $1,692.70

Item No. 26. admis.

Items No. 29 et 30. Erreurs de calculs qui a été établie. Nous accordons ces deux items s'élevant à $33.06.

Item No. 40, admis.

RECORD.

In the Court of Queen's Bench.

No. 194 Chief Justice Sir A. Lacoste's Reasons for Judgment *continued*—

Item No. 41, est pour l'usage de la cour et du quai de Peters en 1877, par Moore & Wright. Nous croyons cet item prescrit. Il est vrai que dans l'acte de dépot de la balance du prix de construction à la banque Union. les parties déclarent qu'il n'ont pas déterminé leur part respective dans le prix du contrat et dans les dépenses accessoires. Nous ne trouvons pas dans ces expressions une renonciation à la prescription. La prescription court du jour ou le droit d'action existe et ce montant pouvait être reclamé à la fin de l'occupation de la cour et du quai. Les deux parties d'ailleurs ont interprété ainsi l'acte de dépot puisque toutes deux ont invoqué la prescription contre la demande faite par chacune d'elles de dépenses communes et accessoires du contrat.

Items 43, 44, 45, 46, prescrits

Item No. 47. Il s'agit du coût d'une truelle donnée à la princess Louise lors de l'inauguration du Bassin Louise. Un montant de $750 a été alloué par les commissaires pour les dépenses de ce genre. Il nous parait juste que le coût de la truelle soit acquitté par les entrepreneurs dans la proportion convenue au contrat du 4 mai qui est aussi près que possible celle d'un $\frac{1}{3}$ à $\frac{2}{3}$.

Item No. 48. Il y a eu une admission de cet item, mais elle est faite dans des termes que nous croyons ne pouvoir accorder à Peters que le tiers du montant reclamé.

Item No. 49, admis.

Les autres items du compte sont des crédits.

Il ne nous reste à discuter maintenant que le compte de Moore & Wright.

Il peut être classifié comme suit :

1. Proportion de Peters dans le montant de $1,799.56 retenue par les commissaires pour loyer, taxes, etc ?

2. Dépenses faites par Moore pour payer le salaire des ingénieurs des entrepreneurs et leurs dépenses incidentes.

3. Dépenses faites par Moore & Wright pour les procès.

Peters doit payer sa part dans les $1,799.56 soit un tiers.

Quant au paiement fait aux ingénieurs et aux dépenses incidentes acquittées par Moore, il y en a beaucoup qui ne sont pas prouvées, Dans tous les cas, la prescription a couru du jour des paiements faits par Moore, ou à tout évènement depuis la fin de l'entreprise.

Les mêmes remarques s'appliquent aux dépenses légales. Pour ne prendre que le paiement du jugement de Paquette et celui fait aux MM. Cook, avocats, les défendeurs étaient tenus de faire la meilleure preuve. Ils auraient dû produire le jugement et le mémoire de frais taxés. Egalement ils auraient dû donner plus de détails dans le compte de MM. Cook et démontrer que c'étaient des dépenses qui avaient été faites dans l'intérêt commun.

Nous sommes arrivés à la conclusion d'accorder à l'intimée, par reprise d'instance $285,094.20 déduisant les crédits $270,942.18, il reste une balance de $14,152.02 plus les intérêts sur certains de ces items à venir au 29 octobre 1892, date du dépot $13,515.71, formant, en tout, $27,667.73, avec intérêt à 4% du 29 octobre 1892.

Les frais d'appel sont à la charge de l'intimée et ceux de la Cour Supérieure à la charge des appelants.

CANADA,
Province of Quebec,
District of Quebec.

Court of Queen's Bench.
(Appeal Side).

Quebec, the third day of June, one thousand eight hundred and ninety-seven.

Present:

The Honorable Sir A. LACOSTE, Chief Justice.
" " Mr. Justice BLANCHET,
" " " " HALL,
" " " " WURTELE,
" " " " OUIMET.

No. 57.

Edward Moore *et al.*, ... Appellants.

vs.

Dame J. E. Lamoureux *et al.*, ... Respondents.

The Court, having heard the parties, by their counsel respectively, on the merits of the motion presented on behalf of the Appellants, asking that leave be granted to them, to appeal to Her Majesty in Her Privy Council, from the judgment rendered by this Court, on the twenty-ninth day of March last, the said motion is allowed and a delay of six weeks is granted in order to file the required security,

(True copy),

Appeal Office,
Quebec, 4th June, 1897.

JOS. NADEAU,
Dep. C. of Appeals.

RECORD.

In the Court of Queen's Bench.

No. 196. Bail-Bond on Appeal to Her Majesty, 12th June, 1897.

CANADA,
Province of Quebec,
District of Quebec.

Court of Queen's Bench.
(Appeal Side).

Whereas, on the twenty-ninth day of March, one thousand eight hundred and ninety-seven, judgment was rendered by the Court of Queen's Bench, sitting in appeal, at Quebec, in the District of Quebec, between :

EDWARD MOORE and AUGUSTUS R. WRIGHT, both of the City of Portland, in the State of Maine, one of the United States of America, Esquires, Contractors, and heretofore using trade in co-partnership under the name style and firm of Moore & Wright, the said Edward Moore and Augustus R. Wright having property in this District, and the Union Bank of Canada, a body politic and corporate having its chief office in the City of Quebec, a party hereto for the purpose of taking cognizance of the judgment to be rendered herein and obey such order as the Court may make herein.

Defendants.

And the said EDWARD MOORE and AUGUSTUS R. WRIGHT,

Appellants.

No. 57. and

SIMON PETERS, of the City of Quebec, Contractor, Plaintiff.

and

DAME ELIZA JANE LAMOUREUX, of the City of Quebec, widow of the late Simon Peters, Henry Joseph Peters, of the City of Montreal, Architect, and Albert Hyacinthe and Joseph Bernard Peters, both of the City of Quebec, and Martial Chevalier of the City of Montreal, all of the said Petitioners in their qualities as Executors of the last will and testament of the said late Simon Peters and the said Dame Eliza Jane Lamoureux also in her quality as universal usufructuary Legatee of the said late Simon Peters,

Plaintiffs *en reprise d'instance.*

Respondents.

Whereas, by the said judgment, it was declared that the Respondents were entitled to the sum of twenty-seven thousand and six hundred and sixty-seven dollars and seventy-three cents, out of the deposit made at the said Union Bank of Canada with interest therein at the rate of four per cent per annum from the twenty-ninth day of October, eighteen hundred and ninety-two, and costs of suit in the Superior Court amounting to the sum of six hundred and thirty-four dollars with interest thereon since the date of the judgment granting the same.

Whereas, on the third day of June instant, the said Appellants obtained leave to appeal from the said judgment to Her Majesty in Her Privy Council thus rendering necessary the giving of the security required by article 1179 of the Code of Civil Procedure for the Province of Quebec.

Therefore these presents testify that on the twelfth day of June, one thousand eight hundred and ninety-seven, personally came and appeared before me the undersigned, one of the justices of the Court of Queen's Bench for the Province

of Quebec, Andrew Thomson, of the City of Quebec, President of the Union Bank of Canada, and Ephraim Elliott Webb, of the City of Quebec, Cashier of the Union Bank of Canada, who have acknowledged to be jointly and severally the legal securities of the said Appellants in regard to the said appeal under the provisions of said article 1179, and have jointly and severally promised and hereby promise that in case the said Appellants will not effectually prosecute the said appeal and will not satisfy the condemnation in capital, interests and costs and pay all costs and damages which may hereafter be adjuged in case the judgment appealed from is confirmed, then the said sureties will satisfy the said condemnation in capital, interest and costs and pay all costs and damages which may hereafter be adjuged in case the judgment appealed from is confirmed. And they have signed.

(Signed) A. THOMSON, E. E. WEBB.

Taken and acknowledge before me, at the city of Quebec, the day and year first above written.

(Signed) J. BLANCHET, J. Q. B.

And the said sureties having at the same time been required to justify their sufficiency and having been duly sworn by the undersigned, have declared and declare by those presents, under the said oath, that they are worth the sum of forty thousand dollars over and above any debt which they may owe, being possessors, owners, and proprietors of goods, and chattels, lands and tenements worth such amount situate in the Province of Quebec and consisting for the said Andrew Thomson of lots 23, 23*a*, 24 of the cadastre for the parish of Notre-Dame de Québec, for the said Ephraim Elliott Webb, in Ward three, City of Hull, Quebec, lot 3; Ward five lots 90, 62, 68, 60, 63, 69, 16, 17, 18, 19, 28, 29, 30, 41, ¼40, 15, 20, 27, 32, 39, 89, 59, 64, 70, ½89, 44, 65, 66, 58, 71, 87, 88, 72, 91, 92, 94, 95, 112, 113, 114, ½57, 12, 13, 14, 21, 22, 23, 24, 25, 26, 33, 34, 35, 36, 37, 38, 10, 56, 67, 73, 86, 122, ½93, 96, 111, 115, 106, 107, 116 pt. 11, 116, 82, 83, 84, 85, 98, 100, 75, 76, 77, 78 of the cadastre for the City of Hull, lot 2552, of St. Lewis Ward of the City of Quebec, of the cadastre of said City of Quebec. And they have signed.

Sworn before me, at Quebec, this twelfth day of June, one thousand eight hundred and ninety-seven. (Signed) A. THOMSON, E. E. WEBB.

(Signed) J. BLANCHET, J. Q. B.

The signing of this bail bond is continued to Monday morning at 11 o'clock, a. m.

Quebec, 12th June 1897. (Signed) J. BLANCHET, J. Q. B.

The objection made by Respondent and fyled to-day is dismissed.

Quebec, 14th June, 1897.

(True copy) (Signed) J. BLANCHET, J. Q. B.

Appeal Office,
Quebec, 16th June, 1897.

JOS. NADEAU, Deputy Clerk of Appeals.

RECORD.

In the Court of Queen's Bench.

No. 197
Transcript of proceedings in Court of Queen's Bench.

TRANSCRIPT of the Proceedings had and entries made in the Register of the Court of Queen's Bench for the Province of Quebec. (Appeal Side.)

10th July, 1896.

The Inscription in Appeal is returned with Schedules annexed thereto being the Record in the Superior Court.

10th July, 1896.

Messrs. Caron, Pentland & Stuart appear for the Appellants.

21st July, 1896.

Messrs. Montambault, Langelier & Langelier, appear for the Respondents.

30th November, 1896.

The Appellants filed their printed case.

27th February, 1897.

The Respondents filed their printed case.

16th July, 1896.

This cause is incribed on the Roll by the Clerk of Appeals, for hearing on the merits.

3rd October, 1896.

Présents :

L'Honorable Sir A. LACOSTE, Juge en Chef.
" M. le Juge BLANCHET,
" " HALL,
" " WURTELE,
" " OUIMET.

Les parties en cette cause sont entendues, par leurs avocats respectifs, sur le mérite de la motion présentée par les Intimés et demandant le renvoi de l'appel, vu l'insuffisance du cautionnement. C. A. V.

13th November, 1896.

Presents :

L'Honorable Sir A. LACOSTE, Juge en Chef.
" M. le Juge BLANCHET,
" " WURTELE,
" " OUIMET.

La Cour, après avoir entendue les parties, par leurs avocats respectifs, sur le mérite de la motion présentée par les Intimés, demandant que le cautionnement fourni par les Appelants, soit déclaré insuffisant, après avoir examiné le dossier

en cette cause, déclare le cautionnement fourni comme susdit par les dits Appelants, insuffisant pour garantir le paiement de la condamnation en capital et frais ; ordonne que les Appelants soient tenus, sous un délai de quinze jours, et après avoir donné l'avis requis, à leur diligence, de fournir bonnes et suffisantes cautions pour couvrir la condamnation en capital, intérêt et frais et à cette fin, que le dossier soit transmis au protonotaire à Québec, pour être transmis de nouveau à cette Cour, après la réception du cautionnement ou l'expiration du délai, réservant à adjuger sur les frais et la demande du renvoi de l'appel, après l'expiration du délai de quinze jours.

L'Honorable juge Hall, qui faisait partie du tribunal, à l'audition de la motion, étant absent a transmis à l'Honorable Juge en Chef, son opinion comme suit : " I am of opinion that the security given by the Appellants is insufficient " and that a new security ought to be ordered to be given."

Montreal, 11 Nov. 1896.

(Signé) ROBERT N. HALL,
J. Q. B.

1st December, 1896.

Présents :

L'Honorable Sir A. LACOSTE, Juge en Chef.
" M. le Juge BLANCHET,
" " HALL,
" " WURTELE,
" " OUIMET.

Les parties sont entendues, par leurs avocats respectifs, sur le mérite de la motion présentée de la part des Intimés et demandant le renvoi de l'appel, pour cause d'insuffisance du cautionnement fourni par les Appelants. *C. A. V.*

2nd December, 1896.

Présents :

L'Honorable Sir A. LACOSTE, Juge en Chef.
" M. le Juge BLANCHET,
" " HALL,
" " WURTELE,
" " OUIMET.

La Cour, après avoir entendue les parties, par leurs avocats respectifs, sur le mérite de la motion présentée par les Intimés, demandant le ronvoi de l'appel interjeté en cette cause, vu l'insuffisance du second cautionnement fourni par les dits Appelants, renvoi la dite motion avec dèpens : les Honorables juges Lacoste et Würtele dissidents.

RECORD.

In the Court of Queen's Bench.

No. 197
Transcript of proceedings in the Court of Queen's Bench.
continued—

2nd December, 1896.

Présents :

L'Honorable Sir A. LACOSTE, Juge en Chef.
" M. le Juge BLANCHET,
" " HALL,
" " WURTELE,
" " OUIMET.

La plaidoirie au mérite en cette cause, est commencée, mais est interrompue par l'ajournement de la Cour à quatre heures, p. m.

3rd December, 1896.

Sur suggestion de la part de la Cour, et les procureurs y consentant, cette cause est envoyée en délibéré avec l'entente que les avocats seront entendus avant que le jugement ne soit prononcé.

1st February, 1897.

Présents :

L'Honorable Sir A. LACOSTE, Juge en Chef.
" M. le Juge BLANCHET,
" " HALL,
" " WURTELE,
" " OUIMET.

La plaidoirie au mérite en cet appel, est commencée, mais est interrompue par l'ajournement de la Cour, à quatre heures p. m.

2nd February, 1897.

Présents :

L'Honorable Sir A. LACOSTE, Juge en Chef.
" M. le Juge BLANCHET,
" " HALL,
" " WURTELE,
" " OUIMET.

La plaidoirie au mérite en cette cause est reprise, continuée, mais est de nouveau interrompue par l'ajournement de la Cour, à quatre heures p. m.

3rd February, 1897.

Présents :

L'Honorable Sir A. LACOSTE, Juge en Chef.
" M. le Juge BLANCHET,
" " HALL,
" " WURTELE,
" " OUIMET.

La plaidoirie au mérite en cette cause, interrompue par l'ajournement de la Cour, est reprise et terminée. *C. A. V.*

29th March, 1897.

Judgment of the Court of Queen's Bench.

(This Judgment is printed at page 725 of this Record.)

Messrs. Caron, Pentland & Stuart, on behalf of the Appellants, move for leave to appeal from the Judgment rendered on the twenty-ninth day of March, one thousand eight hundred and ninety-seven, to. Her Majesty, in Her Privy Council *nisi causa* the first day of May next.

3rd May, 1897.

Present:

The Honorable Sir A. LACOSTE, Chief Justice.
" Mr. Justice BLANCHET,
" " HALL,
" " WURTELE,
" " OUIMET.

The Court, having heard the parties, by their counsel respectively, on the merits of the motion, presented on behalf of the Appellants, asking that leave be granted to them to appeal to Her Majesty in Her Privy Council, from the Judgment rendered by this Court, on the twenty-ninth day of March last, the said motion is allowed and a delay of six weeks is granted in order to file the required security.

14th June, 1897.

The Appellants file a Bail-Bond on their Appeal to Her Majesty in Her Privy Council.

The Respondents file objections to the said Bail-Bond.

"The objection made by Respondents and filed to-day is dismissed."

Quebec, 14th June, 1897.

(Signed) J. BLANCHET,
J. C. Q. B.

No. 198.
Consent as to omission of Documents from Transcript Record.

IN THE PRIVY COUNCIL.

On Appeal from the Court of Queen's Bench for Lower Canada.

BETWEEN

EDWARD MOORE AND ANOTHER, . . . Appellants.

and

PETERS AND OTHERS, ... Respondents.

It is agreed between the Appellants and the Respondents that the following documents and parts of documents forming part of the original record in the Courts below be omitted from the transcript record on the appeal to the Privy Council, viz:

1. Præcipe for writ of summons.

RECORD.

In the Court of Queen's Bench.

No. 198
Consent as to omission of Documents from Transcript Record.
continued—

2. Writ and return of service.

3. Appearances.

4. The following parts of Plaintiff's Exhibit No. 2 being the form of tender and specification upon the contract between Peters, Moore & Wright and the Quebec Harbour Commissioners, viz: Title and Index, clauses, Nos. 7, 12, 15, 16, 18, 20, 21, 22, 24, 25, 31, 33, 34, 35, 36, 38, 42, 43, 45, 46, 47, 51, 52, 53, 60, 63, 64, 69, 118, 119, 120, 121, 122, 125, 126, 127, 128, and Bills Nos. 6, 10, 11, 12, 13, 15.

5. Plaintiff's Exhibit No. 3 being the contract between the Appellants and the late Simon Peters, passed before Strang, Notary Public, on the 4th of May, 1877, which contract is omitted because it is set forth at length in the Plaintiff's declaration and is printed as part thereof.

6. Plaintiff's Exhibit No. 5 being the agreement between the Plaintiff and the Defendants and the Harbour Commissioners, dated 29th October, 1892, which is also omitted for the reason that it is set forth at length in the Plaintiff's declaration and printed as part thereof.

7. Defendants' Exhibit No. 1 filed with pleas, being copy of final certificates, the original of which is printed as Exhibit 1A annexed to the Commission.

8. Defendants' Exhibit 3, being correspondence and account connected with stub piling, the originals of which are printed.

9. All inscriptions, notices to produce, subpœnas, returns of service and other formal documents of every kind, lists of witnesses, motions, and incidental proceedings.

10. Plaintiff's Exhibit 10, filed with the Special Answer, being statements of amounts due to parties as per progress estimates, the originals of which are printed.

11. Plaintiff's Exhibits 16 and 17, synopsis of estimates to close of 1880 and 1881, duplicates printed.

12. Defendants' Petition for Commission to London.

13. Petition in continuance of suit, Exhibits and all proceedings thereon.

14. Plaintiff's Exhibit at trial A3, cheques given in payment to contractors and A35, letter of 19th April, 1886, printed.

15. Defendants' Exhibits B27, B33, Diary.

16. Inscription in Appeal, Bail-Bond on Appeal to Queen's Bench, Appearances, Motions to strike Appeal for insufficiency of security, and all incidental motions and orders.

17. It is further agreed that the Plaintiff's Exhibits 23, 24 and 25, being three original plans be sent forward as part of the case herein.

18. Further, that the transcript proceedings on the Appeal to the Privy Council be printed in Canada and the cost of such printing and of the preparation of the case be taxed as part of the costs upon the Appeal.

Quebec, 15th November, 1897.

MONTAMBAULT, LANGELIER & LANGELIER,
CARON, PENTLAND & STUART,
for Appellants.

In the Court of Queen's Bench.

No. 199. Certificate of Clerk of Appeals.

I, Joseph Nadeau, Deputy Clerk of Appeals of Her Majesty's Court of Queen's Bench, for the Province of Quebec, do hereby certify that the foregoing seven hundred and forty-three and present pages contain true and faithful copies of all and every, the original papers, documents and principal proceedings and of the transcript of all the rules, orders, proceedings and judgments of Her Majesty's Superior Court for the Province of Quebec, sitting in the City of Quebec, transmitted to the Appeal Office in the said City of Quebec, as the record of the said Superior Court in the cause therein lately pending and determined, wherein Edward Moore and Augustus R. Wright, Defendants in the Court below, were Appellants in this Court and Simon Peters, Plaintiff, in the Superior Court and Eliza Jane Lamoureux, Henry Joseph Peters, Albert Hyacinthe Peters and Joseph Bernard Peters, and Martial Chevalier, Plaintiffs in continuance of suit, were Respondents, and also of all the proceedings and documents had and filed in the said Court of Queen's Bench (Appeal side) and of all and every, the entries made in the Register of the said Court of Queen's Bench and of the Judgment therein given on the Appeal instituted by the said Appellants, save and except such documents and proceedings as were by consent of parties omitted, save further the three original plans, which, by consent of parties, are transmitted with the present transcript in lieu of copies thereof.

In faith and testimony whereof, I have to these presents set and subscribed my signature and affixed the seal of the said Court of Queen's Bench, Appeal side.

Given at the City of Quebec, in the Province of Quebec, this day of November, in the year of our Lord, one thousand eight hundred and ninety-seven.

RECORD.

In the Court of Queen's Bench.

No. 200
Certificate of Chief Justice.

I, the undersigned, Alexander Lacoste, Chief Justice of the Court of Queen's Bench for the Province of Quebec, do hereby certify that the said Joseph Nadeau is the Deputy Clerk of the Court of Queen's Bench on the Appeal side thereof, at the City of Quebec, and that the signature "*Jos. Nadeau*" subscribed at the foot of each of the foregoing pages and of the certificate attached to the plans sent forward as part of the transcript herein, is his proper signature and handwriting.

I do further certify, that the said Joseph Nadeau as such Deputy Clerk, is the keeper of the Records of the said Court at the City of Quebec, and the proper officer to certify proceedings of the same on the Appeal side and that the seal above set and that affixed to the certificate accompanying the said plans is the seal of the said Court on the Appeal side and was so affixed under the sanction of the Court.

In testimony whereof, I have hereunto set my hand and seal at the City of Montreal, in the Province of Quebec, this day of November, in the year of Our Lord, one thousand eight hundred and ninety-seven, and of Her Majesty's Reign the sixty-first.

In the Privy Council.

On Appeal from the Court of Queen's Bench, for the Province of Quebec, (Appeal Side.)

BETWEEN

EDWARD MOORE AND AUGUSTUS R. WRIGHT, . . . (*Defendants,*) *Appellants.*

AND

SIMON PETERS, . . *Plaintiff,* (*deceased,*)

AND

ELIZA JANE LAMOUREUX, Henry Joseph Peters, Albert Hyacinthe Peters, Joseph Bernard Peters, and Martial Chevalier,
(*Plaintiffs in continuance of suit*)
Respondents.

RECORD OF PROCEEDINGS.

T. J. MOORE & CO., PRINTERS, QUEBEC, CANADA.