

67, 1930

In The Privy Council

No. of 1930.

**ON APPEAL FROM THE SUPREME COURT OF
ONTARIO (APPELLATE DIVISION)**

BETWEEN

THE KEEWATIN POWER COMPANY LIMITED,
(Plaintiffs) APPELLANTS,

AND

LAKE OF THE WOODS MILLING COMPANY LIMITED,
(Defendants) RESPONDENTS.

AND BETWEEN

THE KEEWATIN POWER COMPANY LIMITED
(Plaintiffs) APPELLANTS,

AND

THE KEEWATIN FLOUR MILLS COMPANY LIMITED,
(Defendants) RESPONDENTS.

(Appeals consolidated by order dated 20th September, 1929)

RECORD OF PROCEEDINGS

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for the Appellants.

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for the Respondent.

TORONTO:
THE HUNTER-ROSE COMPANY, LIMITED

1930

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(*Defendants*) RESPONDENTS

(Appeals consolidated by order dated 20th September, 1929)

RECORD OF PROCEEDINGS

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No. 1
Statement of Claim
(Lake of the Woods Action)

IN THE SUPREME COURT OF ONTARIO

(Writ Issued 22 February, 1916)

THE KEEWATIN POWER COMPANY LIMITED,
Plaintiffs,

— AND —

LAKE OF THE WOODS MILLING COMPANY LIMITED,
Defendants.

*In the
Supreme
Court of
Ontario.*

—
No. 1
Statement of
Claim (Lake
of the Woods
Action).
June, 1916.

1. The plaintiffs are a duly incorporated company incorporated by
10 Letters Patent of the Province of Ontario having its head office at the City
of Ottawa in the Province of Ontario and the defendants are a duly incor-
porated Company carrying on a milling business at Keewatin in the said
Province of Ontario and elsewhere throughout the Dominion of Canada.

2. The Plaintiffs are the owners of those certain parcels of land and
premises and land covered with water situate in the Town of Kenora in the
Township of Kenora, namely :—

Those certain parcels or tracts of land and premises and land covered
with water situate in the district of Rainy River (in the Municipality of
Kenora) namely :— (A) All that part of Tunnel Island lying northerly
20 and westerly of the right of way of the Canadian Pacific Railway Company
containing three hundred and fifteen acres more or less. (B) That block
of land situate on Tunnel Island southerly of the right of way of the Canadian
Pacific Railway Company and adjoining the West Branch of the Winnipeg
River marked K.L.M. Co., on plan of survey by Ontario Land Surveyor
E. Seager, dated August 24th, 1892, of record in the department of Crown
Lands as surveyed by him under instructions from said Department dated
the eighth day of August in the year of our Lord one thousand eight hundred
and ninety-two, containing exclusive of the Colonization Road, one chain
wide leading towards Keewatin crossing said block, twenty-seven acres and
30 a half more or less. (C) A small Island situate on the West Branch of
the Winnipeg River on the north side of Tunnel Island as shown coloured
green on the sketch prepared by Ontario Land Surveyor Thomas Turnbull
dated April 6th, 1892, of record in the Department of Crown Lands, con-
taining four acres more or less. (D) That block of land situate on the south
shore of the west branch of the Winnipeg River shown coloured yellow on
plan of Village of Norman by Ontario Land Surveyor T. R. Deacon, dated

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August 23rd, 1893, of record in the Department of Crown Lands as surveyed by him under instructions from said Department dated July 31st, 1893, described as follows :— Commencing at an iron post planted at the intersection of the East limit of Mill Location 227. P. granted by Letters Patent dated the 30th of June, in the year of our Lord one thousand eight hundred and ninety-two to Messrs. Ross, Hall & Brown with the water's edge of the west branch of the Winnipeg River thence due south astronomically along said limit four chains, thence north seventy-nine degrees, twenty-four minutes east astronomically six chains seventy-five links, thence north three degrees twenty-five minutes east astronomically one chain forty-two links, thence north eighty-three degrees, twenty-four minutes east astronomically forty-five chains thirty-four links to a birch post planted by Ontario Land Surveyor Deacon in the westerly limit of railway siding one hundred and fifty feet in perpendicular width laid out by Ontario Land Surveyor Seager as shown on plan of survey of same dated May 31st, 1892, of record in the Department of Crown Lands, thence the following course and distances along the westerly and southerly limit of said railway siding, namely :— North seventeen degrees thirty-eight minutes West astronomically fifty-five links, thence north fifty-one degrees fifty minutes West astronomically two chains thirty-two links, thence north eighty-two degrees twenty minutes west astronomically three chains seventy-six links, thence north eighty-six degrees thirty minutes west astronomically three chains forty-seven links to a point or re-entrant angle in the herein described block, thence north sixty-six degrees twenty-four minutes East astronomically five chains sixty-six links to the easterly limit of said railway siding, thence the following courses and distances along said easterly limit, namely :— South eighty-two degrees twenty minutes east astronomically two chains eighty-five links thence south fifty-one degrees fifty minutes east astronomically three chains sixty-nine links, thence south seventeen degrees thirty-eight minutes east astronomically three chains sixty-two links, thence south nine degrees forty-three minutes West astronomically two chains thirty-three links thence south forty-five degrees west astronomically five chains eighty-seven links to the north limit of Bulmer's Mill location, thence due east astronomically along said limit three chains twenty-nine links to the north east angle of said mill location, thence due south astronomically along the east limit thereof fifty-three links more or less to the northerly limit of the right of way of the Canadian Pacific Railway Company, thence easterly along the said limit five chains more or less to the water's edge on the west branch of the Winnipeg River and thence northerly and westerly along said water's edge following the turnings and windings thereof to the place of beginning containing forty acres more or less. (E) All those islets or reefs or rocks and the land under water in the said west branch of the Winnipeg River between Tunnel Island and the last described block of land together with the water power adjoining thereto on the west branch or outlet of the said Winnipeg River.

3. The Winnipeg River is the natural outlet of the Lake of the Woods; at a point a short distance from where the Lake of the Woods flows into the

Winnipeg River the said River is divided into two channels or branches by Tunnel Island aforesaid, one of which said channels being known as the west branch of the Winnipeg River and the other being known as the east branch of the Winnipeg River.

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No. 1.
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Claim (Lake
of the Woods
Action).
June, 1916.

—continued

4. The plaintiffs are the owners of the lands on both sides of the said West branch of the Winnipeg River and of a valuable water power on the said West Branch and have erected or constructed a substantial dam across the West branch for the purpose of developing the water power.

5. The defendants are the owners of all and singular those certain parcels
10 in the township of Keewatin in the District of Kenora aforesaid, which may be described as follows :—

All and singular those certain parcels or tracts of land and premises situated lying and being in the Village of Keewatin, in the District of Rainy River, and Province of Ontario, being parts of the Station Grounds of the Canadian Pacific Railway Company at Keewatin not required for the purposes of the Canadian Pacific Railway Company, and which may be described as follows :—

All that part of the said station grounds lying north of a line drawn from
20 a point in the easterly limit of the wider portion of the said station grounds, being a point distant on a course North six degrees thirty minutes West astronomically at right angles to the main track of the Canadian Pacific Railway at Keewatin aforesaid eighty-five (85) feet from station No. 137, on the centre line of the said main track of the Canadian Pacific Railway as it is at present constructed and as shown on a plan of said Station Grounds prepared by C. McPhillips, P.L.S. and O.L.S. dated the twenty-third day of December, 1898, and filed in the Department of Railways and Canals thence westerly parallel with the centre line of the main track of the said railway and everywhere distant eighty-five (85) feet at right angles northerly therefrom to the west limit of the said Station Grounds. All that portion of the
30 said Station Grounds lying south of a line drawn from a point about opposite station 137-40 on the centre line of the main track of the said railway and near bridge 108½ of the said railway and on the west side of the mill race to the mill of the Lake of the Woods Milling Company Limited and where a line parallel with the said centre line as now constructed and distant seventy-five (75) feet at right angles southerly therefrom would intersect the shore of Portage Bay, an arm of the Lake of the Woods, thence westerly and parallel with the centre line of the main track of the said railway and everywhere distant seventy-five (75) feet at right angles southerly therefrom to a point distant easterly along the said line 624.44 feet from the westerly limit of the
40 said Station Grounds as shown on said plan.

All that certain plot or parcel of land situate lying and being in the Township of Keewatin in the District of Rainy River in the Province of Ontario, which may be known and described as follows :— Commencing at an iron post planted at the north east angle of the station grounds of the Canadian Pacific Railway in the Village of Keewatin ; thence north six degrees thirty-minutes West on the same course as the eastern boundary

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June, 1916.

—continued

of the said Station Grounds, five chains and forty-seven links to an iron post planted ; thence continuing North six degrees thirty minutes West on the same course fifty-three links more or less to the edge of Winnipeg Bay ; thence Westerly along the shore of Winnipeg Bay to the Easterly limit of the property of the Lake of the Woods Milling Company ; thence along the easterly limit of the said lands of the Lake of the Woods Milling Company to the Northern limit of the Station Grounds of the Canadian Pacific Railway ; thence Easterly along the northern limit of the said Station Grounds, to the place of beginning, containing by admeasurement four acres and eight-tenths of an acre more or less, as shown red on the plan made by Thos. Turnbull, O.L.S., attached to the transfer from the Rat Portage Lumber Company to the defendants dated 9th March, 1897. 10

Two blocks of land at Keewatin Railway Station in the District of Rainy River, namely two hundred P, containing one acre and three quarters of an acre, and two hundred P-A, containing two acres and half an acre, and two islands in Winnipeg Bay of the Winnipeg River, adjoining, namely Island two hundred P. B. containing six acres and two hundred P. C., containing three quarters of an acre as shown respectively on plan of survey by E. Seager, Provincial Land Surveyor, dated tenth March, in the year of our Lord, one thousand eight hundred and ninety-two, of record in the Department of Crown Lands, described as follows, that is to say : First as regards block two hundred P., Beginning at the north west corner of Dick & Bannings' property, granted by Letters Patent dated January the fifth, in the year of our Lord one thousand eight hundred and ninety-one at the water's edge of Winnipeg Bay, thence due south two chains, forty-five links to an iron post set by Provincial Land Surveyor Stewart in the year of our Lord one thousand, eight hundred and eighty-nine at the distance of twenty feet from the edge of the Mill Race of the Lake of the Woods Milling Company ; thence north eighty-seven degrees four minutes, east one chain, twenty-nine links to an iron post set by Provincial Land Surveyor Stewart in the year of our Lord one thousand eight hundred and eighty-nine ; thence south two degrees fifty-six minutes east seventy-five and one half links to an iron post as aforesaid twenty feet from the edge of said Mill Race ; thence south eighty-nine degrees fifty-six minutes east keeping twenty feet from edge of said Mill Race four chains twenty-six and one half links to an iron post planted by Provincial Land Surveyor Stewart in the year of our Lord, one thousand eight hundred and eighty-nine in the north boundary of Keewatin Railway Station Ground at a point three chains and thirty links from an iron bar planted by Land Surveyor Stewart in the year of our Lord, one thousand eight hundred and eighty-nine at the north east corner of said Station Ground ; thence westerly along said north boundary nine chains seventy links more or less to the shore of Winnipeg River ; thence north easterly following the shore in all its windings to the place of beginning, containing one acre and three quarters of an acre. Second as regards block two hundred P. A.—Beginning at the intersection of the north boundary of the Canadian Pacific Railway right of way with the shores of Winnipeg Bay, west of Keewatin Station Ground, thence easterly along the north boundary of the said right 40

of way one chain, twenty-seven links to the south west angle of Location S-4 thence northerly along the west boundary of said Location S-4 fifty-five links to the north west corner thereof ; thence north sixty-two degrees thirty-eight minutes along the rear boundaries of Locations S-4, S-3, S-2, and S-1, five chains seventy-eight links to the north west corner of Keewatin Railway Station Ground ; thence easterly along north boundary of said Station Ground to its intersection with the shore of Winnipeg Bay ; thence westerly following the shore in all its windings to the place of beginning, containing three acres and one half an acre.

*In the
Supreme
Court of
Ontario.*
—
No. 1.
Statement of
Claim (Lake
of the Woods
Action).
June, 1916.

—continued

10 6. The land and premises set forth above as belonging to the defendants are situated and lie between the north shore of the Lake of the Woods and the Winnipeg River and constitute a narrow strip of land.

7. The defendants by means of an artificial channel excavated across their said lands, from the said north shore of the Lake of the Woods to the Winnipeg River, are wrongfully and improperly diverting large quantities of water from the Lake of the Woods and thereby detracting from the amount of water which would otherwise flow through the said west branch by and over the lands of the plaintiffs described above.

20 8. The plaintiffs are entitled to have the waters of the Lake of the Woods flow through the said west branch by, away and over their said lands set out in paragraph 2 hereof without obstruction, hindrance or diversion and are entitled to the full flow from the said Lake of the Woods which would pass through the said west branch under natural conditions.

9. The said diversion is causing and has caused great damage to the said water power of the plaintiffs by reducing the amount of water which would otherwise flow through the said west branch.

30 10. The plaintiffs submit that the defendants ought to be restrained from diverting or continuing to divert the water of the Lake of the Woods through the said excavation on the said lands and from further interfering with the plaintiffs' rights and ought to be ordered to cease diverting the water as set forth above.

THE PLAINTIFFS CLAIM :

1. An injunction restraining the defendants from diverting and continuing to divert the water of the said Lake of the Woods through the lands and premises set forth as belonging to the defendants and from further interfering with the said plaintiffs' rights.

2. An account of the damage sustained by the plaintiffs by reason of the diversion of the said water by the defendants as aforesaid.

*In the
Supreme
Court of
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No. 1.
Statement of
Claim (Lake
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—continued

3. An order for the payment by the defendants of such damage.
4. The costs of this action.
5. Such further and other relief as the nature of the case may require, and to this court may seem meet.
6. And that for these purposes all necessary and proper directions be given and accounts taken as the nature and circumstances of the case require and as to this Honourable Court shall seem meet.

Delivered this 26th day of June, A.D., 1916, by Greene, Hill & Hill of 110 Wellington Street, Ottawa, Solicitors for plaintiffs.

No. 2

10

Amended Statement of Defence and Counterclaim
(Lake of the Woods Action)

1. The defendants admit the statement contained in paragraphs 1, 5 and 6 of the Statement of Claim.

No. 2.
Amended
Statement of
Defence and
Counter-
claim (Lake
of the Woods
Action).
March, 1927.

2. The defendants also admit that there are two main outlets of the Lake of the Woods known respectively as the east and west branches of the Winnipeg River and separated by Tunnel Island.
3. The defendants deny that the plaintiffs are the owners of the land referred to in paragraph 2 or of the land and water power referred to in paragraph 4.

20

NOTE
Parts under-
lined show
amendments
made pur-
suant to order
of the Master
dated 27th
February,
1927.

4. The Defendants as owners of the lands mentioned in paragraph 5 of the Statement of Claim are entitled to the use of the waters upon which their said lands are located in the manner and to the extent to which the Defendants use them, and the Defendants have not done anything that they are not entitled to do as the owners of the said lands and their appurtenances.

5. The Defendants have not in anything that they have done infringed upon any right or property of the Plaintiffs.

6. Notwithstanding any act of the Defendants the Plaintiffs have always enjoyed all the rights and privileges to which they were entitled in respect of any lands owned by them to the waters of the Winnipeg River.

30

7. The grant made by the Crown of the lands and property of which

the Plaintiffs claim to be the owners and any title that the Plaintiffs may have to such lands and property are subject to the performance by the Plaintiffs of all the terms and conditions of an agreement between the Keewatin Lumbering & Manufacturing Company and Her Majesty the Queen as represented by the Province of Ontario, dated the 24th day of November, 1891, and subject also to the condition and understanding that nothing in the said grant contained shall be construed as conferring exclusive rights elsewhere upon the Lake of the Woods or upon other streams flowing into or out of the said Lake, or shall confer power or authority to interfere with or in any way restrict any
 10 powers or privileges theretofore enjoyed by the grantor or which might thereafter be granted or demised to any person or company in respect to any other water power on the said Lake of the Woods or on any other stream flowing out of or into the said Lake.

*In the
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Court of
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—
No. 2.
Amended
Statement of
Defence and
Counter-
claim (Lake
of the Woods
Action).
March, 1927.
—continued

8. The area of the Lake of the Woods is about 1,500 square miles, and its water supply is derived from a drainage area of about 27,000 square miles. At the extreme northerly shore of the Lake is situate Portage Bay, which is separated from the Winnipeg River by a natural rock ridge. As the level of the water on the lake side of this ridge is much higher than on the river side, it was at an early date recognized by the Government of Canada that
 20 the waters of the lake could by means of artificially constructed channels be carried across this natural barrier and used for power development.

9. The Dominion Government in the year 1881 caused experts to examine and report upon sites suitable for water powers at the northerly shore of the lake, and as a result it was ascertained that there were three locations upon said ridge suitable for water powers, one of such locations being situate at the point of the defendants' mill race now used for the operation of their said mill, another of such locations being situate a few hundred feet to the east of the mill-race in question, at the point where the mill-race of the Keewatin Flour Mills Company Limited used for the developing power
 30 for flour milling was constructed ; and the third of such locations being situate at the extreme westerly end of Portage Bay, at a point where the Keewatin Lumbering and Manufacturing Company, the predecessors in title of the plaintiffs, constructed a mill-race across said ridge for the development of power for the operation of a saw and planing mill, which such Company operated for many years.

10. From the time of such report the said three locations were recognized and dealt with by the Government of Canada as water power sites, which should only be granted to those establishing their ability to make use of same for industrial purposes, and in due course an application was made for a
 40 patent of a tract of land which included the site of the water power in question herein.

*In the
Supreme
Court of
Ontario.*

No. 2.
Amended
Statement of
Defence and
Counter-
claim (Lake
of the Woods
Action).
March, 1927.

—continued

11. After said mill had been so operated for a considerable time, it was determined that the lands in question came within the territorial limits of the Province of Ontario and pursuant to an arrangement made between the Governments of Canada and Ontario while the question of the Western boundary of Ontario was in dispute, the Province of Ontario adopted whatever had been done by the Dominion in respect of the said lands and water powers, and the Province of Ontario granted the said land as a mill location with the right to the grantees and their successors and assigns to take and use the waters of the Lake of the Woods for the purpose of operating a mill or mills thereon by means of a channel or watercourse leading from the Lake of the Woods through and over said lands to the Winnipeg River, and the defendants in exercise of such right and with the knowledge, acquiescence and consent of the plaintiffs expended large sums of money in the development of the said lands as a mill location and have erected mills thereon operated by power developed on said lands by means of the water power thereon. 10

12. Even if the plaintiffs might otherwise have had any right to object to the defendants' use of the said water power, which the defendants do not admit but deny, the plaintiffs by reason of their knowledge of the operations and expenditures of the defendants as aforesaid and their acquiescence therein and consent thereto and by their laches are estopped from objecting to the use of said water power now being made by the defendants. 20

13. The Defendants and their predecessors in title as of right and without interruption for over twenty years prior to the commencement of this action have taken and used the waters of the Lake of the Woods by means of a channel or watercourse leading from the Lake of the Woods through and over the land of the defendants mentioned in the Statement of Claim to the Winnipeg River, and the defendants say by reason thereof the plaintiffs are not entitled to maintain this action, and the defendants plead "The Limitations Act" as in answer to the claim of the plaintiffs. Alternatively, by a grant now lost, the Plaintiffs or their predecessors in title granted to the Defendants the right to take and use the waters of the Lake of the Woods aforesaid. 30

14. The defendants further say that the plaintiffs have not suffered any damage from any of the acts of the defendants complained of.

15. The Defendants, by way of counterclaim, repeat paragraphs 8, 9, 10 and 11 hereof.

16. If it should be held that the grant mentioned in paragraph 11 of the Statement of Defence as written does not upon its true construction confer upon the Defendants the right to take water from the Lake of the Woods for the operation of the mills from time to time erected upon the said 40

lands by the Defendants, it should be declared that the grant made by the Crown of the land and property of which the Plaintiffs claim to be the owners and any title that the Plaintiffs may have to such lands and property is subject to such a right.

17. The Defendants therefore claim

(1) A Declaration that the grant to and title of the Plaintiffs is subject as aforesaid.

(2) Such further or other relief as the nature of the case may require.

10 DELIVERED as amended this 5th day of March, 1927, by Christopher C. Robinson, 24 King Street West, Toronto, Solicitor for the defendants.

No. 3
Joinder of Issue
(Lake of the Woods Action)

The plaintiff joins issue on the defendants' amended statement of defence and counterclaim.

DELIVERED this 22nd day of March, 1927, by Tilley, Johnston, Thomson & Parmenter, 255 Bay Street, Toronto, Solicitors for the plaintiff.

*In the
Supreme
Court of
Ontario.*
—
No. 2.
Amended
Statement of
Defence and
Counter-
claim (Lake
of the Woods
Action).
March, 1927.
—continued.

No. 3.
Joinder of
Issue (Lake
of the Woods
Action).
22nd March,
1927.

20

No. 4
Statement of Claim
(Keewatin Flour Mills Action)

IN THE SUPREME COURT OF ONTARIO

(Writ issued 29th March 1916)

BETWEEN :

THE KEEWATIN POWER COMPANY LIMITED,
Plaintiffs,

— AND —

THE KEEWATIN FLOUR MILLS COMPANY LIMITED,
Defendants.

1. The plaintiffs are a duly incorporated company, incorporated by Letters Patent of the Province of Ontario, having its head office in the City

No. 4.
Statement of
Claim (Kee-
watin Flour
Mills
Action).
26th June,
1916.

*In the
Supreme
Court of
Ontario.*

No. 4.
Statement of
Claim (Keewatin Flour
Mills
Action).
26th June,
1916.

—continued

of Ottawa in the Province of Ontario, and the defendants are a duly incorporated Company carrying on a milling business at Keewatin in the Province of Ontario and elsewhere through the Dominion of Canada.

2. The plaintiffs are the owners of those certain parcels of land and premises and land covered with water situated in the Town of Kenora in the Township of Kenora, namely :—

Those certain parcels and tracts of land and premises and land covered with water, situated in the District of Rainy River (in the Municipality of Kenora), namely (A) All that part of Tunnel Island lying northerly and westerly of the right of way of the Canadian Pacific Railway Company containing three hundred and fifteen acres more or less. (B) That Block of land situated on Tunnel Island southerly of the right of way of the Canadian Pacific Railway Company and adjoining the West Branch of the Winnipeg River, marked K. L. M. Co., on plan of survey by Ontario Land Surveyor, E. Seager, dated August 24th, 1892, of record in the Department of Crown Lands as surveyed by him under instructions from said Department, dated the eighth day of August in the year of our Lord one thousand eight hundred and ninety-two, containing exclusive of the Colonization Road, one chain wide leading towards Keewatin crossing said block, twenty-seven acres and a half more or less. (C) A small island situated in the West Branch of the Winnipeg River on the north side of Tunnel Island as shown coloured green on the sketch prepared by Ontario Land Surveyor, Thomas Turnbull, dated April 6th, 1892, of record in the Department of Crown Lands, containing four acres more or less. (D) That block of land situated on the South shore of the West Branch of the Winnipeg River shown coloured yellow on plan of Village of Norman by Ontario Land Surveyor, T. R. Deacon, dated August 23rd, 1893, of record in the Department of Crown Lands as surveyed by him under instructions from said Department dated July 31st, 1893, described as follows : Commencing at an iron post planted at the intersection of the east limit of Mill Location 227 P. granted by Letters Patent dated the 30th day of June in the year of our Lord one thousand eight hundred and ninety-two, to Messrs. Ross, Hall & Brown with the water's edge of the West Branch of the Winnipeg River, thence due south astronomically along said limit four chains, thence north seventy-nine degrees twenty-four minutes east astronomically six chains seventy-five links, thence north three degrees, twenty-five minutes east astronomically one chain forty-two links, thence north eighty-three degrees twenty-four minutes east astronomically forty-five chains thirty-four links to a birch post planted by Ontario Land Surveyor Deacon, in the Westerly limit of a railway siding one hundred and fifty feet in perpendicular width laid out by Ontario Land Surveyor Seager, as shown on plan of survey of same dated May 21st, 1892, of record in the Department of Crown Lands, thence the following courses and distances along the westerly and southerly limit of said railway siding, *viz.*, North seventeen degrees thirty-eight minutes west astronomically fifty-five links thence north fifty-one degrees fifty minutes West astronomically two chains thirty-two links, thence north eighty-two degrees twenty minutes west

astronomically three chains seventy-six links, thence north eighty-six degrees thirty minutes West astronomically three chains forty-seven links to a point or re-entrant angle in the herein described block, thence North sixty-six degrees twenty-four minutes East astronomically five chains sixty-six links to the easterly limit of said Railway siding, thence the following courses and distances along said Easterly limit, *viz.*, South eighty-two degrees twenty minutes East astronomically two chains eighty-five links, thence south fifty-one degrees fifty minutes east astronomically three chains sixty-nine links, thence South seventeen degrees thirty-eight minutes East astronomically 10 three chains sixty-two links, thence south nine degrees forty-three minutes West astronomically two chains, thirty-three links, thence south forty-five degrees West astronomically five chains eighty-seven links to the North limit of Bulmer's Mill Location, thence due east astronomically along said limit three chains twenty-nine links to the north east angle of said Mill Location, thence due south astronomically along the east limit thereof fifty-three links more or less to the northerly limit of the right of way of the Canadian Pacific Railway Company, thence easterly along the said limit five chains more or less to the waters edge of the West Branch of the Winnipeg River, and thence northerly and westerly along said water's edge following the 20 the turnings and windings thereof to the place of beginning, containing forty acres more or less. (E) All those islets or reefs or rocks, and the land under water in the said West Branch of the Winnipeg River, between Tunnel Island and the last described block of land together with the water power adjoining thereto on the West Branch or outlet of the said Winnipeg River.

3. The Winnipeg River is the natural outlet of the Lake of the Woods. At a point a short distance from where the Lake of the Woods flows into the Winnipeg River, the said River is divided into two channels or branches by Tunnel Island aforesaid, one of which said Channels being known as the 30 West Branch of the Winnipeg River and the other being known as the East Branch of the Winnipeg River.

4. The plaintiffs are the owners of the land on both sides of the said West Branch of the Winnipeg River and of a valuable water power on the said West Branch, and have erected and constructed a substantial dam across the said West Branch for the purpose of developing the said water power.

5. The defendants are the owners of all and singular that portion of the land patented as Dick, Banning and Company's Mill Location situated between Portage Bay and Winnipeg River in the Municipality of Keewatin, particularly described as follows ;— Commencing at a point where the south 40 limit of Location K. 83, intersects the water's edge of Winnipeg Bay, thence East along the South Boundary of K. 83 five chains fifty links, more or less to the north east angle of Dick, Banning & Company's Mill Location, thence due south twelve chains and eighty links more or less to the north limit of the Colonization Road between Rat Portage and Keewatin, thence South

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No. 4.
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—continued

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Supreme
Court of
Ontario.*
—
No. 4.
Statement of
Claim (Keewatin Flour
Mills
Action).
26th June,
1916.
—continued

fifty degrees thirty minutes West along the north limit of the said Colonization Road one chain sixty links, thence due north seventy links. thence westerly parallel to the north limit of the Canadian Pacific Railway right of way, seven chains, seventy-five links, thence at right angles southerly three chains seventy-five links to the said north limit of said Canadian Pacific Railway right of way, thence westerly along said north limit of said right of way twelve chains more or less to the easterly limit of the Canadian Pacific Railway Company's Station Grounds at Keewatin, thence north six degrees thirty minutes west along the line of the said east limit of the said Station Grounds produced seven chains eighty-nine links, more or less to the water's edge of Winnipeg Bay, thence easterly and northerly along the water's edge of Winnipeg Bay, crossing the mouth of the Mill Race to the place of beginning. 10

6. The lands and premises set forth above as belonging to the defendants, are situated and lie between the north shore of the Lake of the Woods and the Winnipeg River and constitute a narrow strip of land.

7. The defendants by means of an artificial channel excavated across their said lands, from the said North shore of the Lake of the Woods to the Winnipeg River, are wrongfully and improperly diverting large quantities of water from the Lake of the Woods and thereby detracting from the amount of water which would otherwise flow through the said West Branch by and 20 over the lands of the plaintiffs described above.

8. The plaintiffs are entitled to have the waters of the Lake of the Woods flow through the said West Branch by, away and over their said lands set out in Paragraph 2 hereof without obstruction hindrance or diversion and are entitled to the full flow from the Lake of the Woods which would pass through the said West Branch under natural conditions.

9. The said diversion is causing and has caused great damage to the said water power of the plaintiffs by reducing the amount of water which would otherwise flow through the said West Branch.

10. The plaintiffs submit that the defendants ought to be restrained 30 from diverting or continuing to divert the water of the Lake of the Woods through the said excavation on the said Lands and from further interfering with the plaintiffs rights and ought to be ordered to cease diverting the water as set forth above.

THE PLAINTIFFS CLAIM :—

1. An injunction restraining the defendants from diverting and continuing to divert the water of the said Lake of the Woods through the lands and premises set forth as belonging to the defendants and from further interfering with the said plaintiffs rights.

2. An account of the damage sustained by the plaintiffs by reason of the diversion of the said water by the defendants as aforesaid.

3. An order for the payment by the defendants of such damage.

4. The costs of this action.

5. Such further and other relief as the nature of the case may require and to this Court may seem meet.

6. And that for these purposes all necessary and proper directions be given and accounts taken as the nature and circumstances of the case require, and as to this honorable Court shall seem meet.

*In the
Supreme
Court of
Ontario.*

No. 4.
Statement of
Claim (Kee-
Watin Flour
Mills
Action).
26th June,
1916.

—continued

10 DELIVERED this 26th day of June, A.D. 1916, by Greene, Hill & Hill of 110 Wellington Street, Ottawa, Solicitors for plaintiffs.

No. 5
Amended Statement of Defence and Counterclaim
(Keewatin Flour Mills Action)

1. The defendants admit the statements contained in paragraphs 1 and 5 of the Statement of Claim.

2. The defendants deny that the plaintiffs are the owners of the land referred to in paragraph 2 and of the land and water power referred to in paragraph 4 of the Statement of Claim.

20 3. The defendants as owners of the lands mentioned in paragraph 5 of the Statement of Claim are entitled to the use of the waters upon which their said lands are located in the manner and to the extent to which the defendants use them, and the defendants have not done anything that they are not entitled to do as the owners of the said lands and their appurtenances.

4. The defendants have not in anything that they have done infringed upon any right or property of the plaintiffs.

5. Notwithstanding any act of the defendants, plaintiffs have always enjoyed all the rights and privileges to which they were entitled in respect of any lands owned by them to the waters of the Winnipeg River.

40 6. The grant made by the Crown of the land and property of which the plaintiffs claim to be the owners and any title that the plaintiffs may have to such lands and property are subject to the performance by the Plaintiff

No. 5.
Amended
Statement of
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Counter-
claim (Kee-
watin Flour
Mills
Action).
March, 1927.

NOTE
Parts under-
lined show
amendments
made pur-
suant to order
of Master
dated 27th
February,
1927.

*In the
Supreme
Court of
Ontario.*

No. 5.
Amended
Statement of
Defence and
Counter-
claim (Keewatin Flour
Mills
Action).
March, 1927.

—continued

of all the terms and conditions of an agreement between the Keewatin Lumbering and Manufacturing Company and Her Majesty the Queen as represented by the Province of Ontario, dated the 24th day of November, 1891, and subject also to the condition and understanding that nothing in the said grant contained shall be construed as conferring exclusive rights elsewhere upon the Lake of the Woods or upon other streams flowing into or out of the said lake, or shall confer power or authority to interfere with or in any way restrict any powers or privileges theretofore enjoyed by the grantor or which might thereafter be granted or demised to any other person or company in respect to any other water power on the said Lake of the Woods or on any other stream flowing out of or into the said lake. 10

7. The area of the Lake of the Woods is about 1,500 square miles, and its water supply is derived from a drainage area of about 27,000 square miles. At the extreme northerly shore of the lake is situate Portage Bay, which is separated from the Winnipeg River by a natural rock ridge. As the level of the water on the lake side of this ridge is much higher than on the river side, it was at an early date recognized by the Government of Canada that the waters of the lake could by means of artificially constructed channels be carried across this natural barrier and used for power development.

8. The Dominion Government in the year 1881 caused experts to examine and report upon sites suitable for water powers at the northerly shore of the lake, and as a result it was ascertained that there were three locations upon said ridge suitable for water powers, one of such locations being situate at the point of the defendants' mill-race now used for the operation of their said mill, another of such locations being situate a few hundred feet to the west of the mill-race in question, at the point where the mill-race of the Lake of the Woods Milling Company used for the developing power for flour milling was constructed ; and the third of such locations being situate at the extreme westerly end of Portage Bay, at the point where the Keewatin Lumbering and Manufacturing Company, the predecessors in title of the plaintiffs, constructed a mill race across said ridge for the development of power for the operation of a saw and planing mill, which such Company operated for many years. 20 30

9. From the time of such report the said three locations were recognized and dealt with by the Government of Canada as water power sites, which should only be granted to those establishing their ability to make use of same for industrial purposes, and in due course an application having been made for a patent of a tract of land, which included the site of the water power in question herein, the same was accepted and a patent issued therefor after the applicant had established his ability and intention to construct a saw mill at said site, and operate same by water power developed at said site. 40

10. After said mill had been so operated for a considerable time, it

was determined that the lands in question came within the territorial limits of the Province of Ontario, and pursuant to an arrangement made between the Governments of Canada and Ontario while the question of the western boundary of Ontario was in dispute, the Province of Ontario adopted whatever had been done by the Dominion of Canada in respect of the said lands and water powers, and the Province of Ontario granted the said lands as a mill location with the right to the grantees and their successors and assigns to take and use the waters of the Lake of the Woods for the purpose of operating a mill or mills thereon by means of a channel or watercourse leading from the
 10 Lake of the Woods through and over said lands to the Winnipeg River, and the defendants and their predecessors in title in exercise of such right and with the knowledge, acquiescence and consent of the plaintiffs expended large sums of money in the development of the said lands as a mill location and have erected mills thereon operated by power developed on said lands by means of the water power thereon.

11. Even if the plaintiffs might otherwise have had any right to object to the defendants' use of the said water power, which the defendants do not admit but deny, the plaintiffs by reason of their knowledge of the operations and expenditures of the defendants as aforesaid and their acquiescence therein
 20 and consent thereto and by their laches are estopped from objecting to the use of said water power now being made by the defendants.

12. The defendants and their predecessors in title as of right and without interruption for over twenty years prior to the commencement of this action have taken and used the waters of the Lake of the Woods by means of a channel or watercourse leading from the Lake of the Woods through and over the land of the defendants mentioned in the Statement of Claim to the Winnipeg River, and the defendants say by reason thereof the plaintiffs are not entitled to maintain this action and the defendants plead "The Limitations Act" as an answer to the claim of the plaintiffs. Alternatively
 30 by a grant now lost the Plaintiffs or their predecessors in title granted to the Defendants or their predecessors in title the right to take and use the waters of the Lake of the Woods as aforesaid.

13. The defendants further say that the plaintiffs have not suffered any damage from any of the acts of the defendants complained of.

14. The defendants, by way of counterclaim, repeat paragraphs 7, 8, 9 and 10 hereof.

15. If it should be held that the grants mentioned in paragraphs 9 and 10 of the Statement of Defence as written do not upon their true construction confer upon the Defendants as successors in title of the grantees
 40 the right to take water from the Lake of the Woods for the operation of the

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No. 5.
Amended
Statement of
Defence and
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claim (Kee-
watin Flour
Mills
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March, 1927.

—continued

*In the
Supreme
Court of
Ontario.*

No. 6.
Amended
Statement of
Defence and
Counter-
claim (Kee-
watin Flour
Mills
Action).
March, 1927.
—continued

mills from time to time erected upon the said lands by the grantees and their successors in title, it should be declared that the grant made by the Crown of the land and property of which the Plaintiffs claim to be the owners and any title that the plaintiffs may have to such lands and property is subject to such a right.

16. The Defendants therefore claim :

(1) A Declaration that the grant to and title of the Plaintiffs is subject as aforesaid.

(2) Such further or other relief as the nature of the case may require.

10

DELIVERED as amended this 5th day of March, 1927, by Christopher C. Robinson, 24 King Street, West, Toronto, Solicitor for the Defendants.

No. 6
Joinder of Issue
(Keewatin Flour Mills Action)

No. 6.
Joinder of
Issue (Kee-
watin Flour
Mills
Action).
22nd March,
1927.
—continued

The plaintiff joins issue on the defendants' amended statement of defence and counterclaim.

DELIVERED this 22nd day of March, 1927, by Tilley, Johnston, Thomson & Parmenter, 255 Bay Street, Toronto, Solicitors for the Plaintiff.

IN THE SUPREME COURT OF ONTARIO.

BEFORE THE HONOURABLE MR. JUSTICE GRANT.

THE KEEWATIN POWER COMPANY, LIMITED,
 v.
 THE KEEWATIN FLOUR MILLS COMPANY, LIMITED,
 v.
 THE KEEWATIN POWER COMPANY, LIMITED,
 v.
 THE LAKE OF THE WOODS MILLING COMPANY, LIMITED.

*In the
 Supreme
 Court of
 Ontario.*

No. 7.
 Opening
 proceedings
 at trial.
 16th May,
 1927.

Tried at Toronto May 16th, 17th, 18th, 19th, 20th, 23rd, 25th and 26th, 1927,
 without a Jury.

10

W. N. TILLEY, K.C.,
 H. P. COOKE, K.C., AND
 C. F. H. CARSON, } *Counsel for Plaintiffs.*

D. L. McCARTHY, K.C.,
 C. C. ROBINSON, K.C., AND
 C. S. MACINNES, K.C., } *Counsel for Defendants.*

HIS LORDSHIP : Are these two cases to be tried together ?

MR. TILLEY : Yes, I think so, my Lord. The Keewatin Flour Mills Company, the defendant in the second action, is really owned by the Lake of the Woods Milling Company, so that as a matter of fact, the two actions might as well be consolidated.

20 MR. McCARTHY : There is some evidence undoubtedly that will be common to both, but I certainly do not consent to consolidation. For all I know though, they can be really tried together except as your Lordship will distinguish.

HIS LORDSHIP : I read the records on Saturday, and apparently the two actions arise pretty much out of the one state of facts, except that the two defendants are located at two different points, contributory to the same water.

MR. McCARTHY : And the titles arise, in a sense, in different ways, that is the rights we claim arise in different ways.

30 HIS LORDSHIP : Is it your intention to try one action first throughout, and then try the other action, or can we take them together, and take such evidence as is common to the two first ?

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MR. McCARTHY : We might try that way. I do not know how it will work out.

HIS LORDSHIP : And then when evidence is to be given which applies to one only, it can be so noted.

MR. McCARTHY : One witness may be giving evidence in regard to both actions.

HIS LORDSHIP : That is pretty difficult, unless witnesses are to be called a second time, to give their evidence in either action.

MR. McCARTHY : What I mean is, some of my witnesses will give evidence, I do not mean evidence that is common to both matters, but evidence that is distinct in regard to one action. 10

HIS LORDSHIP : I am in Counsel's hands. I am willing to take them whichever way is going to conserve time, and labour.

MR. McCARTHY : I do not know how far we can work along together. I suppose one can try, but they are two distinct actions, and two distinct claims, and the defences are different in each case, up to a certain point.

HIS LORDSHIP : I thought from the repeating of the defences on the Record here, the defences appear to be, at least so far as the paper defence—

MR. McCARTHY : No doubt some things are similar, and some witnesses will give evidence as regards both cases, that is common to both cases. 20

HIS LORDSHIP : Am I likely to have much difficulty in distinguishing, myself, the evidence which is applicable to this or to that ?

MR. McCARTHY : The difficulty may arise in a case of this kind—for instance the result is not necessarily the same in both cases, in this way, in regard to one case the Plaintiffs may succeed, in regard to the other the Defendants may succeed.

HIS LORDSHIP : What is the outstanding distinction in the matter of defence between the two, Mr. McCarthy ?

MR. McCARTHY : It is a long story—the outstanding distinction, there are two mills in question, they are commonly referred to as Mill "A" and Mill "C." 30

Mill "A" is the location which is now owned and controlled by the Lake of the Woods Milling Company. Mill "C" by the Keewatin Flour Mills.

Mill "C" has a very long history, and the facts are much more difficult, possibly, in regard to Mill "C" than they are in regard to Mill "A."

Now what I had in mind was this, if the Plaintiff succeeded in regard to Mill "A" and we succeeded in regard to Mill "C" and appeals were taken, it would necessitate the printing of all the evidence, if the cases were consolidated and tried together.

MR. TILLEY : We would appeal all around. 40

MR. McCARTHY : Unless, as my learned friend says, we would all appeal. That is the only difficulty, according to my view.

HIS LORDSHIP : Well, suppose that you go on, it looks as if the only thing that we could do is to go on as far as we can with the evidence that is applicable to both, and if we do reach a point where we cannot go on with them together, we will just have to make some new arrangement then, and finish up one of them.

MR. TILLEY : We can discuss that, however, when that occasion arises, I suppose ?

HIS LORDSHIP : Yes.

MR. TILLEY : It might be convenient, before I call any witnesses to explain to your Lordship, just what the question is as between the Plaintiff Company and the Defendant.

HIS LORDSHIP : Yes, well, broadly, you complain that they are, by something which they have done, water that should be coming through, or coming to you is not coming to you.

10 MR. TILLEY : Is not coming to us by virtue of some certain raceways that they have established. It may just be well if I show your Lordship the location of the properties. We can show your Lordship by this map where the Plaintiffs' property is. It is the part coloured pink, I suppose that would be called, and we come to this, this is the western outlet of the Lake of the Woods.

HIS LORDSHIP : Where is this place where the cutting was made across ?

MR. TILLEY : The cutting was made across—there is Portage Bay, and here is what is called Darlington Bay—

MR. MCCARTHY : Darlington Bay is in the Winnipeg River.

20 MR. TILLEY : Here is the one that runs over to "A," that is the Lake of the Woods—that is the Raceway coming out of Portage Bay, and running towards this Bay, Darlington Bay, it is called; and the other one is here, that is Mill "C."

HIS LORDSHIP : This is at Keewatin ?

MR. TILLEY : Yes, that goes to Keewatin, and this is the Winnipeg River which flows this way, and joins this here. The part we have been looking at is the Winnipeg River, and here is the outlet, at this point, to the west, the outlets of the Lake of the Woods—the water comes here, and runs around this way—the water runs North.

30 HIS LORDSHIP : Where is your Power Plant ?

MR. TILLEY : Our plant is here, shown there.

HIS LORDSHIP : How far back is it, these cuts are made ?

MR. TILLEY : Over here, across this strip of land. There is a strip of land here, and the outlet over here, so they cut across that neck of land here.

HIS LORDSHIP : Was there a flow of water to these places before any excavation was made ?

MR. MCCARTHY : As to one there may have been.

HIS LORDSHIP : That is in dispute. I am just trying to clear the atmosphere for myself.

40 MR. TILLEY : This shows the dam again.

HIS LORDSHIP : This is the Island shown in the pleading ?

MR. TILLEY : This is the property conveyed to us in 1894. These islands, and it comes back to that, which may be a convenient map to show what was conveyed to us. I do not know whether it is accurate or not.

MR. TILLEY : I would put in as Exhibit 1, my Lord, a certified copy of the Plaintiff's Patent from the Crown, which is dated the 13th April, 1894.

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HIS LORDSHIP : Covering Tunnel Island and the adjoining property.

MR. TILLEY : It covers all that property, that is coloured on this plan.

HIS LORDSHIP : Coloured brown or tan—you had it here a minute ago, Mr. Tilley, I know what it is.

MR. TILLEY : I might possibly mark that as Exhibit No. 2, just a convenient sketch of the properties to show where they are.

My friend, Mr. Carson, will get it. I will just read the Patent to your Lordship, because there are some parts of it that are of some importance.

I have the plan, Exhibit No. 2, now. I am not putting it in. I am not professing that it is anything more than just a convenient way of showing 10
our properties. That is all. I do not say that it is accurately drawn, that is what it professes to be.

HIS LORDSHIP : You want that plan to go in as Exhibit No. 2 ?

MR. TILLEY : Exhibit No. 2.

HIS LORDSHIP : And with the statement it is being submitted merely as giving an approximate outline or location of the properties.

MR. TILLEY : Just to indicate the location of the properties, that is all.

HIS LORDSHIP : And not as being accurate ?

MR. TILLEY : Not being necessarily accurate, if anything turns on its accuracy, we will have to prove it otherwise. 20

HIS LORDSHIP : Any date ?

MR. TILLEY : January 30th, 1906, and prepared by John Kennedy, and said to be a plan of the Keewatin Company Water Power and Lands on the west branch of the Winnipeg River at the outlet of the Lake of the Woods.

I do not know if your Lordship desires to see that any more at the moment.

HIS LORDSHIP : No, I remember it.

MR. TILLEY : Then the Patent cites an agreement, dated 24th November, in the year of Our Lord one thousand eight hundred and ninety-one, made between the Keewatin Lumbering and Manufacturing Company Limited of the first part and US as represented by the Province of Ontario, of 30
the second part, reciting that WE had agreed to sell to the said company, and the said company had contracted and agreed with US to purchase a certain island known as Tunnel Island, in the Lake of the Woods, in the District of Rainy River, in the said Province of Ontario, saving and excepting the right of way of the Canadian Pacific Railway thereon and any other rights which the said Railway Company might have, saving and excepting the Colonization Road one chain in width leading to Keewatin, and saving and excepting also fifty-one acres more or less situated in the south of the right of way of the said railway company, and adjoining the outlet of the east branch of the Winnipeg River"—— 40

HIS LORDSHIP : Citing the agreement between the Province and whom ?

MR. TILLEY : Our predecessors, the Keewatin Lumbering and Manufacturing Company, Limited, the predecessors of the Plaintiffs.

I need not read the descriptions further. There are provisions about developing power—possibly I should read it.

HIS LORDSHIP : I would like to get a general idea of the situation.

MR. TILLEY : After making exception of the Colonization Road it then

10 excepts fifty-one acres more or less situate to the south of the right-of-way of
 the C.P.R. adjoining the outlet of the east branch of the Winnipeg River,
 bounded on the east and south sides by the waters of the Lake of the Woods,
 on the west by a due north and south line extending from the Lake of the
 Woods to the right-of-way of the said Railway Company, and on the north
 by the said right-of-way; and also for the purchase of twenty-three acres of
 land on the south shore of the west branch of the Winnipeg River at or near
 the Lower Falls, and composed of a strip of land four chains in perpendicular
 width inland from the waters in it, and extending from the east limit of location
 20 227P. a distance easterly of fifty-eight chains more or less to a point at the
 water's edge of said river distant about thirteen chains north of the right of
 way of said Railway Company, but such strip should not exceed in extent
 twenty-three acres, the said parcels so to be sold containing by admeasurement
 three hundred and seventy-three acres more or less, together with the water
 power adjoining thereto on the west branch or outlet of the Winnipeg River
 for the sum of One Thousand Six Hundred and Seventeen Dollars of lawful
 money of Canada upon certain conditions and for certain other considerations
 thereafter set forth, and that we have further agreed with the said Company,
 that upon the sale of the unsold land adjoining the said twenty-three acres on
 20 the south side of said River WE would reserve a highway or right-of-way
 sixty-six feet in perpendicular width from the present Colonization Road to
 the said twenty-three acres at some convenient point to be selected and also
 a right-of-way one hundred and fifty-feet in perpendicular width to lay a
 siding or spur track to such twenty-three acres at some convenient point to be
 selected, and that WE would not make a greater charge for such reserve for
 such purpose than at the rate of four dollars and fifty cents per acre. It was
 witnessed that the said company should expend in the construction of work
 for the purpose of creating the water power the sum of Two Hundred and
 Fifty Thousand Dollars whereof at least One Hundred and Fifty Thousand
 30 Dollars was to be expended within a period of three years from the date of the
 said agreement, the work to be begun within one year from said date and not
 less than one-fourth of the said last mentioned sum to be expended within one
 year from the commencement of the work, the remainder of the Two Hundred
 and Fifty Thousand Dollars to be expended when our Lieutenant-Governor-
 in-Council shall direct; and whereas, the said Company doth here also cove-
 nant with US that before executing any portion of said work they will submit
 to our Lieutenant-Governor-in-Council plans and statements in detail of the
 system or scheme proposed to be adopted in carrying out such works which
 plans and statements should not be acted on until they should have been
 40 approved by an Engineer appointed for that purpose, and whereas the said
 Company did further covenant with US, that they would supply to such
 parties that might require it water power to the extent of the capacity of the
 works aforesaid at a rate per h.p. per annum, and would upon the completion
 of the said works or when fit for use, give leases of lands for the erection of
 buildings and factories upon terms and at a rate per square foot per annum,
 the maximum of both such rates to be fixed and determined by a competent
 Engineer to be appointed by our Lieutenant-Governor-in-Council for that

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purpose, and that such engineer in fixing the rates aforesaid might take into account the expenditure which the company has been called upon to make and the difficulties they had had to encounter in making the water power sufficient, and in preparing the broken ground along the river bank for mill sites, and otherwise in the completion of the water power work.

“And whereas the said Company have applied to US for and WE have agreed to sell the turnings and windings thereof to the place of beginning containing forty acres more or less.”

HIS LORDSHIP : Are these lands that are there described the lands which appear in the statement of claim recited as being the property of the Plaintiff ? 10

MR. TILLEY : I am not sure we have set them all out, but we have set out the material islands.

HIS LORDSHIP : Anyway, those in the statement of claim are covered ?

MR. TILLEY : Yes, my Lord, covered in this.

HIS LORDSHIP : Mr. McCarthy, you asent to that, that the lands which they allege in the statement of claim as being theirs were covered by this grant from the Crown ?

MR. MCCARTHY : I understand they are, my Lord.

HIS LORDSHIP : I am just trying to clear the way so that I will under- stand. 20

MR. MCCARTHY : Your Lordship is speaking only of the description.

HIS LORDSHIP : Yes, there is no question of title.

MR. TILLEY : Then (E)—All of those islets or reefs of rock and the land under water in the said West Branch of Winnipeg River between Tunnel Island and the last described block of land, together with the water power adjoining thereto on the west branch or outlet of the said Winnipeg River.”

HIS LORDSHIP : Might I see that on the plan so I will get some idea of where that is ?

MR. TILLEY : I think this is the more convenient, on Exhibit 2—that is Block “A,” Block “B,” and I think that is Block “C” and this is Block “D.” 30

HIS LORDSHIP : Where are these small islets ?

MR. TILLEY : All these small islets in here (indicating).

HIS LORDSHIP : Islets in the west branch ?

MR. TILLEY : All those islets or reefs of rock and the land under water in said west branch of Winnipeg River between Tunnel Island and the said last described block of land together with the water power adjoining”——

HIS LORDSHIP : “The last described block”——

MR. TILLEY : That is lettered wrongly, it should be “D” and the small island north of Tunnell Island is “C” on the west branch, on the north side of Tunnell Island, and “D” that block of land situated on the south side of the west branch of the Winnipeg River shown in yellow on the plan of the Village of Norman. 40

HIS LORDSHIP : Then that should be changed, if you are quite sure ?

MR. TILLEY : Yes, the island to the north of Tunnel Island is “C” and the land on the main land is “D.”

HIS LORDSHIP : Anyway, these small islands of which you are speaking,

where the power development is concerned, are along in the channel of the west branch of the Winnipeg River, between these two parcels.

MR. TILLEY : I ask your Lordship to note it is the islands, islets and reefs of rock and land under water in the west branch between Tunnel Island and the last described block," so we have the bed of the stream, and then it says, "with the water power adjoining thereto"; so that the grant to us was expressly of the bed, of both banks and the water power.

Then it says, "the whole herein described land containing three hundred and eighty-six and one-half acres more or less."

10 Then there is this provision, "Subject nevertheless to the performance by the said the Keewatin Power Company Limited, of all the terms and conditions of the hereinbefore in part recited agreement of the Twenty-fourth day of November in the year of Our Lord one thousand eight hundred and ninety-one and subject also to the condition and understanding that nothing herein contained shall be construed as conferring upon the grantees exclusive rights elsewhere upon the said Lake of the Woods or upon other streams flowing into or out of said Lake, or shall confer upon said Company power or authority to interfere with or in any way restrict any powers or privileges heretofore enjoyed by us or which may hereafter be granted or
20 demised to any other person or company in respect of any other water power on the said Lake of the Woods or on any other stream flowing out of or into the said Lake.

PROVIDED that any such powers or privileges which may hereafter be granted shall not destroy or derogate from the privileges hereby granted."

So that your Lordship sees it is quite a long clause—first it makes the grantee assume the burden of the contract with its predecessor that it has taken over, and then it subjects the grant to the condition and understanding that it is not to be construed as conferring on the grantees exclusive rights elsewhere, that is, I presume outside the area covered by the grant on the said
30 Lake of the Woods, or upon streams flowing into or out of the Lake—that is one branch of the proviso.

Then another one is, "Or shall confer upon the said company power or authority to interfere with or in any way restrict any powers or privileges heretofore enjoyed by us, or which may hereafter be granted or demised to any other person or company in respect of any other water power on the said Lake of the Woods, or on any other stream flowing out of or into the said Lake."

"Provided that any such powers or privileges (it goes on) which may hereafter be granted shall not destroy or derogate from the privileges hereby
40 granted."

"Given under the great seal of our Province of Ontario, witness The Honourable George Airey Kirkpatrick, Member of our Privy Council for Canada, and Lieutenant-Governor of our Province of Ontario.

"At Toronto, this thirteenth day of April, in the year of Our Lord One Thousand Eight Hundred and Ninety-four, in the fifty-seventh year of our reign."

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EXHIBIT No. 1 :—Copy Crown Sale Grant to the Keewatin Power Company Limited, parts of Tunnell Island, islands, islets, etc., with water power, west Branch Winnipeg River, District of Rainy River, three hundred and eighty-six and one-half acres.

MR. TILLEY : That is endorsed, recorded 26th day of May, 1894, liber eight, great seal folio 207.

Number 715 in the office of the Land Titles at Rat Portage at ten o'clock on the 1st day of June, A.D. 1894.

EXHIBIT No. 2 :—Coloured plan of Keewatin Power Company Limited water power and lands on the west Branch of the Winnipeg River 10 at the outlet of the Lake of the Woods, by John Kennedy, C.E., dated January 30th, 1906.

MR. TILLEY : My Lord, the agreement that is referred to in the Deed should be put in. That will be Exhibit 3.

It is an agreement dated 24th November, 1891, between the Keewatin Lumbering and Manufacturing Company Limited, and Her Majesty the Queen.

MR. McCARTHY : Is that a certified copy ?

MR. TILLEY : I do not know if it is certified or not. I will read this copy, and you can check it with yours. 20

MR. McCARTHY : That won't prove it, will it ?

MR. TILLEY : "Whereas Her Majesty has agreed to sell to the said Company——"

HIS LORDSHIP : Am I interested in what was surrendered ?

MR. TILLEY : I think we ought to see what was surrendered. Nothing may turn upon it, but as a matter of detail, I think we ought to see what was given up.

"And it is agreed by and between the parties hereto that the island known as Sultana Island (reads from agreement)."

MR. McCARTHY : Your Lordship will observe that I am not admitting 30 the accuracy of that, because it is not certified and not proved. I have no certified copy myself, and I presume it could only go in as a certified copy.

HIS LORDSHIP : There should not be any doubt about that.

MR. TILLEY : My friend has a copy.

HIS LORDSHIP : It should be established quite definitely.

MR. TILLEY : I thought my friend wanted this agreement in.

If you are not satisfied, I will withdraw it.

HIS LORDSHIP : We should have the accuracy of it established before it becomes a document of Record.

MR. McCARTHY : I should have thought the references in it to the 40 Patent required my friend to prove it—if it does not, it is for him to say.

HIS LORDSHIP : The Patent must stand on its own bottom for whatever it contains.

MR. McCARTHY : Your Lordship notes the reference.

MR. TILLEY : I thought my friend wanted the agreement in, and I did not know we would require a certified copy, but if my learned friend does not want it, I will withdraw it.

I do not know what my friend is making the objection about. He has a copy, and I have read it word for word, and he objects to it.

MR. MCCARTHY : I do not know if it is true or not ?

MR. TILLEY : You object to this copy ?

MR. MCCARTHY : Unless it is proved, I do.

HIS LORDSHIP : Cannot you get the certificate ?

MR. TILLEY : I have a copy from the department, the officials are here, but there is no certificate on it.

HIS LORDSHIP : Have the certificate put on it, and it will be Exhibit 3, when it is produced. We can go on using a copy for the time being until we get through.

There is Exhibit 3, but subject to the right of the defendants if they see fit to object, that it has not been certified.

MR. MCCARTHY : I do not know what justification there is for putting it in unless it is a certified copy or proved.

HIS LORDSHIP : That is perfectly true, if you take that position, it cannot go in as an Exhibit at this stage, it will have to be certified before going in. I thought from what you said your position was rather that you wanted to be assured that it was an accurate certified copy.

MR. MCCARTHY : It is not evidence under the Act until it is a certified copy.

HIS LORDSHIP : It cannot go in, it will just stand as it is. It is not admitted, if either Counsel wants it, I have no doubt he can get a certified copy, and then it will go in.

EDWARD W. BACKUS, sworn. Examined by MR. TILLEY.

Q. Mr. Backus, what position do you occupy in the Keewatin Power Company ? A. I am President of the Company.

Q. You are President of the Company, and how long have you been connected with that Company ? A. About ten or eleven years.

Q. About ten or eleven years ? A. Yes, sir, well, as an Officer about fourteen years.

Q. I beg pardon ? A. About fourteen years interested.

Q. Interested ? A. For about fourteen years.

Q. Interested in it for about fourteen years, but an officer for about ten or twelve ? A. A little less than that, I do not recollect the date I was elected President.

Q. And how long have you known the property in the vicinity of the present Norman Dam ? A. For twenty-one years.

Q. And the name of which the Plaintiff's company's dam is known is the Norman Dam ? A. Yes, sir.

Q. That is the west branch of the outlet of the Lake of the Woods ? A. Yes.

Q. How many outlets are there, do you know ? A. Two.

Q. Which ones ? A. The western outlet and the eastern outlet.

Q. And the eastern outlet, the two of them passing around Tunnel Island ? A. Yes, sir.

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Q. Then in 1906, was there any dam where the present Norman Dam is located? A. Yes, sir.

HIS LORDSHIP: Prior to what date is that, Mr. Tilley?

MR. TILLEY: Prior to 1906, my Lord.

Q. That is when you first came there—what—the Norman Dam?

A. Yes, sir.

Q. Or a dam in the same line? A. Yes, sir.

Q. And it is still there? A. Yes, sir, it is still there.

HIS LORDSHIP: You mean in addition to the present Norman Dam?

MR. TILLEY: It is the present Norman Dam. You have made some 10 changes—what have you done since?

A. We took out the rock fill and put in solid concrete.

Q. Where was the rock fill? A. About, a little to the north of the centre.

Q. A little to the north of the centre line, there was a portion of the dam that was made up of rock filling? A. Yes, sir.

Q. And then the two sides of the rock filling was what?

A. Stone, masonry with stop-log openings.

Q. That is where the gates were? A. Yes, sir.

Q. Or stop logs, and then between the gates, on each side, you had this 20 rock fill? A. Yes, sir.

Q. And that was the condition when you came there in 1906? A. It was, yes, sir.

Q. And does this illustrate where the solid masonry was, and where the rock fill used to be, but is not replaced? A. It does.

Q. By your power house? A. Yes, sir.

Q. And dam? A. Yes, sir.

MR. McCARTHY: When was this taken?

MR. TILLEY: This is just to illustrate the present condition.

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MR. McCARTHY: I must object, your Lordship. You will know this 30 writ was issued in 1916. I want to take the objection that anything as to condition since that date is not admissible in evidence, anything that has taken place since.

HIS LORDSHIP: Is not this action barred by the Statute of Limitations—I should think the Court ought to be protected by the Statute anyway.

MR. TILLEY: Q. That shows the change you made? A. Yes, sir.

Q. The changes you made, consisting of putting a power house where the rock fill used to be? A. Yes, sir, and repairing all of the leaks and wash-outs in the original Norman Dam.

MR. McCARTHY: Your Lordship notes my objection as to this as evi- 40 dence of the present condition. The present condition, I submit has nothing whatever to do with it. The condition in 1916 is what we are dealing with.

HIS LORDSHIP: When does the witness say that this photograph was taken?

MR. TILLEY: It was taken in 1926, it shows by the date on it. The photograph is dated October 25th, 1926.

HIS LORDSHIP: I do not suppose it is evidence at all.

MR. TILLEY : May we just have a word about that, because I suppose the objections will be pressed.

May I just refer your Lordship to the pleadings. Our action, as my friend states, was brought in 1916, and in it we asked for an Injunction and for damages and for further relief and in the statement of defence and counter-claim of each defendant, they raised at least from their standpoint and this document is dated sometime in March, 1927—my pleading does not show the exact date, but no doubt it will be on your Lordship's copy, March, 1927.

MR. MCCARTHY : The original defence, your Lordship will note, was
10 filed in 1916, the amendment was put in later.

HIS LORDSHIP : February 27th, 1927, the amendment was made.

MR. MCCARTHY : Your Lordship will note that they did not go on for many years, but when they showed indications of coming to life, the statement of defence was amended.

HIS LORDSHIP : Now, I do not see. Perhaps we are going to have this question raised in regard to other matters as well, but in regard to the photograph, if the witness can state that the physical appearance of the location had not been altered since 1916 ?

MR. TILLEY : It has been altered.

MR. MCCARTHY : That is the issue, my Lord.
20

MR. TILLEY : Substantially altered.

HIS LORDSHIP : Then this photograph will not show the conditions as they existed in 1916 ?

MR. TILLEY : No, but with the aid of the photograph I will describe the conditions as they existed in 1916. It was only for the purpose of your Lordship seeing them as we go along.

But I think it is well we should decide whether we are to be limited to the year 1916, because my friend has taken that position, strongly, on the Examination for Discovery, and while we have a *modus vivendi* for getting the
30 documents here, we reserved it to your Lordship to deal with it, and it will be convenient and expeditious in the long run.

Now what the defendants say in their pleadings is this, I am taking now the defence of the Lake of the Woods Milling Company—the defendants admit certain allegations and also admit that there are two main outlets of the Lake of the Woods, known respectively as the east and west branches of the Winnipeg River and separated by Tunnel Island.

The defendants deny that the plaintiffs are the owners of the land referred to in paragraph two or of the land and water power referred to in paragraph four. (Reads paragraphs 4,5,6 and 7 of Defence of the Lake of the Woods Milling
40 Company).

MR. TILLEY : Because of that I thought it desirable that the agreement should be put in.

So that the question will be before your Lordship. (Reads paragraphs 8, 9 and 10 of same Defence.)

MR. TILLEY : I am reading this to show they raised the issue with regard to what the Dominion Government did, I submit is not evidence. There is

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no evidence can be given of that, because it was Ontario property. (Reads paragraphs 11 to 17 (inclusive) of same Defence.)

MR. TILLEY : Now, the other pleading was in the same form—I mean an amendment to bring them both into harmony.

And my submission is, first on our own pleadings, and secondly on the defendants' pleadings the evidence is relevant, as, if we are right, it is a continuing wrong, and it is a wrong in respect of which damages are to be assessed down to the trial, and therefore, on that view alone we would be entitled to show what has gone on. Then—

HIS LORDSHIP : Is that not limited. I mean the right down to trial—is 10
that not limited down to a right to assess damages, but it does not include, at least just speaking from memory, it does not include a right to establish another cause of action which has arisen since the issue of the writ ?

MR. TILLEY : I am not putting it as a separate cause of action. I am putting it, if I am entitled to adduce evidence to show our large damages sustained. We built this new power house, and have it ready for use of more water, therefore, I am entitled—I am not saying that in the end your Lordship would have to give judgment for all the damages, but I am entitled to prove all my damages as part of my case, unless your Lordship should say, “I am not 20
going to hear any damage at all, or any evidence of damage until I have determined whether prior to 1916 there was something done that would be a breach of the Plaintiff's right.” I quite agree that your Lordship might well say, “I will not hear anything that happened after that date,” if your Lordship thought it would be a proper thing to do it. My submission is it would not be.

HIS LORDSHIP : Now, while you are speaking of the question of the damage. Is the damage of such a character that it can be assessed readily in a trial court ? Or is it of such a character that it would be necessary to be ascertained by a reference ?

MR. TILLEY : I think it is eminently of a character where your Lordship would assess the damages, otherwise we would have to go again over all the 30
story, but whether your Lordship would or not, I assume your Lordship would hear the general character of all the damage at any rate, in order to determine whether it was suitable that your Lordship should fix it or refer it. It is something that your Lordship, I submit would be able readily to ascertain.

But whether that be so or not, and take the defendant's plea, and I am entitled in my submission to rely on what they are raising, otherwise I could go and amend my own plea, and therefore when they ask, and I am asking for a declaration as to what our right is, my submission is your Lordship cannot determine what the right is until you know what the conditions are as 40
of this date, because without that, it cannot be determined.

Now what my friends are saying, apparently, in their statement of defence, “What we are doing, we have a right to do and have always had the right to do,” and they ask, as late as the year 1927, for a declaration to that effect, and if on that pleading as that pleading stands, your Lordship should give a declaration in the language of the pleadings, it would be a declaration that they are at the date when they delivered that amended pleading entitled to these rights, or at the time of the trial, so far as the Record shows, they are

entitled to the right—I do not know which it would be—at any rate it would be down to 1927, because they say, “All we are doing we are entitled to do,” and they raise the issue whether there is something connected with their grant that raises the implication in their favor not to do just what they were doing at a precise date, but to do what they are doing, and I am exceedingly anxious, and I regard it as of prime importance that I should show, not only what they did in one year, two years, but what they have been doing in purporting to exercise this right which they claim to drive any mill on their property, because I quite agree there may be various stages; for instance, my friend
 10 indicated it may be as to one or both, no right at all, in the defendants—then there may be a right, if their view is correct to drive any mill on the property, and in between these two things your Lordship will see various possibilities as to the actual water being used at the date of their grant or our grant, or as to the capacity of used water at the date of their grant or our grant, or the capacity of the mill to use water in the production of the output that the mill has a capacity for.

HIS LORDSHIP : Have the defendants’ mills been altered as to capacity or otherwise since ?

MR. TILLEY : Oh, yes.

20 HIS LORDSHIP : And they are taking more water than in 1916 ?

MR. MCCARTHY : We do not admit that.

MR. TILLEY : Your Lordship asks what we are trying to prove—largely increase at both places both before and after 1916.

HIS LORDSHIP : And what you are saying to me now is in view of the amendment which was made to their defence in 1927—a finding on my part would be a finding to the effect that they are entitled to use what they are using today, in spite of the fact that the action was commenced in 1916 ?

MR. TILLEY : Yes, and your Lordship will see no defence was raised prior to the delivery, and in granting counterclaim as your Lordship said, if one
 30 side consents, there is no difficulty in getting this thing done, and my submission is, on this pleading, if it had not been so, the other proceedings, had been taken, and issue another writ, and have the two actions tried, and I will admit it, and have the two tried together, or have the two consolidated, because it is very important that these matters be determined once for all, and there are many, very many important questions that are raised, having regard to user both before and after. I quite agree, as my statement of claim said, I cannot recover damages down to the judgment, or prove damages down to the judgment unless I prove the wrong before 1916—I quite agree with that—of course, that does not say I would not be entitled to maintain my action,
 40 because my action would be for the purpose of preventing any such right ripening into a title by prescription. Your Lordship sees I have got two branches to my case—first, I have got the branch of the wrong being done, with actual damage—secondly I have got the branch of wrong being done without actual damage, but an action properly brought so as to declare rights and prevent the continual exercise ripening into further title, and as to the second branch, I would be entitled to a declaration that would be proper as to what, if any right, assuming that I cannot make out my whole case, that they

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are entitled to any right at all, or any water, then at least I would be entitled to say what is it—because I have brought this action for the purpose of having something, to declare or fix rights and prevent this ripening into an absolute title.

Now, my friend is doing the same thing. My friend says I want also a declaration of my rights—I want something declared as between me and the plaintiff, as to what as against the plaintiff I am entitled to do, and he says just as plainly as can be, that I ask a declaration that I am entitled to do all that I am doing, and that there should be implied—

Your Lordship will see how he puts it at the end. He says, “Even if it 10
be held that the grant in paragraph 11 does not upon its true construction confer upon the defendants the right for the operation of the mills from time to time erected, so that they have their mills, and if he brought that action against me I would be entitled to say, “Well, now, what have you, and let us see what you are claiming protection for,” and then if that declaration was made, the declaration was made, the title to which I am not just saying how it would be, but there are so many different things, the title to the water as they are actually using it now, it might be, or it might be the water they have the capacity in their driving apparatus to use in their wheels to use so much, 20
or it might be water sufficient to drive the mill that could turn out as many barrels of flour as this mill could turn out, or the whole distance, any mill that may be erected.

Now with these constant references in the statement of defence and counter-claim in which they are seeking to get something from the Courts justifying all they have been doing, my submission is we cannot properly try the issues unless we know just what they have done.

HIS LORDSHIP : Let me see if I can clear the matter a little for my own understanding.

MR. TILLEY : My friend, Mr. Carson, tells me I mentioned paragraph 12, it should be paragraph 16. 30

HIS LORDSHIP : Your writs were issued in 1916, now your action was presumably for an Injunction and for damages—damages for injuries sustained and an Injunction to prevent them going on causing more damage, and for a declaration of what your rights were at that time ?

MR. TILLEY : Yes.

HIS LORDSHIP : Then even if that damage had already been sustained, in other words, you were going to prevent them going on and causing damage in the future or at any rate get a declaration from the Court as to what your respective rights might be.

Now if that stood, if that were the action which I have to try, your 40
damages as suffered since that time, if shown to be resulting from that which was the foundation of your action, the wrong done to you at that time you would be entitled to assess it to the time of the trial, up to the time of the assessment of damages, you would be entitled in that action to show that something which was done subsequently was in itself a substantial interference with your rights other than as an increase in the damages caused already—now, can you do that ? Suppose that something has been done

since that time which has not merely increased the amount of damages,—I am assuming you are entitled to damages—which has not merely increased the amount of damages to which you would be entitled, but has given you what would be a new cause of action, you cannot give that here, can you ?

10 MR. TILLEY : I think that is the distinction, if we may accept that Foley Case, I think that is the distinction. If my cause of action is a new cause of action, then I would not be able to get the damages resulting from a new cause of action, but if the damage is merely the using of water that in 1916 was being used which should have gone to me as the owner lower down, then I would be

entitled to such damages as the wrongful taking of the water would bring about, and my submission is, the increase of it today, the decrease of it to-morrow, the increase the next day, does not make a new cause of action, they commenced to use prior to 1916 and if they created the work that takes from me the water that I should receive, takes away a certain part of it, it diverts it.

20 HIS LORDSHIP : But, Mr. Tilley, if certain work, suppose for illustration that it were a rock cutting, suppose a rock cutting were made, I do not know what was done that constituted the wrong, suppose a rock cutting were made prior to 1916, as a result of which, a certain quantity of water which would otherwise have come down to you, and to your power plant was diverted, and

went off in another way, and you never got the benefit of it, and supposing that in 1917 after you had commenced your action for the wrong already done, you, suppose in 1917 some further rock cutting were done, now you cannot collect for any damages which might result to you in respect of the 1917 cutting in your action commenced in 1916.

30 MR. TILLEY : I would submit so—I would submit—

HIS LORDSHIP : You can get in your declaration—it strikes me that this would be so, that the declaration which you would be entitled to get from the Court assuming that your claim is right, your declaration would cover the one just as much as it would cover another so far as the declaration of your rights

was concerned, but that you would not have any cause of action with respect to the one wrong that was done you after your writ was issued.

MR. TILLEY : I think your Lordship is possibly approaching it a little from a wrong attitude.

HIS LORDSHIP : I am just trying to get it clear in my mind.

MR. TILLEY : I won't suppose the making of a rock cutting, it sounds so much like trespassing, but this is not trespassing on my property, this is, as the owner higher up the stream, exercising rights of ownership in the water, and the right to divert, and when he commences that, in the exercise of his right, my submission is that he does a wrong against me, and that the wrong

40 so long as it continues is one wrong, even though he may add something at a later date, by taking a little more water, because what he is claiming the right to take—anything.

HIS LORDSHIP : Is it merely the taking of a little more water, or the extending of a wing, more dam, or doing some thing active which will catch more water ?

MR. TILLEY : My Lord, it is this, it is doing something in the exercise of

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which he claims that he is entitled to all the water he wants for another mill that is there.

HIS LORDSHIP : The easements would originally show that he was not.

MR. TILLEY : Supposing that I am getting damages; supposing I had shown he had exceeded any right prior to 1917 and I was getting damages, I would get all the damages I would sustain—you would not say, I would start out and get all the damages for the water that would go through that mill, but not for the water through another mill, because that was put in at a later date. You would not split up the damages in that way, because what I am damnified is by his exercise of a right to divert water, and so long as he diverts it wrong- 10
fully, I would be entitled to show how much damages was sustained by me, by his diversion of that water.

HIS LORDSHIP : Clear this for me—has the diversion been the same at all times, or has the diversion been increased from time to time ?

MR. TILLEY : Your Lordship will find that it has been increasing from time to time.

HIS LORDSHIP : By active measures taken on the part of the defendants, you allege, to bring about the increased diversions ?

MR. TILLEY : Some measures actually taking place, and other times just merely grinding more flour and using more water because after all it is the 20
water diverted.

HIS LORDSHIP : Is it not the diversion—not the use, that is your wrong ?

MR. TILLEY : Yes, that is the point—let me put it this way. I have no right of action against the defendants as I conceive it, because on their own land they blast out a cut and make a contraption through which water can run, they can have as many of those on their own land as they like.

HIS LORDSHIP : But you say they cannot digress the water that comes to you.

MR. TILLEY : That is the point, so my submission is. When I show that they are using water and continuing to use water, I ought, I submit, to be able 30
to prove exactly what they have used, just on the wrong—if I establish the wrong by a certain time it means a continuous thing, that I should not bring a separate cause of action because the very point of this is that they start this user and continue it, claiming it is as a right, and when I come to my damage it must be a damage that results from their exercising the so-called right of ownership on their part, right to control the water, and I say that is a wrongful act done against me. I say, “You claim to do this as a right, and therefore, if it is wrongful, I am entitled to prove all the injury that has happened to me in respect of the wrong; and then on the other branch I had 40
put it that the defendants could not come into Court with a statement of defence and counter-claim that raises the whole issue without being ready to have that all put before the Courts, so that the rights of the parties may be determined, having regard to what they have done.

HIS LORDSHIP : Might not your right rest with respect to that much, while such portion of your counter-claim as has to do with something since the commencement of this action.

MR. TILLEY : A defendant can raise a counter-claim any way he wants.

Your Lordship will find this, as a defendant by a mere defence can raise any defence to an action, based after the issue of the writ, and based after the delivery of statement of claim, and he may deliver any counter-claim that ensues before the delivery of the counter-claim and when this counter-claim is amended, it is amended precisely in accordance with what I want, because I want these points tried and want, and think it should be in the interest of all parties to have all issues tried. It seems a useless thing to issue a writ in 1927 to have it tried in 1943—I may not be here to try it.

HIS LORDSHIP : I will hear you further at two o'clock, Mr. Tilley.

- 10 Court adjourned for lunch.
Court resumed two o'clock p.m.
Mr. Tilley continues argument.

MR. TILLEY : I do not know that I have much more to add to it, my Lord, but the rule with regard to damages, Rule 260, damages in respect of any continuing cause of action shall be assessed down to the time of the assessment, and this has been held in the case of the polluting of a stream, and I assume the proof can be given that in certain years it was more, and in other years less and so on—

- 20 HIS LORDSHIP : I suppose in a case of pollution, at any rate, the amount of damage sustained would be affected largely by the extent of pollution from time to time, and in that way they would go directly to the question of the quantum of damage.

MR. TILLEY : And would that not be so in the use of water.

HIS LORDSHIP : What I am wondering, I have not got it clear in my mind yet, was, if what they did, that you say was wrong was done once for all, prior to 1916, that is the case on one side—then any damage you suffer down to the assessment of damage, you would be entitled to show—but suppose that they did something of which you complained prior to the issue of the writ, and then in 1917 they did something else—

- 30 MR. TILLEY : Something else ?

- HIS LORDSHIP : That is, it is not merely supposed, following up the illustration I was giving—suppose that as a result of what they did before 1916 they were able in 1917 to use a certain quantity of water which was diverted by what was done in 1916, or prior to that time, in 1918—as a result of what was done prior to 1916 they were able to use a further quantity of water, not by anything in addition which they did in 1918, except to utilize it—in other words, their plant in 1917 was not large enough to utilize all that was coming to them in 1918, 1919 and 1920, they increased the capacity of their own plant—in other words, increased the capacity to utilize the water, but had
40 not in any way, from 1916 down increased the means by which their diversion is caused.

MR. TILLEY : Your Lordship, I think, is just a little confused, the means by which the diversion is caused is by use of it through their water wheels.

HIS LORDSHIP : That is what I cannot understand. How the use of the water causes a diversion.

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MR. TILLEY : Because they divert the water that they use through their wheels and pits out of the Darlington Bay outlet.

HIS LORDSHIP : That is what I want to understand—am I to understand that the actual use of the water is the only diversion ?

MR. TILLEY : Yes.

HIS LORDSHIP : That is, it is not that the water is taken off in a body in their direction and away from you, and they use a part of it this year, and next year they by increasing their plant take a further quantity—

MR. TILLEY : It is taking the running water.

HIS LORDSHIP : It is only so much as they use they divert—how much 10
do they divert ?

MR. TILLEY : It is not, I do not say there is any leakage.

HIS LORDSHIP : I wanted to know how much would their diversion consist of.

MR. TILLEY : We do not in any sense in this case establish a wrong against us, because they have a capacity to take more, because they do not take their capacity and then use it afterwards, they use it as they go, and if they have a capacity to take more, they may use more, and thereby divert more, but the diversion does not take place until they actually use it.

HIS LORDSHIP : It is actually the use which results in the diversion. 20
I did not know what the facts were.

MR. TILLEY : There would be no diversion if they did not use it.

HIS LORDSHIP : I had got the idea that there had been some cutting made, or something of that sort which took off a body of water.

MR. TILLEY : That is just to lead to their water wheels that could have been, that just takes it into their wheels, and as the wheels let it go through, it has to go through their wheels to get down to Darlington Bay.

HIS LORDSHIP : There is not a large spill, or anything of that kind.

MR. TILLEY : No, no works of that kind. We supply all that to the undertaking, they only use, and we have the expense of the dam that keeps 30
up the levels and that sort of thing.

HIS LORDSHIP : Is not this the result, Mr. Tilley, notwithstanding what you say now that at the time when they increased the use, or the quantity used, they increased the quantity diverted, and that thereby they gave you a new cause of action ?

MR. TILLEY : No, my Lord, if I might say so, they increased my damage, but they did not increase the number of causes of action—they increased the injury, they increased the wrong, but it is just the one wrong, I thought it was the same thing as pollution. They pollute a stream, it may go for some- 40
time without any pollution coming in, certain days little, other days more, you cannot say. Now, you are doing something more, that is a new cause of action—in fact, your Lordship sees it is the continuance of the thing that gives the right of prescription, and therefore it is in the nature of an easement.

HIS LORDSHIP : Taking that very point—suppose that they were using, and therefore diverting in 1916 when you commenced your action, 10,000 H.P. the right by prescription in respect to that 10,000 H.P. would accrue at the

expiration of the time limited, by the twenty years user, and supposing in 1917 they used, and therefore divert, another 10,000 H.P.

MR. TILLEY : When ?

HIS LORDSHIP : In 1917, another year afterwards, would it not take another ten years afterwards—would it not be an entirely new cause of action because the prescription operates on the cause of action from the time that the cause of action arises.

MR. TILLEY : I am afraid it is not in the sense of operating on a cause of action, it is operating because of a use that is made because of your proprietary right.

HIS LORDSHIP : What I am meaning is, there is a new and distinct cause of action every time they increase the quantity they divert and use.

MR. TILLEY : I would say not in that sense, they may acquire a right, to use your Lordship's illustration, of 10,000 H.P. or water sufficient to develop that. They may acquire a right for that, and when that right is secured, of course, that becomes their right. In the same way they may acquire the right to pollute, but that does not mean they can increase the pollution. Nevertheless, your damages are assessed for such portion as is sworn to, not each time you pollute, it is a new cause of action. It is a continuing wrong. I may, in the end, if I have not brought my action in time, I may not be able to recover all the damage, because there may be an easement required for a certain amount of it, for it is one continuing wrong, and at the end of ten years, I may be debarred from suing as to part of my damage, I would still be entitled to sue, and if I bring my action within the ten years I would get it down to the time of bringing the action, and on down to the assessment of damages in the judgment is my submission.

I quite agree that I may be barred by prescription from getting all my damage, but I do not understand that is because of a separate cause of action accruing. The right of prescription is not a right that commences to run with regard to each separate and distinct wrongful use, treating a little more as a separate wrong from the original taking. It is a right that is acquired because of a constant use of a certain amount without objection, then of course that becomes a right by prescription to that amount.

HIS LORDSHIP : It would not entitle him to take any more though.

MR. TILLEY : It would not entitle him to take any more, but it would not prove the taking of that power was a separate wrong, it was an increased amount. If, however, during the period of ten or fifteen years none of the taking would be rightful, it would be all wrongful, and the whole would be assessed, if the writ was issued—then after the writ was issued, at a later date, the whole could not be assessed, because a right has been acquired as to part of it, but that is not because one cause of action is barred, and the other not barred, but it is because a prescriptive right has been acquired as a result of exercising openly a proprietary right over the water and diverting it. As to the balance, of course, there is no prescriptive right, and therefore the wrong continues, but my submission would be, taking the case of *Ratté v. Booth* in 14 Ontario Appeal Reports, at page 419, it was held that it was, pollution is a continuing wrong. Of course, if that is so, the damages are assessed right down

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to the date of the Judgment, and yet pollution is another operation you can get prescription for pollution, the measure of your right to pollute at the end of twenty years would be the extent to which you had polluted during that period of time, but I do not think that means that on a certain day that it was all wrongful, that it was all wrongful because within the twenty years the pollution is split up between what had been going on before in respect of which a pollution of the balance occurred, and the balance which was additional, you could only get damages for the additional, but I do not think it would be because the additional amount over what was put in the day before is a new wrong. It is a wrong every day that pollution takes place. It is a wrongful act, and is not to be split up between that which you are getting prescription for, and that you are not getting prescription for, because in the end you may have prescription for the additional amount if it is continued long enough. I do not think the law with regard to the extent of a prescriptive right is based on the view that on certain days there was an increase, and that then there were two causes of action, one for the normal amount, and the other for the increased amount—but it is on the view that having continued for twenty years, to take a certain amount, you acquired that right. 10

HIS LORDSHIP : The question that occurred to me, that you will perhaps clear up for me now, in regard to the question of damages which are alleged by you to have been sustained—are these damages resulting from your having by their diversion of water been prevented from utilizing your plant to its fullest capacity, or that you wanted to increase the extent of your plant, or in what way is the damage alleged to have been sustained? 20

MR. TILLEY : I think the damage is to be alleged in this way, that that water, being taken by them, has deprived us of using it, though possibly it would require us to put in an additional unit in order to make use of it—I think practically that is it.

HIS LORDSHIP : Would your damages be more than, so to speak, nominal, if you did not show that you had wished to increase your capacity for using it and could not use it? I do not want to argue it. I am trying beforehand, so far as I can, to get the thing clear in my mind that I may appreciate the evidence when it comes. 30

MR. TILLEY : My Lord, I will put it this way. We have to wish to use it—if your Lordship asks me the further question—“have you actually enlarged your capacity in order to use it and could not,” to that actual extent I would say we have not. I would say that if the water was coming to us, we would have had the unit and used it, and on that branch, I put it this way, that we had the plant, it was just a matter of adding the unit for which you have the water coming, and the more water you have coming—of course, the question is very broad, your Lordship sees results in this, here is a large power development at their Norman Dam, with an obligation to sell to others—of course the Lake of the Woods would say, “Well, there is no damage to you, you have no other actual use for it, because you have not developed it, and therefore we can continue, because we are not damaging you.” Well, if the Lake of the Woods did not take our water, there would certainly be a very 40

early customer for water and actually wanting it in the most pronounced way, we rather go round in a circle on the question of damages.

HIS LORDSHIP : What I was really wanting to find out for my own information was, whether the damages applied to something which you had been doing, and were attempting to do, and then the water coming to you was not sufficient ?

MR. TILLEY : No, I shall not put forward that.

HIS LORDSHIP : That is really what I wanted.

MR. TILLEY : I shall not put forward the case we had actually constructed a unit, and to our surprise water was taken away from us—it is not that. It is more this, that we are being deprived of the water and should have it, and if we had had it earlier, we would have made ourselves equipped to use it, and have developed it.

Now, may I say one more word in regard to my friend's counter-claim—I am not sure that I made it clear, because my friend, Mr. Carson, probably stated to your Lordship that there was no counter-claim at all until this amendment.

HIS LORDSHIP : I did not understand that.

MR. TILLEY : Mr. Carson complained in that respect too. There was no counter-claim at all, until by amendment this counter-claim was raised, and therefore, we must read the counter-claim as being a statement made at the time it is delivered of the claim that is being put forward.

HIS LORDSHIP : That would entitle you, would it not, to give evidence on anything which you had a defence to, that which is alleged in their counter-claim.

MR. TILLEY : Yes.

HIS LORDSHIP : Would it allow you to submit your original claim on something which would be available only as a defence to the counter-claim ?

MR. TILLEY : I should think, my Lord, that when the case comes before your Lordship in that aspect, that each side is wanting a declaration of right, but the difficulty is carrying it down to a later date, it would be important to have all the evidence of any sort all in order, I do not suppose your Lordship needs to split up the case by the counter-claim as a matter of evidence.

HIS LORDSHIP : I do not suppose so, yet it might be by reason of the rules I would be precluded in determining the question of your original cause of action from taking into consideration evidence as to something which was done subsequent to the time that your cause of action arose.

MR. TILLEY : My Lord, I am the one, of course, who commences in the ordinary course of events, but as to my friend's counterclaim, although I started first, unless we are going to have separate trials of the two, my submission is I put anything in that is material either as to the defence to the counter-claim or in aid of my claim.

HIS LORDSHIP : I suppose that is going to be the shortest way of doing it.

MR. TILLEY : And if I proceed in that way, then anything is material as to the user of the water, and as to conditions right down to the defence and counter-claim as delivered.

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HIS LORDSHIP : Perhaps I should have said that is the least long way of doing it, judging from its appearance.

MR. TILLEY : And it is not without significance that when they move for an amendment, they move for change, all this to be amended is delivered as of the amended date—but of course, the counter-claim was never delivered until it was allowed as an amendment—so that my submission is that on the pleadings as they stand the evidence is relevant and material.

HIS LORDSHIP : That is putting it, so we will have it on the Record, Mr. Tilley, you state briefly just what evidence you think you should be permitted to put in, I mean speaking generally in describing the evidence as to its time and nature. 10

MR. TILLEY : My submission is that we are entitled to put in evidence showing the user made by the defendants of this water down to the date of the filing of the counter-claim at any rate, that we are entitled to show the user by both parties, the plaintiffs and the defendants, so that your Lordship may in the end declare whether the whole right that they allege is to be theirs, or whether any right is theirs, and if so, how much—and unless we do that, unless we do that, we have to split it up, and we have probably a declaration as to 1916, there was any impairment or was not, and then an action, later on when it is really of Record here, and not determined here. 20

HIS LORDSHIP : Is it possible or probable that the result might be that the defendants would be found entitled to the user of the water only to such an extent as would not injuriously affect your user.

MR. TILLEY : It might, because they are not to derogate from our grant, we have the grant for a water power at that point—there is no grant by the Crown to any person else.

HIS LORDSHIP : Then, that you would have no cause of action against them until the point was reached, and passed where the taking of water, the taking of which might injuriously affect them—

MR. TILLEY : That might be one view, and I put that in this way, a claim to a right of prescription is set up here, a good deal might depend upon a point that somewhat touches the point your Lordship has just mentioned, and that is this, the grant to one of the defendants from the Province was made in 1891, three years before the grant to us, but the grant to us was for the purpose of a power proposition. Now the action was brought in 1916; twenty years from either of these two dates would expire before 1916, but there is a view that I propose to urge upon your Lordship, that no prescriptive right could accrue unless the time commenced to run after we had built, at any rate built the dam, and was in a position to use the power—that is to say, that no time would start to run until then, and that is about 1898. 30

Now, it might go further, and it might be that so long as they were not taking water from us, it might be that view—I shall contend, for on each view until we know what is to be the legal right of the parties. We must go into all the evidence, I submit, so that a final judgment can be pronounced. I am quite agreed with this, that your Lordship may reach the point with these various contentions being put forward, your Lordship may say, “Well, I am not going to fix the amount now, but I shall determine the basis on which 40

any right of the defendant, if they have a right, is to be ascertained. If it goes the whole distance, and they have a right to take any water, the right, for any mill they erect. then that would be an end of the matter, in priority to us, but there are various other ways in which a judgment can be shown, and I think, that having regard to these possibilities, while your Lordship may not want to hear evidence as to actual amount taken at particular time, on the second view, nevertheless, I should think your Lordship would want to know what has been the user throughout the whole period of time by each side.

10 HIS LORDSHIP : It might possibly be necessary to have the evidence as to the user as bearing upon the counter-claim which you set up. I do not know, I am not sufficiently seized with the situation to be able to tell as to that.

Is that all, Mr. Tilley ? I will hear you, then, Mr. McCarthy.

MR. MCCARTHY : I think, my Lord, before discussing the question of the admission of evidence, in order that your Lordship may have a more or less intelligent view of the situation, I think it is possibly necessary in discussing the evidence, might I just in a word describe the situation. My friend has, as he has already explained to your Lordship, obtained a Patent
20 in 1894 for a water power on the western branch of the Winnipeg River, which is one of the outlets from the Lake of the Woods into the Winnipeg River, the main branch. Our patents are from the Ontario Government. The Patent for Mill "A" issued in 1892, the Patent for Mill "C" issued in 1891.

Now, our mills, our power plant and mills are situated on a neck of land, which your Lordship will remember was the subject of dispute between the Provinces of Manitoba and of Ontario, and which in 1884 was decided by an Award of the Privy Council belonged to Ontario—but prior to that date, the Dominion Government, the Federal Government assumed to deal with the
30 power sites on that neck of land, under an arrangement between the Federal Government and the Province of Ontario, by which they each agreed to recognize the Acts done by the other Government. Now, we say that in the 80's we obtained certain grants of water powers by means of artificial cuts across this neck of land which became, to use a convenient expression, canalized.

HIS LORDSHIP : There are two cuts.

MR. MCCARTHY : Two cuts, Mill "A" and Mill "C."

MR. TILLEY : I do not want to interrupt my learned friend on his facts, but I do not want to be taken as agreeing to any agreement between the parties.

40 MR. MCCARTHY : I will take it neither of us agree on anything to start with.

So that when the Province, after the Award of the Privy Council and after a great deal of discussion in regard to different matters, we finally got our Patents from the Province in the years 1891 and 1892.

Now, I would ask your Lordship's attention to the provisions, I have no doubt you noticed my friend read the provisions of my friend's patent—in the first place, you will see a provision, "Whereas the Company did also

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covenant with us that before executing any portion of the said work, they would submit to our Lieutenant-Governor-in-Council plans and statements in detail of the system or scheme proposed to be adopted in carrying out such work, which plans and statements should not be acted on until they have been approved of by an engineer appointed for that purpose.

Now, I say, that has a significance which I think will appeal to your Lordship later when reading the latter part of the Patent which provides as follows: "Subject, nevertheless, to the performance by the said Keewatin Power Company Limited, of all the terms and conditions of the hereinbefore recited agreement of the 24th of November, 1891." And then also, "Subject also to the conditions and understanding that nothing herein contained shall be construed as conferring upon the grantees exclusive rights elsewhere upon the Lake of the Woods or upon other streams flowing into or out of the said Lake." 10

Our submission being that when the Ontario Government granted this Patent, they had in mind two things—first that the plans of any proposed water powers that were to be developed on the western branch of the Winnipeg River were to be subject to their approval, having always in mind the prior patents which had been granted to the Lake of the Woods, and the Keewatin Flour Mills Company, for the two mill sites on the neck of land that had been awarded them by the Privy Council in 1894, and our position therefore is that the grant given to the Plaintiff throughout these cases is subject to the existing rights, and the existing rights we say we are at least, having been there from the early 80's, and operating there prior to the granting of the Ontario Patent, and then getting our Ontario Patent, in 1891 and 1892. 20

Then, to come down to the question of evidence which my friend has been discussing, if we take his claim—his first claim as to an Injunction. Now, my submission is, and I think it is quite clear on the Authorities that if I can be restrained from doing something which I was wrongfully doing in 1916, my friend cannot add at the trial of the action a claim that I was doing something wrong in 1917—therefore, if in 1916 I was diverting say 10,000 H.P., my friend cannot say in the year 1918, that I was diverting 20,000 H.P., or in the year 1919, that I was diverting 30,000, nor can he ask your Lordship to restrain to more than the amount that I was diverting at the time the writ was issued, when his rights would be determined. Now, I think that is perfectly clear on the authorities. To use the illustration, your Lordship put a little while ago, given in regard to the nature of my friend's claim; I do not think my friend appreciates the nature of our contention. There are these two cuts through this neck of land, whether they are artificial, or originally artificial or not, I do not think it matters at present, we say they became naturalized. 30 40

Now, the water flows through these cuts, depending, of course, on the Lake pressure—if the Lake is high more water flows through. At the present time, we are all suffering from the abundance of water, in fact, we are nearly all flooded out.

HIS LORDSHIP : May I understand just there, you say there are two cuts ?
MR. McCARTHY : Yes.

HIS LORDSHIP : And one mill is in one cut, I presume, and the other in the other ?

MR. McCARTHY : Yes.

HIS LORDSHIP : Does any water get past or down except the water you are using, or are you in such a position you are an effectual bar to the cut except insofar as the water you use.

MR. McCARTHY : I think for practical purposes we are, your Lordship.

Now, if my friend's claim was this, "The cut, as it existed in 1916, at the time my writ was issued was so and so; you in 1918 increased that cut by either deepening it or widening it," that claim could not be tried in this action because that would be an entirely fresh cause of action to which I might have entirely new defences.

But if he said, "No, you have not altered the actual size of the cut, but you are taking, you are utilizing more water in 1918, than you were in 1916"—now the utilization of the water depends entirely on the machinery which happens to be installed—when I say utilization—that I had in originally in a very inefficient plant, very inefficient wheels, and I substituted more efficient wheels for these inefficient wheels, I would be getting better results as far as the manufacture of produce was concerned, but I would perhaps not be using actually the same quantity of water.

HIS LORDSHIP : That is you would not be letting it away from the upper level ?

MR. McCARTHY : I would not be letting it away, my Lord, from the upper level—if you lifted our plant clean out of the cut, the water would flow through, but putting of our plant back does not increase the flow, if anything it retards it, because instead of having a natural flow it has to go through our wheels.

HIS LORDSHIP : Then following that up the wrong was done, if wrong was done at all, when the cut was made.

MR. McCARTHY : When the cut was made.

Then my friend says, "But you have a continuing damage, because if you were diverting more water than you were entitled to divert in 1916, and you diverted more in 1918, and more in 1920."

HIS LORDSHIP : What do they say, that you did in 1918 or 1920 increase the capacity of your plant ?

MR. McCARTHY : I do not know, because we have strenuously resisted, as I have told your Lordship, strenuously resisted anything that has happened since the issuance of the writ, and this is perhaps more on the amount of the damage, because the real injury gives him the right to assess the continuing damage up to the date of the assessment, but they must assume an original damage.

Now, my instructions are that there was no damage at the time the writ was issued, because there was no mill constructed—that is, the Plaintiff had not yet constructed his plant, so that there was no damage, and there could not even be nominal damage, because there was no damage or any right in flowing water—therefore, if my friend suffered any damage in 1916, there cannot be a continuation of nothing—in other words, if you take the ordinary damage

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action, and the man suffered no damage up to the date of the writ, but subsequently as a result of something else, damage occurred later—he cannot give evidence of that as continuing damage unless he can prove his continuing damage, or at least it actually existed at the date of issue of the writ.

HIS LORDSHIP : In the particular case of power, the fact that the cut was made, if the water was not allowed to go through, is causing no injury to the Plaintiff.

MR. McCARTHY : No.

HIS LORDSHIP : Until water is actually allowed to go through.

MR. McCARTHY : Until water is actually allowed to go through. 10

As I say, my friend's claim for Injunction must be to restrain some wrong which is of the date of the writ, and not some wrong doing which may happen some two years or five years after the issuing of the writ, and as to damages, if there was no damage at the issue of the writ, then there cannot be continuing damage, and therefore, my friend's claim to this evidence as to continuing damage must be based on his first satisfying your Lordship he suffered any damage at the date of the issuing of the writ.

HIS LORDSHIP : That, of course, would have to be considered when the evidence was being given as to the quantum of damage.

MR. McCARTHY : It is not a question of quantum as yet. 20

HIS LORDSHIP : I understand.

MR. McCARTHY : But it is the damage which he suffered at the time he attempted to make use of the water. Now, if he was making no use of the water at the time of the issue of his writ, he could recover no damage. All he could get, if he could get anything, would be a right restraining us from doing something, that is a right apart from the damage.

HIS LORDSHIP : His mill was not there.

MR. McCARTHY : His mill was not there. He was not making any beneficial use of the water. He had acquired a mill site from the Keewatin Company, an old company, there had never been a power plant there, and the Plaintiff's company acquires and erects this mill after 1916, so there was no beneficial use of the water prior to 1916—so I say, quite apart from my friend's right to his Injunction, there was no continuing damage at the date of the issue of the writ. 30

Then, as to the counterclaim, of course, my friend very adroitly wants to answer our defence and counter-claim before we put it in, and your Lordship suggests that you shorten the proceedings—but let me point this out—in paragraph 15 of the counter-claim, and I think it is the same in both counter-claims—paragraph 15 of both counter-claims, your Lordship will note, "The defendants, by way of counter-claim, repeat paragraphs 8, 9 and 10 hereof." 40

HIS LORDSHIP : In one of the pleadings that I am now looking at, clause 14, says, "the defendants, by way of counter-claim repeat paragraphs 7, 8, 9 and 10 hereof," no difference perhaps.

MR. McCARTHY : It refers—the reference to the same paragraphs is the same in each, it is 14 in one and 15 in the other.

Then, if your Lordship looks at paragraphs 8, 9, 10, and 11, you will see, as my friend read them he gives the area of the Lake of the Woods in square

miles, and the drainage area, and goes on, "At the extreme northerly shore of the Lake is situated Portage Bay, which is separated from the Winnipeg River by a natural rock ridge." That is the natural rock ridge which forms the subject of the inquiry.

"As the level used for power development." That is what was done.

Then paragraph 9, "The Dominion Government . . . the operation of their said mill"—that would be Mill "A" the Lake of the Woods.

10 "And other of such locations being situate . . . flour milling was constructed"—that would be Mill "C," and, "And the third of such locations . . . operated for many years."

So there were three mill sites, we say, located in 1888 as convenient locations for power sites, two of them are now controlled by the defendants in this action, the third was owned by the Keewatin Lumbering and Manufacturing Company, which I think was burned about 1905, and in 1907 was acquired, or the rights, whatever they be were acquired by the Plaintiffs, in the present action.

Then paragraph 10—"from the time of such report, . . . water power in question herein."

20 Then paragraph 11, "After said mill had been so operated . . . the water power thereon."

Now, your Lordship will note that what we are repeating there is our original claim to operate as of right under the authority of the Dominion as afterwards implemented by the grants given by the Province. Now, if when the time comes for me to put in my defence and counter-claim which I presume will be put in together, I attempt to show, and I will assure your Lordship I mean that I will show that we are entitled to show if anything has taken place since the issuing of the writ—then I would no doubt be met with my learned friend's objection, "You cannot give that. Your rights are the rights
30 which are defined by my claim and my writ"—in other words, you say, in answer to my claim that you had acquired certain rights in 1916, the rights that I acquired later as I assure your Lordship I do not intend to refer to any I have acquired any later, because our right must rest on the fact when these canals were built that they became naturalized into watercourses, and that we established our mills there, and that we have operated our mills there up to the time of the issue of the writ.

Now, my friend says he issued his writ, and says, "You have no right to divert that water down these artificial channels." We say we have got that.
40 It seems to me that is the sole issue between us now, what either of us have done since, it doesn't seem to me to have any bearing at all on the points which arise during the trial of this action.

HIS LORDSHIP : What perhaps would have in some measure lent colour to what Mr. Tilley was urging on that point, Mr. McCarthy, would appear from the use of the language "from time to time" in your paragraph 15 of the Keewatin Flour Mills Company pleadings, and 16 in the pleadings of the other company, I think, you say, the operation of the mills "from time to time, erected thereon."

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MR. McCARTHY : Our rights, my Lord, must rest on the original rights as they existed, and as they existed at the time of the issue of this writ.

HIS LORDSHIP : That is the rights established before 1916.

MR. McCARTHY : Quite so, we have established nothing since. My friend now seeks to initiate something, I do not intend to raise anything that we have done since, I am content that our rights be determined on the condition at the time of the issue of the writ—but if we attempt to introduce anything subsequent, then I have no doubt my friend, in reply, will offer evidence in respect to it, so it seems we are only introducing matter that would wreck the trial by introducing something that took place subsequent to the issue of the writ. 10

HIS LORDSHIP : Anything more, Mr. Tilley ?

MR. TILLEY : My friend is a little in error. I do not know how my friend gets to the state where he says, "If we bring an action in 1916 for an Injunction, when they were diverting 10,000 H.P., and that at a later date, it was shown before the judgment, during the course of the trial, that they were diverting 20,000 H.P., that the injunction would only be as to the 10,000—that is not as I understand the law at all. The law is not that each thing done by them is a wrong, but that it is a wrong for water not to go past our property which would go past it in the state of nature. That is the wrong, and the amount of the water is a matter that affects the damage. 20

Now Lord Penzance at page 425 of the Report I gave your Lordship, is quoted in this way, "The cause of action in each case is not the mere act of pouring polluting matter into the river, for the quantity might be insufficient to do mischief by reason of dilution, or the water might purify itself, as flowing water does, so that the cause of action is not complete until the result of rendering the water unfit for the pursuer's use is brought about. The result may, in some cases be traced to the individual act of one of the defenders, but in the majority of cases the reverse is the case, and the extent of the deterioration in the water arises from the polluting act of several would have to be inquired into * * *. The cause of action against them depends upon the ultimate impurity of the water, when it reaches the pursuer's land, and that impurity is the joint result of the acts of all of them". It is not a cause of action to say that something was done by the Lake of the Woods Milling Company, the cause of the action is to show that water which would pass over our water power site does not pass over it, and that is the wrong of which we complain. True, in order to show the cause of it, we go back to the Lake of the Woods property, to show what is being done, and there you find the cause of it, because if it is shown that the water goes through a flume or a race-way at their mill, and goes down to Darlington Bay, it is quite evident that the water has not gone over our water power site that should have been there, but the thing that is done by the Lake of the Woods is not the wrong, it is the thing that happened at our water power site, and that is the wrong. For instance, there was something said about whether building this canal would be wrongful so as to give a right of action in damages—until some water had been allowed to pass through it. The building of the race-way as a structure is no wrong to us at all. It is not on 40

our property. The owner can do what he likes with his own. He can build any number of race-ways there, provided he effectually blocked off the water—it is the passing of the water through that indirectly renders it impossible for the same water to pass over our water power site, and that is the damage that occurs to us at our water power site, and that must be shown as a fact, and the evidence of what happens at the Lake of the Woods is only relevant, not as proving the wrong, but as proving the fact from which the wrong is necessarily inferred.

10 HIS LORDSHIP : But when does the defendant give you the right of action against him ? Is it not at the time that he does something which causes water which otherwise would flow past your power site to go in some other direction—is that not the time ?

MR. TILLEY : He does us the wrong, that is the wrong in law—I am not saying the damage occurs, but the wrong is complete when he takes water away from the water power site, and the wrong is a continuous wrong as long as that continues—that is my contention, and it is immaterial when you are considering whether the wrong is continuous or not, to determine how much damage results from that wrong from day to day—the question 20 damage that it occasions is the damage from that continuing wrong—it is not the damage from a new wrong each day, nor does it become a new wrong, because the amount is more—the fact is that by something they did that caused water that should be at our water power site to be elsewhere, and it is the taking away of that water from our water power site that is the wrong—and my submission is that the works they put on their own lands are only material as evidence of what the wrong is, and how much it amounts to, because if we prove that the water is taken down to Darlington Bay without going down the river, we prove we have not got it—but if the Court come to the conclusion that that proof was not sufficient and that it did not clearly demon- 30 strate that the water was not at our power site, of course there would have to be further proof, because the proof of what happens it is not the material thing—the thing that is material is the water at our water power site. But as Lord Penzance says, supposing it was pollution (which is the same thing) if the Lake of the Woods threw something into the water that for the time being and at the moment caused pollution, that would be no wrong against the owner lower down, unless it was so great and to such an extent that the pollution would be held to be existing at the point where it was at the plaintiff's property, because that is the material thing, not what he does on his own—it is what he does at the Plaintiff's property. It amounts to something when he 40 starts at his own property, but the proof is not complete unless as a necessary result it is evidenced that the wrong is committed at your property.

Now then, if the defendants are continually taking away water, that means the wrong to us is being deprived at our power site of water is continuing all the time, and is a continuous wrong; if that wrong continues for a certain length of time they may get an easement to a certain amount of it, not on the theory that it was a separate cause of action, but simply because an increase in the amount, if the right to pass some down has been acquired, that

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then becomes a wrong because that additional amount was not justified, but if prescription was complete it is justified. If the prescription was complete a certain amount is justified, that is not a wrong, but until the prescription is complete the wrong is a continuing wrong and whole damage is to be assessed.

Then in one other case my friend, Mr. Carson, gives me, *Hole v. Chard Union*, 1894, 1 Ch. 293. "A continuing cause of action * * is a cause of action arising from the repetition of acts or omissions similar to those in respect of which the action is brought. The Plaintiffs brought an action against the Defendants for permitting sewage to fall into and pollute a stream 10 running through the Plaintiffs' land and obtained judgment for a perpetual injunction and for damages. The Defendants continued to pollute the stream and three years after the judgment the Chief clerk assessed the damages sustained by the Plaintiffs, carrying the assessment down to the date of his certificate. It was held (affirming the decision of Chitty, J.), that there was a continuing cause of action within the meaning of Order XXXVI, rule 58, and that the damages were rightly assessed down to the time of the assessment."

At Page 295 Lord Justice Lindley says this : "It is contended on behalf of the Defendants that it was not right in principle to do this : because any nuisance committed after the date when the injunction came into operation 20 gave rise to a fresh cause of action, and was not a continuing cause of action in respect of which the damages could be assessed down to the date of assessment under Order XXXVI rule 58. What is a continuing cause of action? Speaking accurately, there is no such thing; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought. In my opinion that is a continuing cause of action within the meaning of the rule. The cause of action complained of and existing in the present case appears to me precisely the kind of mischief at which rule 58 was aimed, its object being to prevent the necessity of bringing repeated actions in respect of repeated 30 nuisances of the same kind" (not of the same amount but of the same kind). "To adopt the argument of the Defendants would be to render the rule altogether a nullity. I feel no doubt that the present case is a continuing cause of action within the rule. It is a repetition of acts of the same kind as those which had been investigated at the trial, and had been decided to constitute a nuisance. The Judge was therefore right in treating it as a continuing cause of action and in assessing the damages down to the date of the Chief Clerk's certificate."

Lord Justice Smith, at page 296, says : "The principal question in this appeal turns upon the construction of Order XXXVI, Rule 58. It is con- 40 tended by the Appellants that when the act on which the action is brought is established, the cause of action can have reference to that one act and to no other. In my opinion that is not necessarily so. If once a cause of action arises and the acts complained of are continuously repeated the cause of action continues and goes on *de die in diem*. It seems to me there was a connection in the present case between the acts before and after the action was brought, they were repeated in succession and became a continuing cause of

action. They were an assertion of the same claim—namely, a claim to continue to pour sewage into the stream—and a continuance of the same alleged right. In my opinion there was here a continuing cause of action within the meaning of the rule.”

Now, my submission is that we must not confuse the case with one where there is an act done as though the excavation of the raceway were a wrong to us—if that was a wrong it would not be a continuing wrong at all. We are not discussing now continuing power, we are discussing continuing wrong—a continuing wrong split up means a lot of wrongs, making one continuous cause of action because the acts are repeated. Acts of the same class and the same kind, the cause of action is said to continue while they are being continued; but after all, in one sense, one might say that each one gave rise to a new cause of action, but when you are considering how damages ought to be assessed and whether they are to be assessed down to the trial, you have regard to the fact whether the thing that is complained of is something that amounts to repeated, day in and day out and year in and year out, with variations as to amount, but repeating acts of the same class and the same character—and if that is the case, then it is a continuing cause of action.

Now then, I do not know that I need to go over the other matters spoken of, but my friend cannot disregard the whole pleading the way he has done, I submit. My friend cannot say, “If you wait for me, I do not propose to go into this other issue at all. I do not propose to show anything that we have done since 1916.” He has raised it in his pleadings, I submit, and constantly refers to it, to all the things they have done.

Now, when your Lordship is looking at the pleading, my friend refers to paragraphs 8, 9, 10 and 11, but in order to raise these very things properly as he wants to raise them in the pleading—paragraph 4 is an entirely new pleading, 5 likewise—

MR. MCCARTHY : Not new counter-claim.

MR. TILLEY : It is new pleading as you amended in order to ask for rights to be declared as from time to time—

And 6, paragraph 6, and the repetition, the changing of the numbers I suppose has failed to take these in, but I suppose they are material, otherwise why are they there.

HIS LORDSHIP : They are not underlined in the Record as being new.

MR. TILLEY : Paragraph 4 ?

HIS LORDSHIP : No, the only number underlined is number 16.

MR. TILLEY : Would your Lordship look at the Lake of the Woods pleading ?

HIS LORDSHIP : I was looking at the Keewatin Flour Mills Company.

MR. TILLEY : I was looking at the Lake of the Woods, and I think they are amended—

HIS LORDSHIP : Yes, 4, 5, 6, and 7 were all added apparently to the Lake of the Woods defence.

These were in the other defence, except three or four lines in paragraph 6.

MR. TILLEY : My Lord, the Lake of the Woods is very material from this aspect, and that ought to be in there at the time they bring forward their

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counter-claim. Then your Lordship sees that in the Keewatin case, they have added 14 and 15, and taking an amendment that is in the last sentence of paragraph 12, "Alternatively by a grant now lost, the plaintiffs or their predecessors in title granted to the defendants or their predecessors in title the right to take and use the waters of the Lake of the Woods as aforesaid"—"as aforesaid" brings in everything they have said about it. Are we not, when we are ascertaining about the lost grant, are we not to enquire what is it that you are claiming to exercise under the heading of a lost grant. Surely if we are dealing with that as an object, when they are setting up a counter-claim and want their rights declared as the object, surely we are entitled to go back 10 and see what is it, and how has it grown up, and how has it accrued to the evident variations and changes that have taken place—so we can assume, whether the Court ought to assume a lost grant with regard to these various things that you say you have a right to do. I do submit it goes right to the root of the defence to our action and to the claim that they make for a declaration, because in my case I ask for a declaration, and in their case they ask for a declaration, and as part of their case they set up all this.

MR. MCCARTHY : You do not ask for a declaration.

MR. TILLEY : I do ask for it under the heading of relief—we asked for that, and they set it up, and set up all these things, and at the end they ask 20 for a declaration to their rights, and I submit, my Lord, we are only trying part of the things on the issue unless we know what they are claiming and if it were a lost grant or a prescription, or that our grant is subject to. They say our grant of 1894 is subject to certain things, and in opposition to my claim they are setting up something that is not there. I have said all that I think I can usefully say about user. Our ground of action is in using water by the defendants as such owner has, by building a cut on their lands—our ground of action is that certain water does not pass over our power site, and that that water we are entitled to.

HIS LORDSHIP : Is that not caused by something which they did which 30 does not give you any right of action until the water or some portion of the water ceases to flow past there—and does not the doing of the something by them determine the time when your cause of action is occasioned ?

MR. TILLEY : Is first commenced ?

HIS LORDSHIP : Yes.

MR. TILLEY : Oh, yes, the repetition of these things.

HIS LORDSHIP : And the quantum of damages, the amount of damage you suffer may vary from time to time as to the amount of water they cause not to flow past your property is increased or decreased as the case may be.

MR. TILLEY : The same way with pollution. 40

HIS LORDSHIP : But is the wrong not suffered by you, the wrong act of theirs done, when they do something which results in the water not going by you.

MR. TILLEY : I must submit your Lordship cannot describe it as a wrong unless it is.

HIS LORDSHIP : It is not a wrong, it may be an act which they had no

right to do, but which does not amount to a legal wrong so far as you are concerned until the water goes past your place.

MR. TILLEY : That is my very argument—I am not contending, in fact, I am resisting any other contention.

HIS LORDSHIP : Suppose they did that prior to 1916, and you commenced your action, as you did, and suppose they did something else, or did something in addition to what they had done in 1916, in 1917 or 1918 by the increase of their capacity, or the increase of the efficiency of their plant, is not that second act done by them giving you a new cause of action ?

10 MR. TILLEY : In one sense one would say it is a new wrong, yes—but it is one of those repeated wrongs, just the same way with pollution, there would be no pollution at all unless they put the pollution in, then they must actually put whatever is deleterious into the water, and that is done by an overt act every day, nevertheless they may come to determine there, the damage as you determine.

HIS LORDSHIP : Take your case of pollution, and the first pollution is caused by throwing a lot of sawdust or matter of that kind from a lumber mill into the river, it goes down and interferes with the enjoyment of the riparian owner further down, and the gentleman keeps on doing that, and
20 then the following year he constructs a sewer, and he runs sewerage in, does not the construction of the sewer and the running of sewerage in constitute an entirely new foundation for an action ?

MR. TILLEY : I do not think the question is whether it is a new foundation for an action—the question is, “Am I entitled under the rule ?”

HIS LORDSHIP : You might be entitled under the Rule if you had issued the writ in the meantime for the pollution to show that, after you had commenced your action he had constructed a sewer and was now running sewerage in addition to what sawdust he did before.

30 MR. TILLEY : Your Lordship has changed the thing he did. You have changed the character.

HIS LORDSHIP : I have not changed the pollution.

MR. TILLEY : Your Lordship has not got a repetition of the same matter.

HIS LORDSHIP : If he had constructed another saw mill, and from that he had dumped sawdust, you think you would be entitled to show that.

MR. TILLEY : Surely, it is not new.

MR. MCCARTHY : It is a new cause of action.

40 MR. TILLEY : It is a continuing cause of action in the sense of the Rule, and when the Rule speaks of a right to assess damages and says you may do that in the case of a continuing cause of action, that means if it is a continuance of the same kind of thing, because that thing having been declared to be wrongful, the assessment goes on right down to the trial.

HIS LORDSHIP : Mr. Tilley, there is no jury here, so there is no one to be affected by it—can you not give me some idea as to the nature of the things alleged to have been done by the defendant since 1916 which you say—

MR. TILLEY : Well, I would say—

HIS LORDSHIP : To prove which is necessary to your case, or essential.

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MR. TILLEY : I would say that they have increased their use of water ten times.

HIS LORDSHIP : By what ? By increasing the capacity of their plant ?

MR. TILLEY : Yes, and increasing the installation of wheels and so on, I would say that they have increased it ten times.

You Lordship sees what happens, my friend at one point, and possibly I could just develop that a little if your Lordship will bear with me a moment longer—

HIS LORDSHIP : Apparently you both think this is of some importance.

MR. TILLEY : My friend resisted it on examination, and refused to let us 10 have the details on examination, and I thought under that rule the only place to have it satisfactorily dealt with was at the trial, and I have no doubt that we will be facilitated if your Lordship rules the evidence is material, but so far, when your Lordship asks me what have they done, I can only state in the most general terms as to what they have done, but they have very, very, very largely increased—to see how this works out, by our development, we raised the water considerably in the Lake of the Woods.

HIS LORDSHIP : That is the general level of it.

MR. TILLEY : Yes, my Lord. Now, no doubt they get, as my friend said 20 this morning, they get better results with a better head, and no doubt they have improved their machinery for the purpose of economical use of water—I am not saying that if they have the right to take a certain amount of water; that they are not entitled to all the advantage they can get in the use of that water by any change in the head that is afforded by our works—I am not saying that at all—nor do I say they are not entitled to all the benefit they can get in their mill by economical appliances for the use of it, but what I say is, you cannot (if you have any right at all, which we deny), you cannot multiply the water you use, if it takes away so much more water from our power site. The Court might say to me, “You have not developed”—well, who would go 30 to the expense until he has got the water. You do not erect a mill just to look at it, or put in a unit, just to gaze at it, and here is a very substantial question because people who are using the water are the ones who need the power—if they do not use the water we have to sell on fair terms—we are under obligation, that is part of our contract, but we have got this large power development, and, of course, it is important for us to ascertain what our rights are with regard to it.

Now, as I say, if they are entitled to certain water, and it does seem to me to be a case where it is so beneficial to know what has actually been done for the purpose of making a judgment, if they have right, that will be enjoined as applied to the actual concrete things that have come out in connection with 40 the handling of the power—for instance, it might be that your Lordship may say, “Well, you are entitled to none,” secondly it may be, “That you are entitled to actual use of second feet as of some date; the date of your Patent, or the date of the plaintiff’s patent,” one or the other, it might be that, I do not know—or it may be “the capacity of each mill.” Now, is it not very desirable, if these are the problems that they be considered—I am not asking your Lordship for the moment, because I assume your Lordship will hear

something about the case before you would give it—before you would go about to actually measure any amount if it was to be determined, or whether your Lordship would say, “their right is nothing, or their right is all they claim, or their right has to be modified according to what each is contending, and will be thus and so—and has to be ascertained on that basis and they will actually receive what they were receiving on a certain date”—I am not pressing for that. I do not think it is a thing that is well to discuss until we get further into the case, but I do submit it is very desirable that your Lordship should know what the practical problem is in connection with this work. Your
 10 Lordship may be surprised to find the litigation has stood so long, but there are practical problems now that must be determined between these parties, and I submit that on the pleadings, and having regard to what would be the proper basis for assessing damages, the evidence is all relevant in this trial. I would say that your Lordship to determine the issues must receive it, but I certainly, with the greatest confidence say that your Lordship is entitled to receive it on the issues that are raised.

HIS LORDSHIP : Is there any evidence that we can go on with that would leave this point undetermined until morning, or is it in such a position that it is necessary that I should dispose of it now ?

20 MR. McCARTHY : I would like to add a word in reference to what my friend said in reply to any addition.

HIS LORDSHIP : Go on, Mr. McCarthy.

MR. McCARTHY : In reference to the Hole case, I think that illustrates the situation here, and to my advantage in this way. In the Hole case the right of action arose on an Injunction, and the right of action to damages—at the same time.

HIS LORDSHIP : It is on that account I am not sure I have grasped it.

30 MR. McCARTHY : There may be two causes of action—there may be a cause of action which entitles the parties to an Injunction without any more, and there may be a cause of action which entitles the person to damages.

Now, my friend says that he does not care how many artificial cuts we erect, or make in our own property, because they do not create any cause of action as far as he is concerned—but he says the moment you allow water of the Lake of the Woods to flow through these cuts, a cause of action arises which causes him to ask for an Injunction restraining me, because under his right he is entitled to the unrestricted flow of that water, and the fact of our opening our cuts has restrained in some sense his right, and therefore his cause of action as to Injunction results.

40 Now, may I stop there for one moment. That is where this case illustrates—if you stop there, and he does not claim damages at all, once he proves his cause of action for an Injunction as to 1916, he cannot give any evidence of what we did in 1917 or 1918, which increased the flow in any way, because that would give, as your Lordship pointed out, a new cause of action with a new defence—because we might have a prescriptive right in 1919, or in 1920, or 1921—therefore, my friend when he claims an Injunction, his cause of action arises in 1916, and finishes there—and therefore he cannot give any further evidence as to what we did in subsequent years.

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Now, the cause of action in regard to damages is entirely different. It arises as the result of the Injunction. The damages would not necessarily arise, simply because we committed a wrong, unless he has suffered damage. Now, if we committed a wrong in 1916, and interfered with his rights, but he suffered no damage, and in 1918 in his efforts to utilize the water he suffered damage, then his cause of action in regard to damage arose in 1918. Now, my point is this, while my friend may have a right to an Injunction in 1916, he has first to establish, at that particular time, he himself was suffering damage. If he does as was done in the Hole case, and as was done in the Ratte case, then he says, "I have a cause of action by Injunction, I have a cause of action for damage arising at the same moment, and if that damage continues up to the date of assessment, then I can claim it, but he has first to establish to your Lordship, not a right to an Injunction, but a right to damage, at the time this writ was issued, and until he does that, then, I submit, he cannot follow it up by a continuing damage. 10

MR. TILLEY : Might I just say one word on the point you have a cause of action for remedy, not a cause of action, but a remedy, and the jurisdiction is for the Court. Now, if I have, as a result of this action, a remedy given by way of Injunction, an Injunction and resulting damage, that will be given. First, your Lordship's judgment will be as a result of everything that has happened by way of water not going over my dam, down to that date, because the damage will then begin to operate for the Company, and has to be down to that date—and if that is not done, I will then have that Injunction down to that date, with no damages for the intervening time when damages really occurred, and I submit that nothing that can be done with these pleadings, even my friend's attempt to divide my cause of action into two, and say one is for an Injunction and another for a damage. 20

MR. McCARTHY : I do not say two causes of action.

MR. TILLEY : There may be alternative remedies, my Lord, and your Lordship may say, "I will give an injunction," and if you do, the Injunction will not be of 1916, because it was not granted then, it will start from the date your Lordship grants it, and if it is a continuing, a repetition of the same wrong that your Lordship has enjoined by the judgment, your Lordship enjoins the continuance of that wrong, the damages for that continuance must be in the same judgment, or else I lose it—and what your Lordship said about my first case having fallen through, it would be not creditable to me, I do not know whether it would be to my learned friend whether we rest till morning, but I do not want to press it, as your Lordship knows I counted on the other case for a couple of days. 30

HIS LORDSHIP : The reason for asking about it was simply this, apparently you both consider this a question of some importance in the ultimate outcome of the case, and that being so naturally I would prefer to give it a little more consideration than there has been time for up to the present. I do not mean by that, that I won't deal with it now, if Counsel want to go on for the rest of the afternoon—if Counsel are satisfied to adjourn now until morning, I will consider it, and then give my decision upon it on the opening in the morning, but it is entirely for Counsel to determine, so far as I am concerned. Counsel 40

really are more interested in it than I am. What do you say, Mr. McCarthy? Do you prefer that we should go on now, or—

MR. McCARTHY : In view of what my friend said, as he was prepared for the other case, it is perhaps hard to force him to go on, and perhaps unfair to your Lordship to ask you to rule.

HIS LORDSHIP : Then, we will adjourn until the usual time tomorrow, at 10.30 in the morning, and I will give my determination then as to this particular point.

Court adjourns at 3.45 p.m. until 10.30 tomorrow morning.

10 May 17th, 1927. Court resumed 10.30 a.m.

HIS LORDSHIP : On the question of the admissibility of evidence as to what has been done, or what has taken place subsequent to the date of the issue of the writ, or the writs in these two actions, Consolidated Rule Number 260 states that damages in respect of any continuing cause of action shall be assessed down to the time of the assessment. In the case which was cited, *Hole v. Chard Union*, Lord Justice Lindley states that what is called a continuing cause of action is one that arises from the repetition of acts or omissions of the same kind as that for which the action was brought, and in that case the Court held that the assessment of damages down to the date of the

20 assessment was proper.

In the present case, although not without some hesitancy, I decided to admit, for the time being, subject to the objection of Counsel for the defendant, evidence as to what may have been done, or omitted by defendants since the issue of the writ of summons, insofar as such evidence may appear to me to bear upon the claim for damages, reserving for subsequent decision by myself whether the evidence is properly admissible, and if so, to what extent. By adopting this course, whatever my ultimate decision may be, the Appellate Court will have the evidence before it, and if my ultimate decision on this point shall be found to be erroneous, the Court in Appeal will be able to deal

30 with this matter without in one event at least being forced to send the action back for further trial for lack of evidence.

What I have in mind is that in case, when I come to give my decision in the action, I should reach the conclusion that this evidence was not properly admissible, I shall then disregard it, and in that event, an Appellate Court, having the evidence before it, will be able, if it sees fit, to make use of the evidence, or to disregard it, as I may do.

MR. McCARTHY : In dealing with that, my Lord, you have dealt with what we have done, you have said nothing as to what the Plaintiff has done.

40 HIS LORDSHIP : No, what I intend to do is this, in other words, what the plaintiffs may have done subsequently may have a bearing on the question whether or not they have suffered damages, but at present I do not see it can have any other bearing. It may affect the question whether the Plaintiffs have suffered damages and in respect to that, I may determine to hear something, subject to Counsel's objection, and if I might state further, it may be, that as we go on, I will come to the conclusion that it is not expedient that I

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should endeavor to deal with the question of damages at all, but that if Plaintiff succeeds, and that if they should have damages, that I might direct a reference to assess damages, if I come to that conclusion at a later stage, I would not hear any evidence bearing solely on the question of damage.

MR. MCCARTHY : I take it, I need not register any further objections.

HIS LORDSHIP : No, I am taking your objection now that it may stand throughout.

MR. TILLEY : And may I ask whether your Lordship rules that the evidence is not admissible on the counter-claim?

HIS LORDSHIP : No I do not say that. If we come to the question of the counter-claim, and the Counsel for the defendants put in any evidence on the counter-claim which I think you have a right to answer with other evidence bearing on the same point, I will decide then as to the propriety of putting evidence in. 10

MR. TILLEY : It is not decided for the moment?

HIS LORDSHIP : No, it is not disposed of for the moment.

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MR. TILLEY : Now, Mr. Backus, you were identifying that as being your plant? A. Yes.

Q. That is the Plaintiff's plant? A. Yes. 20

MR. TILLEY : That will be Exhibit 3.

EXHIBIT No. 3. Photograph dated 25th October, 1926. Lake of the Woods, General View of Norman Dam and Power House from West bank.

MR. MCCARTHY : Does he say when it was taken?

MR. TILLEY : Apparently taken in 1926? A. Yes.

Q. And I think you stated yesterday the building is in the place of the old rock fill portion of the dam?

A. It is.

HIS LORDSHIP : The building as shown in the photograph?

A. Yes, sir. 30

MR. TILLEY : Q. What is that building, Mr. Backus?

A. That is the Power House, the superstructure of the Power House, and the superstructure as the wall, the dam wall, the same as the two sides of the dam.

Q. That is to say it acts as part of the dam to a certain height? A. Yes, sir.

Q. And then above that it is the power house? A. Yes, sir.

Q. And there you developed power? A. Yes, sir.

Q. And when was that building built, and put into use? A. In 19—, the work was started on it late in 1924 and finished early in 1926. 40

Q. Yes? A. The work continued all through 1925.

Q. 1925, and that at an expenditure of how much, roughly. A. Oh, that part of the work, approximately two million dollars.

Q. Well, then, has it been operated—how long has it been operated now—since 1926? A. Yes, it started operating early in 1926 and continued up to the present time.

Q. That is what I gather from what you said? A. Yes, sir.

Q. Now, you said yesterday, I do not know just what you referred to, but, speaking generally, this locality in 1906—what do you mean by that, Mr. Backus—how did you come in touch with it—I do not care about the reason, but what did you come to know about it at that time? A. We purchased from the Keewatin Lumber and Manufacturing Company their Minnesota timber first.

Q. Their Minnesota timber? A. Their Minnesota timber holding.

Q. Yes? A. And then—

Q. When you say “we”? A. Backus-Brooks Company.

10 Q. The Backus-Brooks Company? A. Of Minneapolis.

Q. Yes? A. And after that transaction was closed, we purchased their Canadian timber holdings contributory to the Lake of the Woods, and started to build a saw-mill at Keewatin in 1906.

Q. And then were you familiar with this Norman dam at that time?

A. Oh, yes.

Q. And was it in use then other than as a dam? A. No, only as a dam.

Q. There was no power development connected with the dam? A. No, sir.

HIS LORDSHIP : As a dam for what purpose?

20 A. Control, it controlled the level of the Lake of the Woods.

Q. And was it then in the market? A. It was, yes, sir.

MR. TILLEY : It was then in the market, you mean for sale? A. Yes, sir.

Q. And then was there any power development there, from 1906, until you made this development in 1925, we will say? A. No, sir, there was not.

Q. It continued in the old condition? A. Yes.

HIS LORDSHIP : That is, it stayed as it was in 1906 down till 1924, the late Fall when you started your work?

A. Yes, sir.

30 MR. TILLEY : Q. Then there are two mills referred to here, owned by the Defendant, one of them Mill “C”——

HIS LORDSHIP : Mill “A” is whose?

MR. TILLEY : Mill “A” is the Lake of the Woods Mill. Mill “C” is the Keewatin Mill.

Q. Now, what condition existed with regard to either of these mills at that time? A.

MR. McCARTHY : That is when?

MR. TILLEY : 1906? A. The Mill “C” was nearing completion, and started operating shortly after.

40 Q. It was a new mill? A. A new mill.

HIS LORDSHIP : That was in 1906? A. In 1906, yes, sir.

MR. TILLEY : Q. Yes? A. And has been operating ever since.

Q. And has been operating ever since? A. Yes, sir.

Q. And how did it then, and how does it now get its power? A. They excavated a canal through from the upper side of the Lake, from the upper water through the solid rock to the outlet of the stream below.

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Q. To the stream below, is that what is called Portage Bay up above, do you know if that arm of the Lake of the Woods is called Portage Bay?

A. I think it is.

Q. That is shown on some of the maps, at any rate, from the Lake of the Woods? A. There is Darlington Bay below.

Q. Darlington Bay below? A. Yes.

Q. Now, just to clear that up—water in Darlington Bay, takes what course with reference to, say the Plaintiff's dam? A. It runs eastward and through the western channel.

Q. It runs eastward and through the western channel where? A. To 10 the Winnipeg River.

Q. Does that pass your dam? A. Yes, sir, in a state of nature.

Q. I am talking of Darlington Bay? A. Do you mean—

Q. Darlington Bay—where does the water from Darlington Bay go with reference to your channel, when it goes down to Darlington Bay, where does the water go?

HIS LORDSHIP : That is the water, after it comes through the rock cut?

A. It goes down to the Winnipeg River.

MR. TILLEY : Q. Does it pass your dam? Does it go over your dam, or where? A. Oh, no. 20

Q. It misses you? A. It misses.

Q. It goes around you? A. Yes.

Q. It is, as I understand, runs east, does it? and then— A. Yes, sir, and then northerly.

Q. And then northerly, and turns around and goes to the north of your dam? A. Yes, sir.

HIS LORDSHIP : There is no disagreement—any water that goes through either one of these other two plants, does not come to your plant?

MR. TILLEY : That is right, Mr. McCarthy?

MR. MCCARTHY : Yes. 30

MR. TILLEY : Q. And that mill, you say, has been operating ever since? A. Yes.

Q. By that means? A. By that means, yes, sir.

Q. Then this mill—I do not suppose, I do not know if you can give the capacity, is it a large mill or small mill? A. A large mill.

HIS LORDSHIP : That is this mill "C"?

MR. TILLEY : The Keewatin Mill, my Lord.

Q. Then Mill "A", was any change made in it at that time? A. They put in an electric light system in Mill "A" at that same time.

Q. That same time—which time was that? A. 1906. 40

HIS LORDSHIP : Then it had been in operation prior to that time?

MR. TILLEY : Q. The mill, as a mill, had been operating before?

A. Yes, sir.

HIS LORDSHIP : We did not have that.

MR. TILLEY : Mill "A" was a mill that was there before 1906? A. Yes, sir.

Q. Can you say how long before? A. No. I cannot give any evidence on that.

Q. But you say there was some additional plant put in? A. They established an electric light plant at the same time as they started Mill "C", and furnished light for the Town of Keewatin and their employees, etc. They used their water power for that.

HIS LORDSHIP : How was the power developed for that?

A. Developed by water power.

Q. By the same means that you have referred to for the other mill?

10 A. Yes, sir.

Q. By water, through a tunnel in the solid rock? A. Yes, sir.

Q. And emptying into Darlington Bay? A. Yes, sir.

MR. TILLEY : Does that light Kenora?

A. No, Keewatin.

MR. TILLEY : Q. Now then, Mr. Backus, has that been operating since?

A. The Mill "A"?

Q. Yes? A. Yes, sir.

Q. And the electric light plant? A. Yes, sir.

20 Q. Now, then, Mr. Backus, the writ was issued in 1916—can you say what, if anything, was being done at that time by the Defendants? A. Well, the Defendants at the various meetings of the International Joint Commission, as I remember it, the Commission had a meeting in Winnipeg in February, 1916, and I remember the Keewatin and the Lake of the Woods people notified the Commission that they were increasing their capacity.

MR. MCCARTHY : Is that evidence, my Lord?

MR. TILLEY : Who said that?

A. The Keewatin—I think it was Mr. Matheson.

Q. What position did he occupy? A. I think he was Manager at that time.

30 Q. That they were increasing? A. Increasing their capacity. He claimed they were using 3,500 to 3,800 or 3,900 H.P. at that time, and would shortly be using 5,700 or 5,800 H.P.

HIS LORDSHIP : They were then using how much?

A. Were using between 3,500 and 4,000 H.P. and were intending to use between 5,500 and 6,000 H.P.

MR. MCCARTHY : The matter the witness is referring to is all a matter of public record.

MR. TILLEY : I suppose it is.

Q. This was all public? A. Yes, sir, it was all public.

40 MR. MCCARTHY : I think the record is the best record of what took place.

MR. TILLEY : You were at the meeting? A. Yes, sir.

Q. But you were not a shorthand reporter? A. No, sir.

HIS LORDSHIP : They were going to increase it to approximately 5,000 H.P.?

A. Between five and one-half and six thousand H.P.

HIS LORDSHIP : This mill?

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A. These two mills under the one management.

Q. You spoke of Matheson being the Manager at that time? A. Both under one management.

MR. TILLEY : It is covered by a Statute of 1906? I will give your Lordship a reference, I think it dates back to 1906, but it is covered by a Statute.

Q. Now, do you remember whether Mr. Matheson said anything as to whether they had recently increased—

HIS LORDSHIP : The way he put it was that they intended increasing.

MR. TILLEY : Q. Is that all he said?

HIS LORDSHIP : That he notified the International Joint Commission? 10

A. I think he said they were then increased, and intended increasing to the capacity.

HIS LORDSHIP : The way the witness put it, they were then using between 3,500 and 3,800 H.P. and intended to increase to from 5,500 to 6,000—would that be it? A. Yes, sir.

MR. TILLEY : We might take the official record, which my learned friend refers to a letter.

HIS LORDSHIP : Will you put that in?

MR. TILLEY : I think probably we had better.

HIS LORDSHIP : If you will refer to the pages then? 20

MR. TILLEY : This will be Exhibit 4, the first.

EXHIBIT NO. 4. "Extracts from evidence given at hearing of International Joint Commission *re* levels of the Lake of the Woods, Winnipeg, February 4th, 1916."

MR. TILLEY : May I just give the commencement.

HIS LORDSHIP : The book itself?

MR. TILLEY : It is the hearings of the International Joint Commission *re* the levels of the Lake of the Woods and its tributary waters, being the final hearing at International Falls, January 28th and 29th, 1916, and Winnipeg, Man., February 1st to February 4th, 1916. 30

HIS LORDSHIP : You will refer, when you are reading to the specific pages.

MR. TILLEY : Page 410—a short bit at the bottom of 409 and 410, and a short bit at the top of page 411.

This is a letter—

"Extract from evidence given at hearing of International Joint Commission *re* levels of the Lake of the Woods (Winnipeg, February 4th, 1916)

"Testimony of Mr. William A. Matheson, Winnipeg, Canada.

"William A. Matheson, after being duly sworn testified as follows:

"Mr. Wilson—Mr. Matheson, you are the General Manager of the Lake of the Woods Milling Company? 40

"Mr. Matheson : Yes, sir.

"Mr. Powell : Is your statement, Mr. Wilson, limited simply to your mills?

"Mr. Wilson : Yes, sir, to the mills and the barrel factory that is connected with them.

"Mr. Powell : When we were at Kenora somebody undertook to get a complete statement of the capital invested in the different industries there.

“Mr. Wilson : That is the purpose of this statement.

“Mr. Powell : But that is only a portion of the industries. There are other industries than the Lake of the Woods Milling establishment. Someone promised to give us a comprehensive statement of all the industries at the foot of the Lake.

“Mr. Tawney : That information has not been furnished.

“Mr. Wilson : It was not I who promised that, sir.

“Mr. Matheson, do you verify the statement that I now show you ?

“Mr. Matheson : I do.”

10 The statement verified by the witness is copied into the record in full as follows :—

“Winnipeg, Canada, February 3rd, 1916.

“The International Joint Commission, City.

“Gentlemen,—We give below valuation of the Lake of the Woods Milling Company’s property in Keewatin :

Mill “C”	\$1,164,000
Mill “A”	1,980,000
	\$3,144,000

20 (This valuation includes Barrel Factory, office building and storehouses).

“Average number of men employed at the mills and barrel factory, about 350.

“Average yearly payroll, about \$250,000.

“Daily output for 1914-1915 : barrels, 7,500-9,000.

Value of products manufactured 1914-1915, about \$15,000,000.

“At present we are using from 3,400 to 3,700 h.p.; are installing machinery to increase output of Mill “A” approximately 1,000 barrels, which will make the total capacity of Mill “A” 5,000 and of both mills 10,000 barrels per day.

30 “We expect to further increase the mill from time to time to use our full installed h.p. of 5,700. Yours truly, Lake of the Woods Milling Company. (Sgd.) W. A. Matheson, General Manager.”

“Mr. Wilson : I think Mr. Matheson also desires to say something with respect to statements made by some of the witnesses here that the milling industry did not intend to extend at Keewatin, but intended to go west and put up their mills on the Prairies. At any rate, the Directors have not heard of that or considered it. That is correct, is it not, Mr. Matheson ?

“Mr. Matheson : That is correct.

“Mr. Wyvell : How many cubic feet per second are you using on an average now there ?

40 “Mr. Matheson : I do not think that I should attempt to answer that question.

“Mr. Wyvell : You spoke of the years being 1914 to 1915. Is that your business year from June 30th of one year to June 30th of the next year ?

“Mr. Matheson : From September.

“Mr. MacGrath : Is there anyone here representing the town of Kenora ?

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“Mr. Keefer : Yes sir. I would say that I received a letter asking me, in the absence of their law solicitor, to look after their interests. The Mayor and the Engineer have been here, but they decided that inasmuch as Mr. Acres is here, they would leave him here to present their case. He can do so now if he wish.

“Mr. Tawney : We have heard Kenora.

“Mr. Keefer : It was just on the one question of what level is required so far as their plant is concerned.

“Mr. Tawney : We asked for and they promised to furnish the Commission with a statement showing the aggregate value of all their plants and the investments of various interests at Kenora, the milling industry, the lumber industry, the value of docks, and everything else, so that we could get some idea of the amount of money that people in that vicinity had invested in the use of these waters. It was first called for three years ago. 10

“Mr. Keefer : I will endeavour to see that the information is furnished you.”

MR. TILLEY : Now the Statutes—Your Lordship will find in the Statutes of 1906, VI Edward VII, chap. 120, Canadian Statutes—that shows the relationship of the two companies so far as it is public.

Q. Now, Mr. Backus, had you any power in this vicinity? A. Yes, sir. 20

Q. Where? A. In the eastern channel?

Q. In the eastern channel? A. In the eastern river.

MR. TILLEY : The Plaintiff company? A. Yes.

HIS LORDSHIP : Will you explain to me, Mr. Tilley, how these things are relative to the present question?

MR. MCCARTHY : We are not concerned with respect to the eastern channel. I object to any evidence about the eastern channel.

HIS LORDSHIP : I just wish Mr. Tilley to explain to me how it affects it.

MR. TILLEY : The fact that this company owns it is not material. The fact that there are grants there relating to water powers may be material, 30 having regard to the clause of our grant. It was discussed considerably in the Keewatin case—I am not asking for any details.

HIS LORDSHIP : The mere fact, in other words, I notice in reading this last night, or you read it yesterday, that it says it is without prejudice to certain things—and one of the things that you are seeking to show that has reference to is this further grant they had made, merely as to the fact of their having another grant, I suppose it may be put in.

MR. TILLEY : The certified copy is not here, for a moment, I thought it was here.

HIS LORDSHIP : That is on the east branch of the river? A. Yes, sir. 40

MR. TILLEY : Now, my Lord—

HIS LORDSHIP : You are getting a certified copy, Mr. Tilley? You had better put it in there, and we can keep the Exhibit 5 for it, if it be put in—

Exhibit 5 will be Certified copy of Hudson Bay Grant.

EXHIBIT No. 5. Certified copy Crown Grant, dated 14th December, 1887, to the Governor and Company of Adventurers of England trading in to the Hudson's Bay, of 690 acres at Rat Portage.

MR. MCCARTHY : I do not understand the basis on which it goes in.

HIS LORDSHIP : Only this, as I recollect it the language of this Charter as the witness put it last night, it provides that nothing herein contained shall be construed as conferring upon the grantees exclusive rights elsewhere upon the said Lake of the Woods or over streams flowing in or out of the said Lake, or shall confer upon the said Company power or authority to interfere with, or in any way restrict any powers or privileges hereto before enjoyed by us or which may hereafter be granted or demised to any other person or company in respect of any other water power on the said Lake of the Woods or
 10 on other streams flowing out of or into the said Lake.”

Now, I am not suggesting it at all, but I presume Mr. Tilley is going to say that the other water power that they bought was one of those, or was the one that was had in mind when this exception was put into this charter, whether that is so or not, of course, remains to be seen, but in case it should be proved to be so, we should have it here so that we will have the chance to see exactly what it is.

MR. TILLEY : It is 1887, I thought I had the reference to it here in this report of the Keewatin case.

And I also put in or refer to, because it is in the Statutes, the Charter, the
 20 original Charter of the Hudson's Bay Company which will be found in the Imperial Statutes, which is more conveniently to be found in Martin's History of the Hudson's Bay Company's Land and Tenure, at page 216. That is not the original Charter, the Original Charter is page 163. Then there is a surrender in the same volume at page 216.

HIS LORDSHIP : Can this volume be available?

MR. TILLEY : I will have them extract it if your Lordship would like.

HIS LORDSHIP : That would be better, and put in a copy of the Hudson's Bay Charter.

What is the nature of the surrender?

30 MR. TILLEY : The surrender is of a large area of Rupert's Land, reserving certain properties at their stations, which brought about ultimately the grant from the Province of Ontario, that I am now going to file.

They have certain rights reserved, it is stated shortly in the Keewatin.

HIS LORDSHIP : As a matter of convenience, Mr. Tilley, I would like if a copy of at least the material parts could be furnished. It is going to be very awkward without.

40 MR. TILLEY : Your Lordship will find it very completely summarized in the Keewatin case 13 O.L.R. 237 at p. 244. It refers there to the old title of the Hudson's Bay Company, how there came to be a surrender, and then arising out of that surrender, there were certain reservations in the surrender which did not total to the full amount which they were entitled to, 50,000 acres, and then by subsequent agreement in 1872 the additional lands were to be conveyed to them, and then pursuant to that, Ontario, at the request of the Dominion, as will be shown by this certified copy that I will produce, granted the lands on the east side of the east branch of the outlet of the Lake of the Woods to the Hudson's Bay Company so that the Hudson's Bay Company came to be the owners of the east half of the eastern outlet.

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Q. And your company came to be the owners of the western half?

A. Yes, sir.

MR. TILLEY : Your Lordship will find the surrender is also in the Orders-in-Council in the Canadian Statutes of 1870, 33 and 35 Victoria.

I think this is strictly 1872 Canadian Statutes in the Orders-in-Council at page LXIII in the earlier part. There was a subsequent agreement of 1872 that I have not found in an official document, but I will give your Lordship a reference to that later ; and then by Statute of 1902, 2 Edward VII, Chapter 62.

HIS LORDSHIP : Is this Canadian Statute? 10

MR. TILLEY : Ontario Statutes—the Municipal Corporation of Rat Portage—Section one has no material bearing—section two reads, “In case the Municipal Corporation elects to avail itself of the sixth section, including the section of this Act, etc., the said Municipal Corporation may, and is authorized and empowered to do all things and exercise all powers requisite to carrying out all provisions contained in schedule “B”.” The powers include the development of electrical energy.

Q. So that when you bought that power on the east branch, you bought it from the Town, I understand? A. Yes, sir.

Q. The town of Rat Portage or the Town of Kenora, as it was subsequently called? A. Yes, sir. 20

HIS LORDSHIP : Now, do I understand, Mr. Tilley, that the references to the Charter of the Hudson’s Bay Company and the surrender, and so on, all these Statutes to bear upon this grant which you say your client got on the east branch?

MR. TILLEY : Your Lordship will find they are all discussed in the *Keewatin v. Keewatin Case*.

HIS LORDSHIP : Except in an indirect way, they have no bearing on your rights on the west.

MR. TILLEY : No, my Lord. 30

HIS LORDSHIP : And am I interpreting aright, your purpose in that as to its bearing?

MR. TILLEY : I would like to reserve what my argument is on it.

HIS LORDSHIP : But if I cannot get the significance of these things going in in a long case, I will get hopelessly involved.

MR. TILLEY : That is the point, it has a bearing upon it.

Q. Now, Mr. Backus, what do you say as to the damage to your company by the use of the water in the way it is used by the Defendants?

MR. MCCARTHY : At what period?

MR. TILLEY : I will let him describe it? A. Damage, of course, is 40 measured by the loss of just the amount of power which the water would produce that they divert.

Q. Yes, and do you know precisely what that is, the amount of power that they have developed? A. No, I do not.

Q. You have not been given information? A. No, I have not any.

Q. You have not had access to that? A. I have not had access to the data, no, sir.

Q. And do you say that this is a loss to you? A. We are in position to use all the water.

Q. Yes? A. That would go through the natural channels by both the eastern and western outlets.

Q. Apart from the eastern outlet, at any rate, the western outlet?

A. Yes.

Q. And this——? A. So that whatever is diverted is just that much less measured by the number of second feet that is diverted.

Q. I think possibly it is material in that way, at any rate, when you
10 acquire the eastern power plant, what year?

MR. MCCARTHY : This of course, is also subject to objection.

HIS LORDSHIP : Yes.

WITNESS : In 1921.

MR. TILLEY : Q. In 1921? A. Yes, sir.

Q. I just want to get it with reference to your construction of the power house on the Norman Dam. It was before that or after? A. Yes, sir, before.

HIS LORDSHIP : You got it as a developed plant, apparently, operating?

A. No, we bought the old plant, which was about ready to fall to pieces
20 from the Town, and rebuilt it entirely.

HIS LORDSHIP : But there had been a plant there previously?

A. Yes, sir.

MR. TILLEY : Q. Of what proportions was the original plant—the same as the old, or has it been enlarged? A. Oh, very much enlarged.

Q. Very much enlarged? A. Yes, sir.

Q. Then you say, to fix your damage, you would first need to know what power they had utilized and the amount of water that had been diverted from time to time, and that information is not available to you yet? A. No, sir.

MR. MCCARTHY : Does not that appear to your Lordship just to sift
30 the question down to what our rights are?

HIS LORDSHIP : As to this question of damage, it looks very much as though the question, assuming we were to find the Plaintiffs were entitled to damages at all, we would have to have a reference in order to ascertain it.

MR. TILLEY : I do not think your Lordship will find that to be so when we get the material. I do not want to have that prejudged, but your Lordship appreciates that we are trying to get on, having been refused this information. Had I had the information, and I hope to put that in shape when I get the information.

MR. MCCARTHY : Yes, but your Lordship realizes the question is now
40 more clearly presented to you than at the time this action was brought, there was no damages.

MR. TILLEY : Oh!

HIS LORDSHIP : I do not want to be misunderstood, Mr. McCarthy. I have not at all made up my mind as to whether in my opinion this evidence

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is properly admissible, and when I come to deal with the matter I will come to a definite decision, either to accept it and act upon it, or to disregard it altogether.

MR. McCARTHY : Then, will your Lordship just take a note of the matter appearing in the Statute which my friend referred to, *viz.*, Chapter 120 of 6 Edward VII—your Lordship has a note of it.

HIS LORDSHIP : In the Ontario Statute?

MR. McCARTHY : In the Dominion, my friend gave you a reference to it.

HIS LORDSHIP : Of what year?

MR. McCARTHY : Of 1906, it is the Statute respecting "Lake of the Woods Milling Company, and Keewatin Flour Mills." 10

HIS LORDSHIP : The two Defendants.

MR. McCARTHY : I would just ask your Lordship to note the clause appearing in that Statute, "And whereas the parties of the second part (who are the Keewatin Flour Mills Company Limited) have acquired certain lands and water powers at Keewatin, and are now erecting thereon an elevator and flour mills"—so that apparently it was recognized at that time that we had certain lands and water powers.

I just ask your Lordship to note that in passing.

CROSS-EXAMINED :

BY MR. McCARTHY.

Q. Then, Mr. Backus, your acquaintance with this particular district begins in 1906? A. Yes, sir.

Q. And in 1906 there was the old Keewatin Lumbering and Manufacturing Company who had a mill lower down on Portage Bay, that was the property that you subsequently bought in 1907? A. Well, the mill had been destroyed by fire.

Q. The mill was destroyed by fire in 1905? A. Yes, sir.

10 MR. TILLEY : How do you know that it was in 1905—how do you know that it was in 1905? A. I was—I happened to be in that vicinity at the time of the fire.

MR. McCARTHY : You happened to be there at the time of the fire?

A. In the vicinity of Winnipeg, Mr. Tilley.

MR. McCARTHY : Q. And the mill being destroyed, you purchased the Minnesota timber of the Keewatin Lumbering and Manufacturing Company first? A. Yes, sir.

Q. And subsequently you purchased their Ontario Timber? A. Yes, sir.

20 Q. And then you erected a mill in the vicinity of Kenora, a steam mill, and manufactured the timber there, did you? A. In Keewatin, well I guess it was in the Municipality of Kenora.

Q. In the vicinity, somewhere there? A. Yes, between Keewatin and Kenora.

Q. Then, at the time you made that purchase, the Lake of the Woods Mills were operating at what we now know as Mill "A"? A. Yes, sir.

Q. And you say that the mill was being erected on the site that we now know as Mill "C"? A. Yes, sir.

30 Q. Were you familiar with the operations that had been carried on at the site which is now known as Mill "C" before the Keewatin Flour Mills Company went into possession, I mean were you familiar with the Mining Company and the Dick and Banning Company and McCauley, who had been operating for many years before, and A. Not prior to 1906.

Q. Not prior to 1906. A. No.

Q. Then when did you first acquire the Norman Dam? A. In 1913.

Q. That was as the result of negotiations between yourself and D. L. Mather? A. Yes.

40 Q. Well, D. L. Mather and others, and his heirs—the negotiations took place between you and D. L. Mather at Fort Francis? A. Will you repeat the question.

Q. All the negotiations with regard to the purchase of the Norman Dam took place between yourself and D. L. Mather at Fort Francis.

A. No, I do not think negotiations took place at Fort Francis.

Q. Perhaps I am wrong in the place, but am I right in the main?

A. Well, D. L. Mather and Senator Gibson, R. A. Mather, I had talks with all of them.

Q. You had talks with all of them? A. Yes.

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Q. With the result, I believe, you agreed to purchase the Norman Dam for \$425,000 and I think you made an initial payment of \$70,000? A. I assume that is right, I have not the figures.

Q. Then am I right in saying you refused to pay the balance? A. Well this question of diversion came up sometime after the initial payment was made.

Q. The question of diversion came up sometime after the initial payment was made—well, am I right in saying that you did refuse to pay the balance?

A. Well, I think we made more than one payment.

Q. You think you made more than one payment? A. Yes.

10

Q. Then you subsequently—or was it before that, I think subsequently acquired the shares, or a majority shares of the Keewatin Power Company?

A. Yes, I acquired all the shares.

Q. Acquired all the shares from the Bank of Ottawa? A. Well, it may have come from the Bank of Ottawa, but I acquired it from the original people that I made the first contract with.

Q. But I understood Mr. John Mather was dead, at that time, of course?

A. Well, John Mather was dead.

Q. In 1907? A. I never met John Mather.

Q. You never met John Mather? A. No.

20

Q. But his shares or the shares standing in his name and then owned by His Estate were, I understand, hypothecated to the Bank of Ottawa at the time you purchased? A. Well, I cannot state as to that, the interest might have come from the Bank of Ottawa, but it came through in the regular way from the owners themselves.

HIS LORDSHIP : You did not deal with the Bank of Ottawa direct?

A. No, sir.

MR. MCCARTHY : You are sure about that?

A. Yes, sir, I have had no dealings with the Bank of Ottawa—I do not say that, possibly our Attorney may have.

30

Q. Because I understood that a number of these shares were hypothecated to the Bank of Ottawa, and it was from the Bank of Ottawa that you purchased and the Bank of Ottawa acquired the shares of the other holders for you? A. No, that is not true.

Q. Then, at the time that you first went there these properties were all more or less controlled by John Mather, whom you had never met, were they not—he had been the moving spirit, had he not, in the Kenora District up to that time? A. Well, you mean the Keewatin Lumbering and Manufacturing Company, and the Keewatin Power Company.

Q. Yes? A. John Mather had been the controlling spirit, yes.

40

Q. And he was also the President and General Manager of the Lake of the Woods Milling Company? A. I cannot say as to that.

Q. And do you also know that he was substantially interested and I think an officer of the Keewatin Flour Mills Company? A. I cannot say as to that.

Q. Now then, the old Norman Dam, as you originally purchased it was

a more or less antiquated piece of construction, was it not? A. Well, it was an old dam, but a good one.

Q. An old dam, but a good one? A. Yes.

Q. Considerable leakage at the time, do you remember? A. What?

Q. Considerable leakage through there, at the time? A. Yes, through the rock fill.

Q. And your first work in connection with the Norman Dam was when?

A. Late in the Fall of 1924.

Q. Late in the Fall of 1924—so that from the time you purchased the Norman Dam and acquired shares in the Keewatin Power Company, you had actually spent no money on the Norman Dam, nor on the Mill site until 1924?

A. Yes, we did some clearing of the Mill site in, I think, 1913.

Q. You think in 1913? A. We started immediately after we made the contract of purchase, we made our plans to go ahead with the development.

Q. The contract of purchase of what? A. Of the Norman Dam.

Q. Of the Norman Dam? A. And I think we acquired the mill site, and had our engineers on the ground for some considerable time, and spent quite a number of thousands of dollars.

Q. But I have reference more particularly to power, no construction work done? A. No actual reconstruction work on the dam at that time.

Q. Until 1924, then you say you purchased the Eastern outlet when?

A. My recollection is 1921.

Q. 1921 was that— A. Now, just wait a minute, or 1920, I will have to change my dates.

Q. 1920 or 1921 won't make much difference—I believe. A. I told Mr. Tilley 1921.

Q. Yes, you did. But it was prior to the securing of the English River limits instead of afterwards.

MR. MCCARTHY : Q. Now then, just going back a moment to the question of the Norman Dam, you purchased the Norman Dam before you acquired the shares in the Power Company? A. I do not just understand you.

Q. You purchased, or my friend says you agreed to buy.

MR. TILLEY : That was never carried out.

MR. MCCARTHY : There was an initial payment—

Q. You agreed to buy the Norman Dam, and made the initial payment before you purchased the shares of the Power Company? A. Yes, we made the purchase originally in 1913.

Q. I want to try and just connect these dates—do you remember when your agreement to purchase the Dam was. Was that in 1913? A. Yes, in 1913.

Q. And you made an initial payment, I am told, and then subsequently you acquired all the shares in the company? A. Yes, that is true, but that was not for several years after.

Q. Not for several years afterwards? A. Yes, sir.

Q. So that the payments which you had agreed to make to the Keewatin Power Company no longer became necessary because you then became the Keewatin Power Company? A. Well, I guess, Mr. McCarthy, I will

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have to explain a little about the transaction. We made our payment as per contract until this difficulty showed up over the diversion of this water, and then we—

Q. The diversion of what water? A. Of the water that we supposed belonged to the Keewatin Power Company, and do yet.

Q. Yes? A. And the writ, shortly before the time of the International Joint Commission meeting at Winnipeg, the writ of 1916 was issued.

Q. Yes? A. And then the matter dragged along until 1919, and the interests who I dealt with in making the contract in 1913 asked me if I would not consider taking over the shares instead of waiting until this litigation was 10 over.

Q. I see? A. So that I made the arrangement and paid for the shares, took all the shares over, and if it came through the Bank of Ottawa, I knew nothing about that. The money may have gone through the Bank of Ottawa, but the deal was made through the same people I made the original deal with.

Q. Then in reference to your construction work, I see reference is made, I think in your grant, to filing plans and reports in connection with any work to be constructed at the Norman Dam—did you file the plans in connection with the work that you have just completed? A. You say, “did we file plans”? 20

Q. Yes? A. Yes, sir.

Q. With whom? A. You mean with what Department?

Q. Yes? A. Well, I presume with the Public Works Department.

Q. You presume with the Public Works Department at Ottawa?

A. Yes. Not having done it personally, I cannot absolutely say, but that would be the only department to file the plans with.

Q. That is the Public Works in Ontario? A. No, the Dominion at Ottawa.

Q. You think you filed plans with the Dominion, and was a report put in at the time, or do you know? A. I cannot answer that. 30

Q. You are not able to say then that you have had any approval from Ontario in regard to the plans of construction work which has been erected at the Norman Dam? A. You mean the work that was completed in 1926?

Q. Yes? A. Oh yes, I know we had approval.

Q. You had approval? A. Yes, sir.

Q. I am just asking that, because I can find no record of any plans being filed in the Works Department here in Ontario? A. Not in Ontario, no.

Q. I mean, did you file any in Ontario? A. I think not.

Q. Then, did you get what we asked for production—

HIS LORDSHIP : Pardon me, Mr. McCarthy. 40

Q. When you say that you know you had approval of your plans, you are referring to approval by whom? A. By the Department of Public Works at Ottawa.

MR. MCCARTHY : Q. Then, Mr. Backus, we asked for production of the Minute Book of the Keewatin Power Company—I understand your company still has the minute book of the company from 1893 on? A. I cannot answer that, sir.

MR. McCARTHY : I asked for production of that, my Lord. We tried to get production of it before.

HIS LORDSHIP : The Minute Book, what is it of.

MR. McCARTHY : Of the Keewatin Power Company.

HIS LORDSHIP : That is of the Plaintiff?

MR. TILLEY : I have it here, I do not know what bearing it has on this.

HIS LORDSHIP : I do not know until Mr. McCarthy lets us know.

MR. TILLEY : I have it here.

HIS LORDSHIP : I do not know whether this witness can find what you
10 want?

MR. McCARTHY : The bearing is this——

MR. TILLEY : I do not know this witness ever saw it?

MR. McCARTHY : As long as we get it produced, we do not want to find out any recent minutes. It is the Minutes of the Keewatin Power Company up to the time Mr. John Mather was in control.

HIS LORDSHIP : That is of the old company.

MR. McCARTHY : The company has never changed. Mr. Backus simply has acquired the shares. It is the same company that originated in
1893 or 1894.

HIS LORDSHIP : I thought it was the old Keewatin and something lum-
bering Company.

MR. McCARTHY : Your Lordship is confused about that. There was a Keewatin Lumbering and Manufacturing Company——

HIS LORDSHIP : You are referring to the eastern branch?

MR. McCARTHY : No, my Lord.

MR. McCARTHY : The Keewatin Lumber Company was the pioneer com-
pany in the Lake of the Woods, that is the pioneer company which does not
appear on any of the plans, your Lordship. The Keewatin Lumber Company
are the people who acquired the western outlet, the Norman Dam, Mr. Mather
30 was for many years the President and Managing Director of the Company,
and Mr. Backus' interests subsequently bought the shares from Mather and
his associates, after having first acquired the Norman Dam from them.

HIS LORDSHIP : That is in 1913 they acquired the Norman Dam, and in
1916 they had bought the shares?

A. In 1916.

MR. McCARTHY : But the Power Company has never changed.

HIS LORDSHIP : At any rate, after the litigation started so that they
would not have to wait for the litigation to be closed.

HIS LORDSHIP : In what way are the earlier minutes pertinent to our
40 enquiry?

MR. McCARTHY : The earlier minutes, if your Lordship will look at our
pleadings, you will note that——

HIS LORDSHIP : Is this the same in both?

MR. McCARTHY : Q. The money we have expended, we say has been
with the knowledge and acquiescence of the Keewatin Power Company.

HIS LORDSHIP : Yes.

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MR. McCARTHY : And as Mr. Mather was the Keewatin Power Company, was also the Lake of the Woods Milling Company, and also the Keewatin Power, we want to show that these works that were done were done with the knowledge of Mather, who was the President and Managing Director

HIS LORDSHIP : It may be a subject for argument afterwards, as to whether his knowledge was knowledge by every other company he was connected with.

MR. McCARTHY : The Minute book, your Lordship, will show this, simply to establish his position with the Keewatin Power Company.

HIS LORDSHIP : Subject to what Mr. Tilley has to say. 10

MR. TILLEY : I do not object, my friend can have anything he wants out of the minute book, only I thought he was examining Mr. Backus as if Mr. Backus knew something about it. I do not suppose he has ever seen it, and I certainly have not read it.

HIS LORDSHIP : The Minute book is available.

MR. McCARTHY : I thought that it would be a convenient time to ask for it, because up to now we have not seen it.

MR. TILLEY : We only said that there was nothing in it that was relevant.

HIS LORDSHIP : Whenever you are ready now, Mr. McCarthy, you can have it. 20

MR. McCARTHY : That is all I wanted to ask.

RE-EXAMINED :

BY MR. TILLEY.

Q. Now, Mr. Backus, just to clear up—

MR. TILLEY : My Lord, there is no need of putting in this big Minute Book. My friend can come back to it.

HIS LORDSHIP : No, all I am directing is that it will be available to them if there is anything wanted.

MR. TILLEY : We can then bring it up specially.

MR. TILLEY : Q. Now, Mr. Backus, I think it is made clear, but my friend will not object to my leading in order that we may understand it— first in 1913 you made a contract with persons who were shareholders and persons interested in the Plaintiff company to buy the Norman Dam? A. The property. 30

Q. The property which then belonged to the Company? A. Yes, sir.

Q. And you made certain payments under that? A. Yes, sir.

Q. And you made certain payments under that, and I gather that having the contract you commenced certain clearing up, or improvements?

A. Yes, sir.

Q. The details are not material, but you commenced spending money at the site? A. Yes, that is true. 40

Q. And in that way, you got money into the property and money into the hands of the company.

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MR. McCARTHY : I do not mind leading up to a certain extent.

MR. TILLEY : Q. The payments were made to the company at that time, for the company's property? A. Yes, sir.

Q. Then, you did not come in to the company until 1919, I think you said, as a shareholder? A. Did not purchase the shares.

Q. So that you were not in the company in 1916 when the writ was issued? A. No, sir.

Q. Had you anything to do with that? A. No, sir, excepting we wanted our title cleared up.

10 Q. Did you instruct it to be done? A. No, sir.

Q. Or engage the solicitors? A. No, sir.

Q. So that was the company's own work? A. That was done by Mr. D. L. Mather, and the other officers of the company.

Q. Instructing their own solicitor? A. To bring those actions.

Q. And I think that was Mr. Hill, Greene, Ridout and Hill of Ottawa?

A. Yes, sir.

Q. They were not your solicitors? A. No, they were not, they were the company's solicitors.

Q. And did you ever give Mr. Hill any instructions at all? A. None
20 whatever.

HIS LORDSHIP : You became a shareholder for the first time in the Plaintiff company as late as 1919?

A. Yes.

MR. TILLEY : Q. If I might give you the date—I think it was 1920?

A. I know the trade was made, Mr. Tilley in 1919, we came over here to Toronto and met Mr. Hill, Mr. James Fraser, and Sir Henry Egan.

HIS LORDSHIP : However, you did not become a shareholder for two or three or four years after 1916?

A. No, sir.

30 MR. TILLEY : Q. In the meantime this action was pending? A. Yes, sir.

Q. And then you had a new negotiation with some parties? A. Yes, sir.

Q. And you bought their stock? A. Yes, sir.

MR. TILLEY : I see there is a note in regard to the issue of the writ in the Minutes at page 143.

Did he show you that?

MR. McCARTHY : No, we had not seen it at all.

MR. TILLEY : There is a note about the issue of the writ at pages 143-
40 144-145, and now that the question has come up—

MR. McCARTHY : What date are the minutes?

MR. TILLEY : That is the 25th of February, 1916, and the persons present were Mr. George Burn, Mr. A. G. Mather,—D. L. you referred to, did you know A. G.? A. No, I did not know A. G.

MR. TILLEY : "And the Secretary reported that he had received
. and asking for an Injunction."

"The Secretary"—it does not say who the Secretary is.

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And at page 144, "The Secretary also suggested There being no further business the meeting adjourned. (Sgd) Geo. Burn, Prest."

And then on March 25th, a further meeting at page 145, "the Secretary read the opinion of Mr. I. F. Hellmuth, K.C. There being no further business, the meeting adjourned."

There may be something else in the book, but I have not seen it.

The Secretary-Treasurer—might I just look to see who that is.

HIS LORDSHIP : Are the Minutes signed by the Secretary?

MR. TILLEY : No, they are signed by the President, Mr. Burn.

We will agree on it, I have it, Mr. H. P. Hill, the solicitor was also secre- 10
tary of the Company.

HIS LORDSHIP : That is admitted.

I see the writ in the Keewatin action was not issued until the 29th of March, and the writ in the Lake of the Woods action was issued on the 27th of February.

MR. TILLEY : Mr. Mather probably had closer touch with one company than the other.

MR. TILLEY : Q. Mr. Backus, what I have read from the Minute Book, did not come within your knowledge at the time. These Minutes were held— I mean you did not attend the Meetings? A. No, I did not. 20

Q. And you were on the outside, and ultimately made a transaction with the shareholders? A. Yes, sir.

Q. And in that way the litigation following you had carried on?

A. That is true.

EXHIBIT NO. 6. Extract from Minute Book of Keewatin Power Company, dated 25th February, 1916, and 25th of March, 1916, at pages 143, 144 and 145 of the Minute Book.

HIS LORDSHIP : In Exhibit No. 6, such extracts may be put in from the Minutes as Counsel desire.

MR. TILLEY : Q. And you say you remember you completed your 30
purchase in 1919, but I see the old company, by the Minute Book, of the old Company, the old shareholders seem to continue until the 15th of February, 1920, and I assume your Minutes start in that new book, but that would be your recollection—you close the transaction in 1920? A. Yes, but the agreement was reached in 1919 for the purchase.

Q. That was later carried out? A. Yes.

Q. Just one further question, then you were asked about getting approval, there is no question raised here about approval, but I possibly should file the Order-in-Council, a certified copy of Order-in-Council.

HIS LORDSHIP : Exhibit No. 7 will be certified copy of Order-in-Council. 40

EXHIBIT NO. 7. Certified copy Order-in-Council approved 2nd October, 1913.

(Mr. Tilley reads the Order-in-Council).

MR. TILLEY : And then release follows upon that (reads release).

EXHIBIT NO. 8. Release from Minister of Lands, Forests and Mines, dated 17th October, 1913.

MR. TILLEY : I am saying, the release of obligation that we assumed by our deed for whatever it may be worth.

MR. McCARTHY : I submit the agreement must be put in before a release of it can be put in.

HIS LORDSHIP : This is a release of certain obligations.

MR. McCARTHY : But your Lordship will not, "Whereby an agreement between her late Majesty Queen Victoria, and the Keewatin Lumbering and Manufacturing Company, it is among other things stipulated that the said Company shall expend upon certain works in connection with a water power
10 on Tunnel Island in the Lake of the Woods, the sum of \$250,000."

HIS LORDSHIP : That may go to the question of what importance may be attached to it, Mr. McCarthy, the Charter recites the agreement was made whereby they undertook to do certain things. Their Charter is in as Exhibit Number 1.

MR. TILLEY : Their grant of the Letters Patent.

MR. McCARTHY : It is the agreement of the 24th of November, 1891, under which they agreed to do certain things.

HIS LORDSHIP : But as to what effect these should have, or what weight may be given to it is a matter for argument.

MR. McCARTHY : My submission is that if you put in the release, you
20 must put in the agreement.

HIS LORDSHIP : I may not be able to appreciate the effect of it.

MR. McCARTHY : And your Lordship will also note, this release refers to Order-in-Council made on the 2nd of October which is prior to the date of this Exhibit.

HIS LORDSHIP : He has already put in as Exhibit 7 a certified copy of the Order-in-Council.

MR. McCARTHY : And if your Lordship looks at the Order-in-Council you will find a memorandum referred to in the Order-in-Council which should
30 also go in as part of Exhibit Number 7.

HIS LORDSHIP : I have not seen the Order-in-Council, or what it says.

MR. McCARTHY : It is, "In consideration of a memorandum of the Deputy Minister of Lands and Forests, dated 2nd of October, 1913, in connection with the application of the Keewatin Power Company Limited to have any further expenditure under this agreement of the 24th November, 1891, with the Keewatin Lumbering and Manufacturing Company Limited released."

That should form part.

HIS LORDSHIP : It is the foundation on which the Order-in-Council was
40 issued, and you may be entitled to put it in as throwing light upon the Order-in-Council. I do not know that Mr. Tilley is bound to put it in as forming part of it.

MR. McCARTHY : What I am going to argue, my friend, is putting it in this way—I asked for the production of the memorandum, or be allowed to put a copy in.

MR. TILLEY : That will come up in my friend's case.

MR. McCARTHY : He is putting it in.

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MR. TILLEY : If my friend can get my witness to get it.

HIS LORDSHIP : I do not suppose this witness knows very much about the matter.

MR. McCARTHY : The witness is still in the box, and he is putting in a document, and the foundation of that document is the memorandum which I ask to be put in.

HIS LORDSHIP : It will be noted when you have it. It may be put in by way of explanation.

MR. McCARTHY : May I also ask your Lordship to make the same note in regard to Exhibit 8, that the agreement which is referred to by the Document, Exhibit 8, 17th of October, 1913, viz., the agreement of the 24th of November, 1891, should also be put in. 10

HIS LORDSHIP : Yes, that is that you are to be at liberty to put it in.

MR. TILLEY : And does your Lordship make any ruling. I did not hear ?

HIS LORDSHIP : Simply, that Mr. McCarthy is to be at liberty to put in a certified copy of the agreement if he wishes to do so.

MR. TILLEY : That is all, Mr. Backus, I did not know I had kept you waiting in the box.

HIS LORDSHIP : And also a certified copy of this memorandum of the Deputy Minister, for what it may be worth. 20

MR. TILLEY : And here is a copy of the grant to the Hudson's Bay Company, Exhibit 5. If the Clerk will stamp it I will then read it.

It is dated the 14th December, 1887.

"Know ye, that We, of Our Special Grace, Recorded 10th day of January, A.D. 1888."

MR. TILLEY : I am told the plan is not attached, but it is being prepared, and I will attach it later.

HIS LORDSHIP : The plan will be attached to the grant itself. That plan is coming from the Department ?

MR. TILLEY : Yes, my Lord. 30

MR. McCARTHY : Is the plan going in as part of the Exhibit ?

MR. TILLEY : Yes, as part of the Exhibit.

MR. McCARTHY : Is it agreed to, your Lordship. It may be more convenient, I do not want to anticipate putting in these plans and agreements now, otherwise we will have the agreements so far apart in number and date.

HIS LORDSHIP : They cannot hurt you, Mr. Tilley, so long as they are part of your case.

MR. TILLEY : Nothing in this case can hurt me possibly.

HIS LORDSHIP : I am quite willing, Mr. McCarthy, there should be two exhibits used here. 40

MR. TILLEY : Put in by my friend.

HIS LORDSHIP : Exhibit 9 will be allowed for your memorandum.

MR. McCARTHY : Exhibit 9 for my memorandum.

MR. TILLEY : Where is it ?

HIS LORDSHIP : Mr. McCarthy is to produce a certified copy, if he has not got it.

MR. McCARTHY : I have a certified copy, it is in this room.

MR. TILLEY : We kept Number 3 for one of these documents yesterday, and I was not able to complete it. I do not think we had better reserve the number until we get through.

MR. McCARTHY : If your Lordship is satisfied, it does not make any difference to me.

HIS LORDSHIP : If you could have it after lunch, it will not be too far away by then.

MR. TILLEY : There is one other document we wish to put in, a certified copy, it is being certified. May I read it and put it in as Exhibit 9? It is
10 an agreement between the Keewatin Power Company and Her Majesty, represented by the Minister of Public Works.

EXHIBIT NUMBER 9. Agreement dated 22nd June, 1898, between the Keewatin Power Company and Her Majesty represented by the Commissioner of Public Works *re* Tunnel Island.

"This agreement made the 22nd day of June, 1898, . . . the day and year first above written.

"(Sgd.) Rich. Fuller, President,

"Witness : (Sgd.) J. A. Culham.

"Witness : (Sgd.) Robert McCallum. (Sgd.) Wm. Harty, Commis-
20 sioner of Public Works for Ontario."

MR. TILLEY : Then there was a notice given terminating that, I think it was May, 1925.

Notice dated 18th of May, 1925, which will be Exhibit No. 10.

"Take notice that by a certain agreement between the Keewatin Power Company of the first part——"

(This Exhibit 10 was subsequently withdrawn and the Reporter advised that it be stricken out and withdrawn.)

MR. TILLEY : That is the Plaintiff's case, my Lord.

D E F E N C E .

30 MR. McCARTHY : I want to make a formal motion, my Lord. No case as yet has been made out against either of the defendants.

HIS LORDSHIP : I will reserve the motion.

MR. McCARTHY : There is nothing so far to show that our canals are artificial and my friend's rights, whatever they are, are subject to the provisions of the agreement with which I will not trouble your Lordship again, but which I read to you yesterday, and which does not give him an exclusive right to the waters of the Lake of the Woods, and until he satisfies the onus, which I submit is cast upon him first, of showing that our waterways are artificial waterways, secondly, that these are not the waterways that are
40 expressly excluded in his grant, that he has no right of action against either of the defendant companies.

HIS LORDSHIP : I will reserve the disposal of the motion, Mr. McCarthy, and ask you for evidence for the defence, if you think proper to put any in.

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HIS LORDSHIP : Mr. McCarthy, would you like to allow the matter to rest until a quarter to two ?

MR. MCCARTHY : Perhaps it might be convenient, say two o'clock, your Lordship.

HIS LORDSHIP : It does not make any difference to me.

Court adjourned for lunch. Court resumed 2 o'clock p.m.

HIS LORDSHIP : Assuming that you put in evidence, is it likely to be of considerable length ?

MR. MCCARTHY : Oh, yes, my Lord.

HIS LORDSHIP : That being so, I suppose half an hour one way or the other is not going to make very much difference. 10

MR. TILLEY : If my friend is not ready to go on.

MR. MCCARTHY : He is ready.

HIS LORDSHIP : If you will take people by surprise.

MR. TILLEY : That is just the remark he made to me yesterday.

HIS LORDSHIP : I suppose it is a fair return,

MR. MCCARTHY : We have decided that we will put in our evidence in both cases, and I understand that the Exhibits that have been filed up to date are in common in both cases.

HIS LORDSHIP : That is my understanding until we reach a point where the evidence is directed to one case only. 20

MR. MCCARTHY : Then my friend, Mr. Robinson, is going to put in certain documents, and he will explain them as he puts them in as to which case they apply.

HIS LORDSHIP : I will have to take my notes together, and mark where it is distinct.

MR. ROBINSON : I think I can keep them separate.

I will put in first the Title Papers of the Keewatin Flour Mills Company.

HIS LORDSHIP : That will be first rate.

MR. ROBINSON : Then I put in first the Letters Patent incorporating the Keewatin Flour Mills Company, Limited. 30

HIS LORDSHIP : That will be Exhibit No. 11.

EXHIBIT No. 11. Letters Patent dated 23rd Jan., 1904. Incorporating the Keewatin Flour Mills Limited.

HIS LORDSHIP : Issued out of the Province of Ontario.

MR. ROBINSON : No, my Lord, a Dominion Incorporation.

HIS LORDSHIP : I suppose under the Dominion Companies' Act.

MR. ROBINSON : Yes, my Lord, under the Dominion Companies' Act.

“By THE HONOURABLE RICHARD WILLIAM SCOTT, SECRETARY OF STATE OF CANADA. 40

“To all to whom these presents shall come, or whom the same may in anywise concern. GREETING :—

GIVEN under my hand and seal of office, at Ottawa, this twenty-third day of January, 1904.”

MR. ROBINSON : Then the next is the Ontario Patent to Dick and Banning of the 5th of January, 1891.

HIS LORDSHIP : Is this an Incorporation ?

MR. ROBINSON : No, my Lord, the grant of land from the Province of the land which is now owned by the Keewatin Flour Mills Company, Limited.

HIS LORDSHIP : That is of the land ?

MR. ROBINSON : Of the land now owned by the Keewatin Flour Mills Company Limited. It is slightly more than the land which the company now owns, but it covers that, and the land is described as "all that parcel or tract of land, . . . may be necessary for fishery purposes."

HIS LORDSHIP : Now the site or mill property that is referred to, as Mill "C" really includes everything connected with it which has to do with this particular case, the case that I am interested in, so when you speak of Mill "C" that includes the water power that they are using ?

MR. ROBINSON : Exactly, and a considerable area all around on each side of the water power, and surrounding the mills and elevators and so on.

EXHIBIT No. 12. Grant by Province of Ontario, to William Robert Dick, and Mary Banning, dated 5th January, 1891, recorded 22nd January, 1891.

(Exhibit 12 continuing from top of page).

"GIVEN under the Great Seal of Our Province of Ontario :

"WITNESS, The Honourable SIR ALEXANDER CAMPBELL, Knight Commander of Our most distinguished Order of St. Michael and St. George, a Member of Our Privy Council for Canada, Lieutenant-Governor of Our Province of Ontario.

"AT TORONTO, this Fifth day of January in the year of Our Lord one thousand eight hundred and ninety one, and in the Fifty-fourth year of Our Reign.

"BY COMMAND of the Lieutenant-Governor in Council (sgd.) J. M. Gibson, Secretary, Arthur S. Hardy, Commissioner of Crown Lands.

R.R. Ref. No. 101 }
R.R. Sale, No. 94. } C.L.S.

Recorded the 22nd day of January, A.D. 1891. (Sgd.) John J. F. Ussher, Deputy-Registrar."

HIS LORDSHIP : The property is all spoken of generally as Mill "C."

MR. ROBINSON : As Mill "C," yes, sir.

Then the next is a transfer from Dick & Banning to the Ontario and Western Lumber Company, which will be Exhibit No. 13.

HIS LORDSHIP : Is it a bargain and transfer ?

MR. ROBINSON : It is a land transfer, the copy is from the Land Titles Office, and is from Dick & Banning to Ontario and Western Lumber Company, Limited, dated 14th of March, 1896, and that conveys all of the land that is covered by the Patents which I have just put in.

HIS LORDSHIP : Is that to your people ?

MR. ROBINSON : No, my Lord, it is to the Ontario and Western Lumber Company.

"We, William Robert Dick . . . Isabella Dick."

"Nora M. Preston,"

Seal. Dy. Local Master of Titles, at Kenora."

MR. ROBINSON : The next is a transfer, also a Land Title Transfer,

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which is not important, but has to go in as part of the chain, from the Ontario and Western Lumber Company to Dick & Banning, dated 14th April, 1896, and that transfers back to Dick & Banning a small piece in the south-east corner, which does not touch the land which is material at all here.

EXHIBIT No. 14. Transfer Ontario and Western Lumber Company, Limited, to Dick and Banning, 14th April, 1896.

MR. ROBINSON : Then Exhibit No. 15 is a transfer from the Ontario and Western Lumber Company to the Rat Portage Lumber Company, dated 5th August, 1896, which transfers to the Rat Portage Lumber Company all the lands which the Ontario and Western Lumber Company had got from Dick & Banning less a little piece which they had transferred back to Dick and Banning. 10

HIS LORDSHIP : That would be the balance of the land ?

MR. ROBINSON : The balance of the land.

EXHIBIT No. 15. Transfer Ontario and Western Lumber Company, Limited, to Dick and Banning, dated 5th August, 1896.

MR. ROBINSON : Then, Exhibit No. 16 will be a transfer from the Rat Portage Lumber Company to David L. Mather, dated the 9th March, 1897, covering the same land that was left in the Rat Portage Lumber Company. There is no dispute about the Title. 20

EXHIBIT No. 16. Transfer, Rat Portage Lumber Company Limited to David L. Mather, dated 9th March, 1897.

MR. ROBINSON : There is no dispute about the Title, the Plaintiffs plead that we do own this.

Then Exhibit No. 17, will be a transfer from D. L. Mather to the Ottawa Gold Mining and Milling Company Limited, dated 10th August, 1897, and being of the whole of the said parcel.

EXHIBIT No. 17. Transfer D. L. Mather to Ottawa Gold Mining and Milling Company, Limited, dated 10th August, 1897.

MR. ROBINSON : Q. Then Exhibit No. 18, and which will be the last relating to Mill "C" is a transfer from the Ottawa Gold Mining and Milling Company, Limited, to the Keewatin Flour Mills Company Limited. 30

HIS LORDSHIP : That is to this defendant.

MR. ROBINSON : To this defendant, my Lord, dated the 19th April, 1905.

HIS LORDSHIP : Of all these lands ?

MR. ROBINSON : Yes, my Lord.

EXHIBIT No. 18. Transfer, dated 19th April, 1905, Ottawa Gold Mining and Milling Company Limited to Keewatin Flour Mills Company Limited.

HIS LORDSHIP : The effect of these Exhibits then is we have in April, 1905, the lands that are in question in Mill "C" vested in this particular defendant ? 40

MR. ROBINSON : Yes, my Lord.

MR. MCCARTHY : These documents are only relevant to the Keewatin ?

MR. ROBINSON : That is Mill "C."

MR. ROBINSON : Then as to Mill "A," my Lord.

HIS LORDSHIP : This is the Lake of the Woods Milling Company ?

MR. ROBINSON : Yes, my Lord.

First, the Letters Patent Incorporating the Lake of the Woods Milling Company, which will be Exhibit No. 19, of the 21st of May, 1887.

EXHIBIT No. 19. Letters Patent (Canada) Incorporating the Lake of the Woods Milling Company Limited, 21st of May, 1887.

HIS LORDSHIP : An Ontario Patent or Dominion ?

MR. ROBINSON : That is a Dominion Patent, my Lord.

10 HIS LORDSHIP : Of course, when you come to anything that has anything in its contents that is specially significant, you are going to call my attention to it specially ?

MR. ROBINSON : Yes, my Lord.

Then the next, Exhibit No. 20 is the Patent to the Lake of the Woods Milling Company, the Crown grant to them of their land, dated the 10th May, 1892.

HIS LORDSHIP : That is directly to this defendant.

MR. ROBINSON : Directly to this defendant, that has the usual recitals and then conveys the parcels of land described in this way, and there are some 20 material issues in the descriptions.

HIS LORDSHIP : Am I interested in both parcels ?

MR. ROBINSON : Yes, my Lord—though I do not know that I need read the description of both parcels.

The description reads in this way : "All those parcels or tracts of lands described as follows : that is to say—"

MR. ROBINSON : Perhaps it would be convenient to your Lordship for the purpose of following the description for a moment to have before you that plan which we can prove in a few moments, the plan is not yet proved, but will be proved later, my Lord—that is Seager's plan referred to in the grant.

30 This is a certified copy, and the original can be produced.

HIS LORDSHIP : This had better go in along with Exhibit No. 20, as Exhibit No. 21, subject to being proven. It is better to have it next to the Exhibit to which it has reference.

MR. TILLEY : Is this Exhibit 21 ?

HIS LORDSHIP : It is Exhibit 21, subject to being proven.

EXHIBIT No. 20. Crown Patent (Ontario) to the Lake of the Woods Milling Company Limited, dated 10th May, 1892.

EXHIBIT No. 21. Plan of E. Seager, dated 10th March, 1892, and of property in Exhibit No. 20.

40 HIS LORDSHIP : Is this the Island, Quarry Island, and three-quarter acre Island—

MR. ROBINSON : Yes, my Lord.

I will just read the descriptions of the first parcel if your Lordship will allow me.

HIS LORDSHIP : That is in Exhibit No. 20, you mean, Mr. Robinson.

MR. ROBINSON : Yes, my Lord.

The description is first as regards 200 P.

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—continued.

"First as regards block 200 P, beginning at the north-west corner
. . . . and three quarters of an acre."

That, your Lordship, will remember is the Patent of the lands that afterwards came into the Keewatin Flour Mills Company.

"At the water's edge of Winnipeg, thence south two chains forty-five links to an iron post"——

HIS LORDSHIP : I see it.

MR. ROBINSON : "At the distance of twenty feet from the Mill race," which your Lordship sees is shown in blue.

MR. ROBINSON : That is the material parcel, and the next parcel is 10 described in the next clause of the description as another parcel.

HIS LORDSHIP : Now, Mr. Robinson, is any part of that coloured blue on this ?

MR. ROBINSON : Yes, my Lord, the part coloured blue, as we will show your Lordship, the mill race made by the Lake of the Woods Milling Company, which is referred to in the description in the Patent. It is the down stream end of the Mill race, where it enters into Darlington Bay.

HIS LORDSHIP : It is really included in the one and three-quarters acres.

MR. ROBINSON : It is really included in the one and three-quarters acres, and this Dick and Banning property which afterwards became Mill "C" is 20 over here (indicating).

HIS LORDSHIP : Over to the East.

MR. ROBINSON : Over to the East.

Then there is a transfer dated 9th March, 1897, which will be Exhibit No. 22, from the Rat Portage Lumber Company to the Lake of the Woods Milling Company.

HIS LORDSHIP : This is Land Titles ?

MR. ROBINSON : This is Land Titles.

From the Rat Portage Lumber Company to the Lake of the Woods Milling Company Limited, of a small piece which is shown on the plan attached 30 to the transfer.

HIS LORDSHIP : From the Rat Portage Lumber Company to this defendant ?

MR. ROBINSON : Your Lordship sees it is the easterly four and eight-tenths of an acre part of the original Dick and Banning property.

HIS LORDSHIP : It lies immediately to the east of the parcel you have been describing—what is the area ?

MR. ROBINSON : Four and eight-tenths of an acre. Your Lordship sees the note on the plan is, "Rat Portage Lumber Company's property shown red—Lake of the Woods Milling property, shown "yellow." 40

HIS LORDSHIP : Yes, I see.

EXHIBIT No. 22. Transfer Rat Portage Lumber Company Limited to the Lake of the Woods Milling Company, Limited, dated 9th March, 1897, with plan by Thomas Turnbull attached.

MR. ROBINSON : Then there is a Patent, a Crown Grant from the Dominion of Canada to the Canadian Pacific Railway, dated the 29th March,

1904—this will be Exhibit No. 23—the only part of that Patent which is material is that which relates to the Keewatin Station Grounds.

MR. TILLEY : I object to the Patent being put in.

MR. ROBINSON : We subsequently got part of this.

HIS LORDSHIP : The material part is what ?

MR. ROBINSON : The material part is a part which relates to the Keewatin Station grounds and which conveys these Station Grounds to the C.P.R. There is a very long description.

HIS LORDSHIP : You afterwards acquired part of these Station Grounds ?

10 MR. ROBINSON : We afterwards acquired from the C.P.R. part of these Station Grounds, and your Lordship will find that that description refers to a plan as shown, a plan prepared by G. McPhillips, D.L.S. and O.L.S., dated 23rd December, 1898, filed in the Department of Railways and Canals.

HIS LORDSHIP : Have you a copy.

MR. ROBINSON : Of that I have a copy certified by the Department of Railways and Canals.

HIS LORDSHIP : Are you putting that in, Mr. Robinson.

MR. ROBINSON : Yes, that I had better put in as the next exhibit to this Patent.

20 HIS LORDSHIP : It will be Exhibit No. 24.

MR. ROBINSON : Your Lordship sees this Patent shows the Mill Races, that being the Mill race of "A" and this being the Mill race of "C."

HIS LORDSHIP : Is this north and south the way this now stands ?

MR. ROBINSON : This is north and south, and the Dick and Banning property is here, that afterwards became the Keewatin Four Mills Company "C."

HIS LORDSHIP : Then the parcel you gave me the description of a few minutes ago is in between these two.

30 MR. ROBINSON : This 200 feet, and then we got from the Ontario and Western Lumber Company four and three-tenths acres, and that is in the Lake of the Woods, and the remainder is in the Keewatin Company site.

We got a piece on the north side of the Station Ground, on which the mill and the elevator were located. I will put that in next, my Lord.

EXHIBIT No. 24. McPhillips Plan, dated December 23rd, 1898.

MR. ROBINSON : And your Lordship will find in the C.P.R. Patent, which was the previous Exhibit (Exhibit No. 23) the proviso in this language, "Provided that in respect to that parcel or tract of land secondly described shall be made without the consent of the Railway Company."

MR. TILLEY : My submission is that does not concern the parties here.

40 HIS LORDSHIP : That is between third parties ?

MR. TILLEY : It is a restriction by the C.P.R. people which cannot concern us.

HIS LORDSHIP : It will be argued, I suppose, what the position was between these people at that time.

MR. TILLEY : 1898, I submit it is not material. We have our grant before that. This is after our grant.

MR. ROBINSON : And then the last is, a Deed from the Canadian Pacific

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Railway to the Lake of the Woods Milling Company of the 2nd of June, 1902, which will be Exhibit No. 25.

That as your Lordship sees, precedes the Patent, the Dominion Patent to the C.P.R.

HIS LORDSHIP : That is of part of the Station Ground ?

MR. ROBINSON : I will show your Lordship on the plan attached to that Deed, just what it was, and attached to that Deed is an agreement by the Lake of the Woods Milling Company which explains that discrepancy in date.

EXHIBIT No. 25. Transfer, Canadian Pacific Railway to the Lake of the Woods Milling Company, Limited, dated 2nd June, 1902, with plan 10 attached.

MR. ROBINSON : The agreement is : "Montreal, 8th July, 1902. To the Canadian Pacific Railway Co : In consideration of your delivering to us, in escrow, the undersigned Lake of the Woods Milling Company, duly executed, the conveyance from your Company to us of the land in the Village of Keewatin, described in the said conveyance which has already been prepared and approved of, we undertake not to register same until after the Patent from the Crown to your Company of this and other lands, has been issued, and if, for any reason you fail to procure patent, we undertake to return the conveyance on demand, and we will, if necessary and on demand by you, execute a re-conveyance of the land to you. In the meantime we will hold it in escrow. 20 The Lake of the Woods Milling Company, (sgd.) Robert Meighen, President."

MR. TILLEY : Is that with the transfer ?

MR. ROBINSON : It is with the transfer all one Exhibit. Exhibit 25.

"This indenture made in duplicate the second day of June, in the year of Our Lord one thousand nine hundred and two"

"Signed, sealed and delivered in the presence of : W. Campbell Oswald. The Canadian Pacific Railway Co. T. G. Shaughnessy, President, C. Drinkwater, Secretary."

Plan is attached to this transfer. 30

HIS LORDSHIP : Tell me, Mr. Robinson, where is the deed or grant to the C.P.R. from the Dominion, was it necessary to the original C.P.R. arrangement, or where the original C.P.R. Grant was from the Dominion ?

MR. ROBINSON : Yes, my Lord, we can show you that later. There was an Ontario Statute passed on 1897 which authorized the transfer by Order-in-Council to the C.P.R. of their Railway Lands, then their Order-in-Council was passed, vesting that land in the Dominion, pursuant to that Statute.

Then your Lordship sees the plan of the land we got from the C.P.R. We got a piece on the north side, and on the south side of the Station Ground by the one conveyance, and that is the way in which it stands, the piece which 40 we got from the Crown is up here (indicating).

HIS LORDSHIP : Looking at this, alongside that other McPhillips' plan, we see—

MR. ROBINSON : And looking at this in conjunction with the Seager Plan, which is attached to the Crown Grant, you will see exactly what gave us Title.

If your Lordship looks at the Patent to the C.P.R., which was Exhibit

No. 23, you will see the explanation in the recitals of how that grant came to be made :

“WHEREAS under the provisions of an Act of our Parliament of the Dominion of Canada, 37 Victoria, Chap. 14 between the Town plot of Fort William and the Province of Manitoba.

HIS LORDSHIP : Now, are these all the documents which show your chain of Title ?

MR. ROBINSON : Yes, my Lord.

HIS LORDSHIP : I have all the documents showing two chains of Title
10 now.

MR. MCCARTHY : Beginning at Exhibit 19, and finishing at Exhibit 25.

HIS LORDSHIP : And beginning at 11, and finishing at Exhibit 18 in respect to Mill “C.”

MR. ROBINSON : But I should put in at the same time, the Ontario Order-in-Council which vested in the Dominion C.P.R. lands, which the Province conveyed.

HIS LORDSHIP : Very well, that will be Exhibit 26. That vests the C.P.R. lands in the Dominion.

MR. MCCARTHY : Dated 1st June, 1897.

20 EXHIBIT 26. Order-in-Council (Ontario) dated 1st June, 1887, vesting C.P.R. lands in Dominion of Canada.

MR. ROBINSON : Your Lordship will find in that Order-in-Council, a clause similar to the one I have read from the C.P.R. Patent protecting the Dick & Banning Mill race, which is in this language : “The lands set out in paragraphs numbers 1, 2, 3, 4 and 5 of the said memorandum without the consent of the railway company.”

The date of the Order is first June, 1897.

HIS LORDSHIP : Is that in the exact language as appears in the Deed ?

MR. ROBINSON : No, not quite, there are some minor variations in the
30 language.

Then I might put in also, at the same time, the Dominion Order-in-Council of the 29th of July, 1897, which will be Exhibit No. 27.

EXHIBIT No. 27. Order-in-Council (Canada) dated 29th July, 1897.

MR. ROBINSON : This refers to the Ontario Order-in-Council of which a copy is attached to the Dominion Order-in-Council, and authorizing the Crown Grant to the Canadian Pacific Railway Company, and the Dominion Order mentions that the Ontario Order, which I have read from protects the interests of the said lumber Company in respect to their mill race which passes under the right-of-way, and it then orders the issue of the Letters Patent, the
40 interests of several parties are safeguarded by the said Letters Patent, if any.

I am sorry this certified copy has been marked, but I do not think that it matters—it has some red pencil marks upon it.

HIS LORDSHIP : Exhibit No. 21, the plan, is still to be proven. It is the one from the Crown Lands Department. I have noted it as still to be proven.

MR. ROBINSON : Then, your Lordship will remember in the Crown Grant of Mill “C,” Exhibit 12, to Dick and Banning of the 5th of January, 1891,

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that referred to a plan by Provincial Land Surveyor Stewart, of the 20th December, 1889, your Lordship perhaps remembers that.

HIS LORDSHIP : Yes.

MR. ROBINSON : I should, I think, have put in, as I did in the case of Mill "A," certified copies of these plans so as to keep the Exhibits together.

HIS LORDSHIP : Put in this, if it belongs to that Patent as Exhibit 12A.

MR. ROBINSON : Yes, or make it part of Exhibit 12—12A.

HIS LORDSHIP : 12A would be the plan.

MR. TILLEY : What plan is that ?

HIS LORDSHIP : It is the plan referred to in Exhibit 12. 10

MR. TILLEY : I do not know that that is your survey, it is just a certified copy of a plan.

MR. ROBINSON : Now, there are two of these plans of Record in the Department, both of which cover or refer my certified parts of which cover the location that is referred to in the Patent.

HIS LORDSHIP : Are these certified to by the Department ?

MR. ROBINSON : These are certified by the Department as being plans. No, certified as being a part, "Copy of part of Stewart's plan.

HIS LORDSHIP : Have you an Engineer, or can we do it ourselves.

MR. ROBINSON : Your Lordship sees there is no plan attached to the 20 Patent itself, by which it can be compared.

HIS LORDSHIP : Someone would have to identify the description as accurately shown on the plan from the document itself.

MR. ROBINSON : Possibly there is no difficulty in doing that, if you will take the plan and the Patent. If your Lordship sees what I mean—the meets and bounds description is in the Patent.

EXHIBIT No. 28. Part of tracing by E. Stewart, dated 20th December, 1889. Certified copy.

MR. TILLEY : We may file it, but that does not identify it as being the plan referred to in the Deed, because my friend has to do that. 30

HIS LORDSHIP : Do they both show exactly.

MR. ROBINSON : Your Lordship sees, there are two plans to a different scale, dated as of that date, and of record in the Department.

HIS LORDSHIP : Well, as to which of them am I able to say that the reference in the Patent is directed ?

MR. ROBINSON : I propose to call from the Department, an Officer to say what plans are of Record there.

MR. TILLEY : Mr. Robinson, it is impossible to hear you down here.

MR. ROBINSON : I say, I propose to call from the Department an Officer to prove these plans are of Record in the Department, and also to prove the Report of Stewart which accompanied this plan, and from that your Lordship will see exactly what the explanation of them is. 40

HIS LORDSHIP : Would it perhaps not be better to defer the actual putting in of the plan until we have that officer ?

MR. ROBINSON : Yes, my Lord.

HIS LORDSHIP : Then, it won't be marked in view of that, until later.

MR. McCARTHY : I will call Mr. Jarvis.
EDMUND M. JARVIS, Sworn. Examined by MR. McCARTHY.

Q. Mr. Jarvis, you are in the Department of Lands, and Surveys Branch ? A. Yes, Crown Lands and Forests.

Q. Ontario ? A. Yes.

Q. I ask you in the first place, to produce a plan of the location which is a plan of Edmund Seager, and dated 10th of March, A.D. 1892, and the locations if I gave them would only confuse.

HIS LORDSHIP : That is Exhibit 21 ?

10 MR. McCARTHY : That is Exhibit 21, my Lord.

WITNESS : That is the original plan.

HIS LORDSHIP : You produce the original plan from the Department ?

A. Yes, my Lord, and this is the certified copy.

MR. McCARTHY : Q. And this Exhibit 21 is a certified copy ? A. Yes.

HIS LORDSHIP : That is all right, very well.

That is fulfilling your promise, Mr. McCarthy.

You may keep the original then, Mr. Jarvis.

MR. McCARTHY : Q. Then, I ask you also to produce Elihu Stewart's plan, you have it there, to produce the report of Mr. Stewart, P.L. S. of the
20 20th December, 1889, which I think is of record in your Department ? A. You want the report ?

Q. I want the report first, if you please.

MR. TILLEY : I submit the report is not evidence.

HIS LORDSHIP : I do not know yet what the nature of it is.

MR. McCARTHY : What is this book that you produce, Mr. Jarvis ?

A. It is the report and field notes of the outlines of the Municipality of Keewatin and Rat Portage, 1889.

May I just look at it for a second ?

MR. McCARTHY : It is a report of the Commissioner of Crown Lands, dated 20th December, 1889, giving Mr. Stewart's field notes in connection
30 with the plan which I am asking to be produced together with an affidavit by Mr. Stewart, saying the foregoing field notes are correct, and taken from the actual survey, and this is of record in the Department, and I submit is evidence.

HIS LORDSHIP : Is Stewart alive ?

WITNESS : Yes, he is there.

HIS LORDSHIP : Mr. Stewart can swear to it.

MR. McCARTHY : He has not got it, but I was going to put it in and then going to ask Mr. Stewart to swear to it.

MR. TILLEY : I object to it as it is not evidence.

40 HIS LORDSHIP : It may not be proof of its contents, but it is evidence of a document in the Department of Crown Lands, and Mr. Stewart is coming, as Mr. McCarthy says he will swear to it. I think I am quite entitled to receive it as a document in the Department of Public Record, not as a proof of its contents, but the man is here and let him tell us what it is.

MR. TILLEY : My objection would go to evidence of this kind being admitted as well as that this report is not evidence of anything contained in it.

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HIS LORDSHIP : Evidence of this kind ?

MR. TILLEY : Evidence of a survey made by Mr. Stewart.

HIS LORDSHIP : From which a plan was prepared ?

MR. TILLEY : We have that plan.

HIS LORDSHIP : And upon which a grant has been made.

MR. TILLEY : According to a plan.

Now whatever follows from that, of course follows, but I submit the field notes behind a plan are not referred to in the Deed.

HIS LORDSHIP : I do not know what use is going to be made or was to be made, but I understood what Mr. McCarthy was doing was laying the necessary foundation to enable him to put in the Stewart plans. 10

MR. TILLEY : He has put the plan in, I understand.

HIS LORDSHIP : No, the plans have not gone in yet.

MR. TILLEY : I thought the witness—

HIS LORDSHIP : No, the Stewart plans have not gone in as yet. I understood that was Mr. McCarthy's purpose. He was laying the foundation for putting in the Stewart plans.

MR. MCCARTHY : There are two plans, and there may be some difficulty of identification, and I wanted the report in.

HIS LORDSHIP : The witness produced it from the Department, and that is enough for me. He identifies the book, and the book will stay here until Stewart comes into the box, and he will give the evidence or not, as it may be permitted. 20

WITNESS : My Lord, it will not go in ?

HIS LORDSHIP : Your original book will not go in as an Exhibit.

MR. TILLEY : What is to be done with it ?

MR. MCCARTHY : It states in the field notes—

HIS LORDSHIP : All I am doing with regard to the book at the present time is saying this witness has identified it as a book from the Crown Lands Department. 30

MR. ROBINSON : Mr. Jarvis was waiting here, the original book being in the hands of the Court.

HIS LORDSHIP : Mr. Jarvis will be allowed to take it away with him when he goes.

MR. MCCARTHY : Q. Now, I ask you to produce two plans made by Mr. Stewart, one dated, perhaps they are both dated the same date, both dated the same date—the 20th of December, 1889, and filed as of record in your Department, being plans of the neck of land separating the Lake of the Woods, or Portage Bay from Winnipeg River Bay—have you got these ?

A. Yes. I am not just sure. I brought all Stewart's plans. You see there are three sheets, but I think this is the one you want. 40

MR. MCCARTHY : I have only taken a portion of it, applicable.

Q. How do you identify the plan you have in your hand now ? A. This is Stewart's Number 1.

Q. One at a time, that is what you call Stewart's Number 1 ? A. Sheet Number 1.

MR. McCARTHY : I am not putting in the whole plan, my Lord, because a great deal of it is not applicable to this case before your Lordship now.

Q. Then the certified copy which I have before me, is a certified copy, is it not, or is it, of the plan which I now show you, the certified plan I now show you is a copy of a portion of Stewart's sheet No. 1, is it not? A. I know it is of one of the sheets.

Q. Tell me which one it is, can you? A. Yes, that is the one—that is the copy of this sheet.

Q. That is a copy of sheet Number 1, Stewart's plan? A. Yes.

10 HIS LORDSHIP : That will be Exhibit No. 28.

EXHIBIT No. 28. Copy of part of tracing by E. Stewart, dated 20th December, 1889.

HIS LORDSHIP : This much is copy of part of sheet Number 1, and has been marked Exhibit No. 28.

MR. McCARTHY : Your Lordship will remember that in the Patent they were described, "That is to say, being composed of all that parcel or tract of land, containing by admeasurement 27 acres more or less, known as Dick and Banning Company's mill location, situate between Portage Bay and Winnipeg Bay, in the Municipality of Keewatin in the District of Rainy
20 River and Province of Ontario, shown on plan of survey of said Municipality by E. Stewart, Provincial Surveyor, dated 20th December, 1889."

Q. Made by Mr. Stewart on the 20th December, 1889.

MR. TILLEY : Where is that shown?

A. This is a plan of Keewatin.

MR. McCARTHY : Where is that shown? A. Sheet Number 1, including the scale and signed, E. Stewart, P.L.S., December 20th, 1889.

MR. TILLEY : There is nothing on that about Keewatin—nothing has gone in in the sense that my friend is now asking the question.

He then asked the witness whether this that has been put in as a portion
30 of the Stewart plan of Keewatin. Now the witness has not said it is.

HIS LORDSHIP : The witness says it is, but whether or not the plan shows on its face.

MR. McCARTHY : If there is doubt about it, leave these plans here, because Mr. Stewart can identify it in a moment.

WITNESS : I have no doubt it has been considered that since I have been in the office, and when he asked for it, it was produced. I have known it for thirty years.

I think this includes Rat Portage, Keewatin and Rat Portage.

HIS LORDSHIP : Have you finished with this witness, Mr. McCarthy?

40 MR. McCARTHY : Yes, my Lord.

CROSS-EXAMINED by MR. TILLEY :

Q. Mr. Jarvis, would you please tell me what plans you have of Stewart's?

A. I have the three, this big one—

Q. Now, let us identify them one at a time? A. This big one, I understand, the three were enlargements of this big plan.

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- Q. You understand, but let us know what you have before you. Tell us your understanding—this large one is what ?
- A. A plan of Keewatin and Rat Portage.
- Q. Now, that is a plan of Rat Portage, Keewatin and the adjoining Territory—now, where is this property shown on that map ?
- A. (Witness indicated.)
- Q. Now, what date is that map ? A. 1889.
- Q. What date in 1889 ? A. 20th of December.
- Q. 20th December, 1889 ? A. Yes.
- Q. Now then, that is one complete map of Rat Portage and Keewatin ? 10
- A. Yes, on heavy paper.
- Q. Now, let us have that identified in some way—on the heavy linen ?
- A. If you like to identify it, it is known as R.78.
- Q. Now, let us know the next one you have. Now you have referred to one from which you take Exhibit 28 ?
- A. That is that one.
- Q. That is this one ? A. Yes.
- Q. That is where ? A. That is part of this big one, an enlargement—made by Stewart.
- Q. Made by Stewart or in the Department ? A. It is made by 20 Stewart and signed by Stewart.
- Q. Merely an enlargement of his own plan ? A. Yes.
- Q. Now, what are the other two pieces that you have got ? A. They are the same thing there, just an enlargement of the other plan, as I understand.
- Q. Of other portions ? A. Of this big plan.
- Q. Of other portions of the big plan ? A. No, of the whole plan.
- Q. Are they all the same, then ? A. Only different parts of it.
- Q. That is what I asked you—are these three which you have now enlargements of three sections ? A. Yes. 30
- Q. Of the large plan ? A. Yes.
- Q. So that one of them will refer to this portion, and the other two will not ? A. Yes.
- Q. Now, let me see if that is so—will you ?
- A. Yes.
- Q. That is some other portion, so we are not concerned with that, sheet 2,—now, let me see the same thing with this one, if you will ? A. You see it is the same.
- Q. Sheet three, that is some other section ? A. Yes.
- Q. That is all right. Now, coming back to sheet Number 1, you say 40 it is merely an enlargement, or does it contain anything in addition to what the main plan shows ? A. Well, it has levels traced on it ?
- Q. It has your levels traced on it ? A. Yes.
- Q. But otherwise it is the same ? A. I think so.
- Q. Just a duplicate ? A. That is what I understand.
- Q. On a much larger scale ? A. On a much larger scale.
- Q. Now, I would doubt that, Mr. Jarvis, if you do not mind my saying

so, just let us take the portion that we are concerned with, because I do not want merely to be inquisitive about things. Now would you just get the other one so that we may compare them. It is not a mere enlargement—where is this property—here we are? A. Yes.

Q. Now, where do you get—? A. Of course the levels.

Q. Suppose now that we will get the answer once for all, that is not a mere enlargement, Mr. Jarvis. You do not say that that plan which you have identified, but which is not marked, the large plan of Keewatin and Rat Portage, that that is merely enlarged of this sheet Number 1—sheet Number 10 1 is a larger and a distinct plan, is it not, because it has a great deal on it which Mr. Stewart has not on this plan at all. It is a different plan? A. Probably it is.

Q. Then, it is not an enlargement. Then this large plan that you have here, that you have identified it, do you? A. R.78.

Q. That plan is a plan of Keewatin and Rat Portage, is it not, and so marked, and the other is not so marked?

A. No, I do not think it is shown.

Q. This one is so marked, the large complete map is so marked, and sheet number 1 is not so marked?

20 A. It does not seem to be, no.

Q. It does not seem to be, so that if a conveyance refers to the Stewart plan of Keewatin and Rat Portage, dated 20th December, 1889, so far as the plans in your office go, it would refer to this larger one? A. No, we have never understood it as that.

Q. I am not asking what you understood, but that would seem to be so, is it not? A. No, my—

Q. You were not there when this deed was given?

A. No, because to explain matters, when that plan is referred to, a reference always goes on it.

30 Q. I am not asking you what always goes on, if a plan is referred to, I suppose you may put a reference on the wrong plan—but I am asking you if in your department this plan you now have before you is not the Stewart plan of Keewatin and Rat Portage? A. This plan is (indicating).

Q. The one before you, and that is?

HIS LORDSHIP : R.78.

MR. TILLEY : Now, if you would let me have the other sheet that you have.

MR. MCCARTHY : That is not in.

MR. TILLEY : Q. You had two of them a moment ago.

40 MR. MCCARTHY : I am not putting it in until it gets settled.

MR. TILLEY : It depends on which way it gets settled, apparently.

Q. Now, Mr. Jarvis, have you another copy of this section of the large plan, embracing the whole of Keewatin and Rat Portage. A. My understanding is that these three plans—

Q. I am not asking about the three plans, have you another copy of this section that we are concerned with?

HIS LORDSHIP : Of R.78? A. No, I have not.

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MR. TILLEY : Would you let me have yours, Mr. McCarthy, so that I can identify it.

MR. McCARTHY : What ?

MR. TILLEY : Your copy of the section of the plan.

MR. McCARTHY : I do not know I have a copy.

MR. TILLEY : You had a copy a moment ago, and trying to adjust it for a part plan.

MR. McCARTHY : What is it a copy of ?

MR. TILLEY : This is said to be a copy of R.78.

Q. Now, is this a copy of the section R.78 that we are concerned with ? 10

A. It seems to be, yes.

Q. Then, just to have a copy of that section—this will be Exhibit No. 29.

HIS LORDSHIP : Exhibit No. 29.

EXHIBIT No. 29. Copy of section between Winnipeg River and Lake of the Woods according to Stewart's Plan R.78.

MR. TILLEY : Q. Now, Mr. Jarvis, will you tell me on what date this plan, R.78, was filed in the Department ? A. No, I cannot.

Q. You cannot tell ? A. I cannot tell more than the field notes would tell.

Q. More than the field notes would tell—someone has them there. 20

Can you tell from that ? A. Yes, I think so.

Q. Can you fix the date ? A. I think so, 20th December, 1889, that was the date they were dated.

Q. That was the date they were dated, but I am asking you the date they were filed, which may be quite a different date.

HIS LORDSHIP : Is there anything on the plan itself that shows the date of its filing ? A. No, sir.

MR. TILLEY : And there is nothing in this book that shows the date you received it ? A. No, probably my files would.

Q. Can you tell us ? A. I do not think I have that file here. 30

Q. Now one further question, this report that you have identified, so that we will not have to bring you back, that is not the original letter sent to the Commissioner of Crown Lands, is it ? A. That is the way we get the report.

Q. It is in the same form that you get it. You have no separate form from this book ? A. No, it is all bound together.

Q. Now then, one further question—

MR. McCARTHY : Does that report go in now. It has been referred to.

HIS LORDSHIP : Mr. Tilley has not cross-examined on the report or its contents. He is seeking to satisfy himself this is the document originally 40 received by the Department, and not merely a copy of it.

MR. McCARTHY : He has to satisfy more than himself.

MR. TILLEY : I do not know that I have satisfied myself.

HIS LORDSHIP : Mr. Tilley is a bit of an optimist—he thinks if he satisfies himself that will satisfy the Court.

MR. TILLEY : Then you referred to the Seager Plan, did you, Exhibit No. 21 ? A. Yes.

HIS LORDSHIP : Yes, that was the plan that went in, subject to being proven.

MR. TILLEY : And I think this witness referred to it.

HIS LORDSHIP : Yes, he said this was a certified copy of the original plan.

MR. TILLEY : Q. Is that the whole of it. A. Yes, that is the whole of it.

Q. Now, can you tell me when that was filed in the Department ? A. I think I can get you that.

Q. You think you can get that—will you please.

10 (Witness produces letter enclosing plan.)

Q. Does that fix the date ? A. April 14th, 1892.

Q. April 14th, 1892 ? A. Yes, when it was sent to us, and the date it was received was April 16th, 1892.

HIS LORDSHIP : That is the Seager plan, Exhibit 21, was received on the 16th of April, 1892.

MR. TILLEY : The 14th of April it was written ?

A. Yes, and received in the Department on the 16th of April.

HIS LORDSHIP : Received in your Department on the 16th of April, 1892 ? A. Yes, received on the 16th.

20

RE-EXAMINED by MR. McCARTHY :

Q. You were telling my friend something about the reference notes which appear on Exhibit 28—what is the significance of these reference notes in red ? A. When a portion of land is granted, the Patents Branch put the references on there so that we will be able to identify it.

MR. TILLEY : I submit that cannot be evidence against us.

HIS LORDSHIP : No, Mr. McCarthy, I fancy is endeavoring to put this in in order to show some difference between this Exhibit 28 and Exhibit 29 that you put in. In other words that Exhibit 28 has some things on it, that do not appear in Exhibit 29, and it is the explanation of these things.

MR. TILLEY : If your Lordship will permit me, the notation they make in their office, for their own convenience, cannot, I submit—

HIS LORDSHIP : They are not part of the plan.

Mr. McCarthy is not trying to give evidence to show that they are any integral part of the plan, but he is endeavouring to show why this Exhibit 28 does not coincide with Exhibit 29, because there are some notations made on it in the Department, which show the difference, is that the explanation ?

MR. McCARTHY : That is not my object at all, If my friend would wait for a moment, if it is not evidence against him, it does not hurt him.

40 My friend said, he pointed to the fact, that on the large plan, R.78, you have no reference notes at all ? A. No.

Q. And no reference notes appear on Exhibit 29, which, you say is a copy of the large plan ? A. Yes, it is a copy of the large plan.

HIS LORDSHIP : A copy of what we have been calling R.78.

A. It is made on a different scale.

Q. Is it made on a different scale ? A. It is larger, I think.

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Q. Please do not talk until you know what I am asking you. I show you Exhibit 29, is that not an exact copy of R.78? A. Yes.

Q. Drawn to the same scale? A. Yes, it is just traced off.

Q. It is just traced off, an exact copy—then Exhibit 28 is a copy of what you call sheet number 1? A. Yes.

Q. With a great deal more detail on it? A. With more detail.

Q. And certain reference numbers? A. Yes.

Q. Now, what I want to find out is the differences—the reference numbers there? A. Well, they are put on by the Patents Branch.

Q. They are put on by the Patents Branch? A. Yes. 10

Q. On what occasion? A. After a patent is issued, but before the patent goes out.

Q. After the patent is issued and before the patent goes out, the Patents Branch puts numbers on the plans?

A. Yes, we do not ever put it on the big plan.

Q. R.78 instead, but on the sheet section? A. Well, because this is more treated as an office copy, and the other is an original.

Q. That would be the difference between them? A. Yes.

Q. R.78 is the original, and the three sheets are office copies on which these reference notes appear? A. Yes. 20

Q. And these are made by the Patents Branch when patents issue from their branch? A. They put them on, they put them on, I understand.

MR. TILLEY : I think, my Lord, it would be of advantage to have the lettering that is on each of these plans put on the Exhibit.

MR. ROBINSON : Are they not?

MR. TILLEY : I mean to say, the lettering as to what the plan is, but I appreciate it is only a section.

MR. MCCARTHY : You mean, "section of R.78"?

HIS LORDSHIP : Perhaps in brackets, "a section of R.78." to show that it is not the whole plan—perhaps it would be better in another Court. 30

MR. MCCARTHY : Q. What do you think, Mr. Jarvis? Would you do that, put on the ones Mr. Tilley has in his hands, mark it, "section of R.78," if that is the number, and put on the one I have, which is Exhibit No. 28, "Part of sheet number 1."

MR. TILLEY : And then put on each whatever lettering is on the plan, what date is the plan, and whatever the surveyor has put on.

HIS LORDSHIP : For instance, R.78 is said on its face to be a plan of Keewatin and Rat Portage and something of that kind. Counsel wants that put on the copy that is in as an Exhibit so that another Court will be able to see exactly what appears on the original, and then put the words "part of." 40

Is anything going to turn on the time when this plan R.78 was filed in the Department. If it is, the witness perhaps can find for us from the Department, the actual date of filing.

MR. ROBINSON : I think Mr. Stewart's report shows that.

HIS LORDSHIP : The witness says that.

MR. ROBINSON : He says, "I am forwarding herewith"—that is my recollection.

HIS LORDSHIP : Perhaps Stewart can say then just when it got into the Department.

Are you through with this witness now ?

MR. MCCARTHY : Just this, my Lord.

HIS LORDSHIP : I thought perhaps you had finished.

MR. MCCARTHY : Except as to this, my friend asked the date on which Seager's plan was filed. Now, I do not know whether I can clear that up now, by the production of a letter.

HIS LORDSHIP : You can use a letter—he gave us a letter written the 10 14th of April, 1892.

MR. MCCARTHY : The letter was not put in.

HIS LORDSHIP : No, but he can say the date that letter was written, and he says that it was received by the Department on April 16th, 1892, and I have taken it that it went in.

MR. MCCARTHY : I would just give your Lordship a reference to the letter, which is a letter from the Lake of the Woods Milling Company to the Commissioner of Crown Lands, dated April 14th, 1892, in which he said, "We are sending you a plan and field notes of the property at Keewatin, for which we have made application for a patent. Would you be good enough 20 to have the patent issued at once. We believe we have complied with all the requirements of your department, as well as settling with all claims against the property, and paid for all buildings that may be erected thereon—we hope to have an early reply from you"—I was going to put this in later on in another connection. I thought perhaps I would give your Lordship a reference to what the page of the letter was. Now, I will probably have to file it later. It goes in with our plan and field notes later on.

HIS LORDSHIP : I have the information, it was sent in the letter from the Lake of the Woods Milling Company.

30 RE-CROSS-EXAMINED :

BY MR. TILLEY

Q. Mr. Jarvis, there is something else on this document that shows that the application was passed upon before this date. Have you anything here with regard to that? It says, "The within applications of the Lake of the Woods Milling Company, Limited, Keewatin, in the City of Montreal, in the Province of Quebec, for the purchase of two blocks of land at the Keewatin Railway Station in the District of Rainy River, and of two islands in Winnipeg Bay, of the Winnipeg River, adjoining as shown on plan of Survey by P. L. S. Seager, dated March 10th, 1892, respectively as 200 P ($1\frac{3}{4}$ ac.), 40 200-P.A. ($3\frac{1}{2}$ ac.), Island 220-P.A.", what do these references mean? A. I do not know, they are shown on the plan.

Q. Island 200 P.B. or Quarry Island (6 ac.), and Island 200 P.C. ($\frac{3}{4}$ ac.) of record in the Department of Crown Lands, and which said blocks of land are described as follows (see 5036/92)—what does that mean? A. That is a letter number.

Q. A letter number showing description as it was in the deed, I suppose? A. Yes.

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Q. As ultimately appears in the deed? A. It was referred in the letter of correspondence, I suppose the surveyor's description, possibly.

Q. It says, "has been already ruled on by the Commissioner Crown Lands under date December 9th, 1890, and a bond approved of by the Commissioner and executed by said Company has been filed and a proper plan of survey has been filed."

MR. McCARTHY : Perhaps I had better have that in now. It may refer to something else, I do not know.

MR. TILLEY : It is on the notes.

HIS LORDSHIP : This is all read, is it not? 10

MR. McCARTHY : My friend is reading now, something. I take it refers to something else.

HIS LORDSHIP : The Department would object to the original going in.

MR. TILLEY : It is just an endorsement of your file?

A. Yes, it is just an endorsement for the patent to go.

Q. Have you got that, of December 19th, 1890? And it goes on to say, "has been already ruled on by the Commissioner Crown Lands under dated December 19th, 1890, and a bond approved of by the Commissioner and executed by said Company has been filed and a proper plan of survey has been filed," and then that is signed by the Chief Commissioner, I suppose, 20 and below that, "Let a patent issue if the purchase money of \$10 per acre has been paid," and this is signed by Mr. Hardy, Commissioner of Crown Lands.

Look it up and let me see it, I won't detain you now, it is here, that is the point? A. And that is that description.

HIS LORDSHIP : Do you want a copy of that to go in, Mr. McCarthy?

MR. TILLEY : It is on the notes.

MR. McCARTHY : It is not altogether on the notes. He says, "Let the patent issue if the purchase money of \$10 per acre has been paid."

My friend says, "If the price has been paid"—\$10 an acre, there is a significance to be attached to that. I do not know at this stage what to say, 30 because I do not know what my friend may want further, but if anything turns on it, we may have to have it all in.

HIS LORDSHIP : Very well, we will see later on when we find if anything else is to go.

MR. McCARTHY : If my friend wants anything else in, then we will make up our minds about that.

Q. Now I have certified copies of both, so perhaps it will simplify matters if I put them in, both the endorsement and the letter.

EXHIBIT NO. 30. Letter of the Lake of the Woods Milling Company to Crown Lands Department, dated 14th April, 1892, with 40 memorandum attached, endorsement.

HIS LORDSHIP : Your next witness, Mr. McCarthy.

MR. McCARTHY : I will call Mr. Elihu Stewart.

MR. ELIHU STEWART : sworn

EXAMINED BY MR. McCARTHY.

Q. Mr. Stewart, you are a Provincial Land Surveyor? A. Yes, Ontario Land Surveyor now.

Q. And have been for how long? A. Well, 1872, since 1872.

Q. Since 1872—you were asked to make a survey of the District of Keewatin and Kenora, were you not? A. Well, a portion of it.

10 Q. Will you tell us how you got your instructions? A. Well, Mr. Kirkpatrick was appointed Commissioner to take evidence as to claims in that vicinity.

HIS LORDSHIP : Who was appointed Commissioner?

A. Mr. George D. Kirkpatrick, Director of Surveys at that time, and sometime after he went out, I received a communication, I forget whether a telegram or letter that he wished me to come out to assist, so I went then and remained until September. It is of record here, and Mr. Kirkpatrick left and left me verbal instructions as well as written instructions, the written instructions are of record here.

20 Q. Now then, do you remember what year that was? A. 1889.

Q. And do you remember what time of the year it was? A. Well, it is all of record here.

Q. Do you remember? A. I commenced, I think I was about four months altogether, and I got back in December, in the neighbourhood of four months.

Q. And you got back in December, then what portions of the district did you survey? A. If you will allow me. May I just look over this?

30 Q. If you have anything to refresh your memory, His Lordship will allow you? A. I made a survey of, or a tracing, rather a traverse, I would say of a long portion of about eight miles around the shore of the Lake of the Woods.

Q. Yes? A. Also a traverse of the Canadian Pacific Railway over a greater portion of that.

Q. Yes? A. And in addition to that tracings of parts, these were the most, where it was necessary to locate other parts along the shore.

Q. Then you say you received both verbal and written instructions?

A. Yes.

40 Q. Do you remember what the verbal instructions were? A. Well, they were from time to time, because we were there together, taking evidence, and I would be out at the Court, sometimes.

Q. What was the object of his visit and yours? A. His visit, he was appointed Commissioner to take the evidence.

Q. In regard to what? A. In regard to locating particularly, so far as I can remember, the mining claims and other claims that had been applied for, many of them previous to the Award between the Provinces and the Dominion.

Q. Many claims that had been applied for previous to the Award?

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A. Yes.

Q. And he was out there taking evidence, and you out there assisting him in doing the survey work? A. Yes.

Q. Then, had he been out there for some time before you went?

A. Yes, sometime, I cannot remember exactly how long.

Q. Now then, you made a report, and made certain field notes?

A. Yes.

Q. Do you recognize that as the report that you made? A. In 1889, yes, I do.

Q. This is the report which you made? A. Yes, it is of record here. 10

Q. Is it signed by you? A. Yes.

Q. And that is your signature? A. Yes.

MR. MCCARTHY : And I also put in a certified copy of that, my Lord.

HIS LORDSHIP : Exhibit No. 31, Certified copy of report of E. Stewart, P.L.S., dated 20th December, 1889.

HIS LORDSHIP : What is the date of that, again, Mr. McCarthy.

MR. MCCARTHY : It is dated the 20th December, 1889—in which it is addressed to the Commissioner of Crown Lands.

“I have the honour to forward herewith . . . as accurate as possible and trust that they will be found satisfactory.” 20

Q. Now, you refer to certain plans and tracings in that report? A. Yes.

Q. Can you identify them, Mr. Stewart—will you look at this large plan which we have referred to as R 78? A. Yes, I recognize it.

Q. What is this, Mr. Stewart? A. It is a plan referred to there, of the large plan.

Q. Wait, until I get that letter again. You refer, I see, to a plan of Rat Portage, Keewatin and adjoining territory? A. Yes.

Q. That is the large plan? A. Yes.

Q. Then you also refer here to three tracings, do you say three?

A. Yes. 30

Q. Also three tracings on a large scale showing a traverse which you made, now the only tracing which we are concerned with is what is known as Sheet Number 1—can you identify that as the tracing which covers the ground which is in question in this action—and separating the Lake of the Woods and Winnipeg River?

HIS LORDSHIP : Is the original tracing made by you?

MR. MCCARTHY : Q. Is this, the original tracing made by you?

A. Let me look at this.

MR. MCCARTHY : Down in this corner, I think you will find your signature? A. That is my signature, yes, and this is the original plan. 40

Q. That is one of the three tracings? A. Yes, I think I referred to that as the large tracing on the large scale.

MR. TILLEY : On a large scale.

MR. MCCARTHY : Q. Now, having identified this, my Lord, I presume we can deal with Exhibit 28 and 29.

Q. Now then, dealing first with Exhibit 28, which is a copy of that tracing which you were just looking at (sheet No. 1) Mr. Stewart will you look at

this and tell me—I do not know whether his Lordship has seen this—you can explain it to his Lordship—tell him about these different locations, what they represent? A. First is a division line between Rat Portage and Keewatin.

Q. When you say first—that is the line at the right hand side of Exhibit 28—can you say that is the line between Keewatin and Rat Portage? A. Yes.

Q. As was the dividing line between the Municipalities? A. It was at that time.

Q. Yes? A. Then I made this—there is another showing all these angles, here, another tracing; I was traversing the Canadian Pacific Rail-
10 way which is shown on the other map.

Q. Yes, what do you say about the condition on the ground—there it is C.P.R.? A. Yes.

Q. The red line is apparently C.P.R.? A. These are points where I put down in many cases—here is an iron post put down in the rock.

Q. Who put those posts in? A. I did myself, and my assistant.

Q. You and your assistant put those posts in? A. Yes.

Q. And when you come to these mill sites, I see you have a location there as “Dick & Banning’s location?” A. Yes.

Q. And saw mill? A. Yes.

Q. What do you say about the condition on the ground as it was when
20 you made these measurements—how far does this map—? A. That represents it as it was then. This was the mill pond.

Q. When you say “this,” you mean? A. South of the railway.

Q. South of the railway was a mill pond—by the way, how did the rail-
way cross? A. On a trestle at that time, a wooden trestle.

Q. About how long? A. I should judge about three or four hundred feet.

Q. And you say there was a mill pond? A. This was a mill pond.

Q. Apparently the C.P.R. went across the pond? A. Just took a part
30 of it there, the logs were taken under the railway. The railway was elevated, of course, and the logs were not.

Q. Now, take the mill buildings themselves—does that plan accurately represent the buildings on the ground as they were at that time? A. Well, I certainly made an exact copy of my notes at that time, of what I had taken, it must accurately represent it.

Q. And what do you say in regard to the mill race, that is both—?

A. You mean the—

Q. Both the head race, and the tail race, as to their size? A. I put it
40 down here, there is the whole distance, it is to scale, you can see it.

This is 6.29 along here.

Q. When you say “along here”—see if you could do it, anybody read-
ing the notes, and reading the plan could—I see you have that figure 6.29?

A. Yes.

Q. Where is that measured from? A. It is a portion of a traverse
line.

Q. Yes? A. Along the?

Q. That is the Colonization road? A. Along the Colonization road?

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Q. Yes? A. That is starting, just east, a short distance, what I cannot tell exactly without a scale, of Dick & Banning's canal, or whatever you call it, waterway through there.

Q. And measured to what point is the 6.29? A. Measured to very close to the mill race from the Keewatin mill.

Q. Now, are there any iron posts in that? A. You can only tell by what is stated here, "iron bar there"——

Q. When you say there? A. Well, between—it is called here—"R.R. 154"—but that is not my figure.

Q. No, the reference numbers are written in afterwards? A. Yes, and 10 the houses are mine.

Q. The houses were all put there by you? A. Yes.

Q. Everything on the map was put there by you except the red figures, I believe——

MR. TILLEY : And the yellow ones?

MR. MCCARTHY : I will ask him.

WITNESS : Practically all, anyway.

Q. What about these yellow ones, Mr. Tilley is asking? A. I do not think those are mine.

MR. MCCARTHY : Let us get the original, just for a moment? 20

Then, while we are getting the original, will you look at this mill race, belonging to the Lake of the Woods? A. Yes.

Q. I see there are several iron bars near that? A. Yes.

Q. Does that accurately represent the location and width of the mill race at that time? A. Wherever it is marked.

Q. That "30" there, that is 30 feet.

MR. TILLEY : That 30 feet, you are referring to the mill race at the west?

A. At the south.

MR. MCCARTHY : That is south.

He is referring to the mill race of the Lake of the Woods? A. Yes. 30

HIS LORDSHIP : Now, just while you are at that, witness, the figures that you have, and the accuracy of location is based upon what, as you found it on the ground, or as you got it from documents?

A. Oh no, on the ground.

Q. As you found it on the ground, based upon what you found on the ground? A. Yes, and shown in the field notes.

Q. Your own field notes? A. Yes.

Q. The field notes from the ground, those from which you prepared the plan? A. Yes.

HIS LORDSHIP : You were not working from descriptions from Title 40 Deeds?

A. No. Of course what goes on these location lines were there, were given direction.

Q. What do you refer to now as location lines? A. For instance, here is Gardener location, probably I have——

HIS LORDSHIP : Do you know definitely are you able to say as to the Gardener location, how much description from title deeds, and base it on that?

A. Here it is, "iron bar, old post, by John McGlatchie" that was a surveyor who laid that out.

Q. Wherever you utilized some old surveyor's work, it is shown on your plan is it? A. I would have to look it over and see.

Q. I am merely trying to find out your basis? A. Yes, in that case it was, and here is another.

HIS LORDSHIP : Mr. McCarthy, so far as the evidence he is giving you goes, it is what is found on the ground.

10 MR. MCCARTHY : Yes, I am just coming to that, I am trying to get the plan in Mr. Stewart's mind again, because he has not seen it.

Q. Now, I will just repeat the question which His Lordship asked you just now, were these locations as a result of your own personal investigation, with your chain man, of course, on the survey? A. Yes.

Q. As you found them on the ground at that time? A. Absolutely so, yes. And there is "an iron bar" here.

Q. Then, will you tell me, what was the object in preparing the tracing as well as the plan? A. Well, the tracing, as you will see, showed more detail than the plan. It shows the traverse line, and I do not think, the other is simply a map.

20 Q. But the information for both the map and the tracing came from the same source, namely, your field notes? A. Yes.

Q. And the tracings are on a larger scale and more detail? A. Yes, from a large scale.

Q. Is this four chains to an inch? A. Yes, there was one I think ten. One is ten, I remember, and this is four, I think.

30 Q. Then, where is the other limit of the Municipality of Keewatin, you have shown me the eastern limit, or the western limit, is that? A. The western limit—I do not know that I—I do not remember whether I got out to the eastern limit or not. I ran down the Portage quite a distance down there, I traversed this, along the C.P.R., but I did not locate the eastern boundary. I do not remember, I might have.

Q. Now, would this plan, or tracing show the elevation of the land on which Dick & Banning's mill was located? A. No.

Q. It does not show any elevation? A. No elevation.

Q. Can you tell us the nature of the land or rock, was it all solid rock through there? A. No, not all solid rock, not on the surface. It did not go very far generally until you got to it. I think to the north there was more rock.

Q. To the north? A. There was a lot of sediment around here.

40 Q. When you say "around here," you mean the south end of the mill?

A. Yes, around near the railway.

Q. And the railway, you say, crossed on a trestle? A. Yes. At that time—

HIS LORDSHIP : Are there no elevations at all shown on this plan?

A. No.

MR. MCCARTHY : I do not think so, my Lord.

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Q. Then, is there any detail that you have omitted from these plans that you know of, Mr. Stewart? A. Well, I cannot recall any.

Q. You cannot recall any? A. There are a lot of details.

Q. You were, you say, about four months, on the job were you?

A. Yes.

Q. And your instructions were what, insofar as detail is concerned?

A. I was just looking over them there, I cannot repeat them, you have it here.

Q. You remember, do you? A. Yes, I do.

Q. What? A. Mr. Kirkpatrick, on leaving Rat Portage, he left some- 10
time before I did.

MR. TILLEY : His instructions were not material, surely. That is going a bit beyond what is evidence in any view.

HIS LORDSHIP : I suppose he would say he carried out his instructions duly, and this was the result.

MR. MCCARTHY : You carried out your instructions, whatever they were?

A. Yes.

Q. And to what extent did you go into detail in making your field notes and in making these tracings? A. Well, I went into sufficient detail to make 20
descriptions and to give an accurate outline of where the buildings were.

Q. And I notice you even got the names of the owners? A. Yes.

Q. Even the names of the owners? A. Yes.

Q. And are the locations of the buildings correct? A. To the best of my knowledge, they are intended to be correct.

Q. Then just to be quite sure, what does the blue mark represent between the words "Dick & Banning" on that plan? A. That blue line represents the bank or shore where the water ran down there.

Q. That is, the blue line, but in between the blue lines? A. Oh, that is merely a shadow line. 30

Q. This blue line running down there? A. The line there (indicating)

Q. The line between these two blue lines—what does that mean?

A. That is just colouring, signifying water.

Q. And what is this? A. The same.

Q. That called "mill race"? A. Just the same.

Q. What I want to get, were they actually on the ground when you were there? A. I beg pardon.

Q. Were the water courses actually on the ground when you were there?

A. Yes, this mill, they were both in operation.

Q. Both mills in operation? A. Yes. 40

HIS LORDSHIP : Those are the Defendant's mills?

MR. MCCARTHY : Yes, my Lord.

MR. TILLEY : Not the Defendant's mills, in that sense, on the same site.

HIS LORDSHIP : When I say "the Defendant's mills", I mean as distinguishing them from any plant of the Plaintiff.

MR. TILLEY : Yes, my Lord.

CROSS-EXAMINED :

BY MR. TILLEY.

Q. Now, Mr. Stewart, I think we understand what you did. First you prepared a large plan of Rat Portage, Keewatin and adjoining territory?

A. Yes.

Q. And that is the plan that we have been referring to as R 78. A. On heavy paper, mounted paper.

Q. The mounted plan? A. Yes.

Q. And that is what you might call a municipal survey? A. Well, 10 that was the—the others are traced, tracings, I think these are tracings, I have not looked them over. I think it is a copy of this.

Q. Oh no, be clear about that?

MR. MCCARTHY : What is it you say, I did not hear you.

HIS LORDSHIP : He said he thought this tracing was a copy of R. 78, and Mr. Tilley said it was not, and that he had better look at it.

WITNESS : I have not seen these plans for thirty-eight years.

MR. TILLEY : Q. It is a little tax on one's memory. There is sheet 1—of the tracing, what we are calling the tracing? A. Yes.

Q. But it is not a tracing of the large plan of Keewatin and Kenora, is it, 20 a good deal more on it? A. Oh yes, there is a great deal more on it.

But I mean where there are any lines down on the one it would be identical on the other.

Q. Yes, I am not suggesting that there is discrepancy in that sense between them, but just to let you read your report, and I think you will remember it, you say, "I have the honour to forward herewith a plan of Rat Portage, Keewatin and adjoining territory." A. That is the title of this plan.

Q. Then you say also, just a moment, "Also three tracings on a large scale showing a traverse which I made"—just a moment, now listen, "Which 30 I made of the Canadian Pacific Railway for a distance of about eight miles, also the traverse of the shore of the Lake of the Woods and Bays thereof within the said territory as well as that of the Colonization Road recently constructed in the neighbourhood"? A. Yes.

Q. Was that the tracing, this one you now have in your hand, one of the three tracings on a large scale shows the traverse you made of the C.P.R., the shore of the Lake of the Woods and the Colonization Road? A. Yes.

Q. That is what that is intended to show, is it not? A. Yes.

Q. And while that area is also on the other map, in this you show the result of your traverse? A. Yes.

Q. Of the C.P.R. and the shore, and it is therefore, A. With dis- 40 tances marked.

Q. It is not a copy of the same plan in that sense at all? A. Oh no, I mean they were based on the same notes.

MR. TILLEY : I am not suggesting they were not? Now then, Mr. Stewart, when you say there were two mills—what mills were there at the point, where we get it on the western mill race, speaking of this one as the western? A. That is the flour mill.

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Q. Now, was that a flour mill, was it? A. Oh no, this is Dick & Banning.

Q. Now, Dick & Banning, was what, what were they doing? A. Lumber, a sawmill.

Q. A saw mill, and that is on the east mill race? A. Yes.

Q. And on the west mill race, was there anything? A. The Lake of the Woods Milling Company.

Q. At that time? A. I do not know as it was named at that time, but they were making flour.

Q. The Lake of the Woods Company were making flour there, in 1889, 10 were they? A. That is my recollection of it.

Q. That is your recollection of it, on this western one? A. Yes.

Q. Did you go into the mill? A. Yes, I want to guard against that now, but I am quite confident it was at that time that I was there, that I was through the mill.

Q. That you were through the mill? A. But I know the mill was in operation.

Q. And then you show the width of that, you say it was 30 feet at the Lake of the Woods mill race? A. Yes, that is thirty feet.

Q. That is thirty feet? A. That is my recollection. 20

Q. Now, have you that shown here, on your field notes? A. I do not know if I have field notes.

Q. They are here, are they? A. Yes.

Q. Now just show me that thirty feet, I have been looking for it, and I cannot locate it? A. It would be shown on the traverse. There may not be a traverse—are there any other field notes here?

MR. TILLEY : Not that I know of. That is all that have been handed to us? A. Where are the field notes of the traverse—that is where it would be shown.

MR. TILLEY : Q. Now, Mr. Stewart, before we pass from it, the field 30 notes that are in this book, produced from the department, are the field notes of what, of the large plan? A. Well, the plan is based on the field notes.

Q. I know, the plan is based on the field notes—for instance, let me ask you this, first—where did you prepare the plan, in Toronto or—? A. No, after returning I think.

Q. Where, Toronto? A. No, my home in Collingwood.

Q. And how long after? A. Oh, immediately after I returned. I may have done some of the work up there, I do not remember.

Q. Now, let us go back to the front page of this book again, and see what it says? A. The title of the book—what does that say—may I look 40 at that.

Q. Yes, look at everything, report and field notes of the outlines of the Municipalities? A. Yes, of Keewatin and Rat Portage.

Q. Yes? A. That is what that is.

Q. That is the report and field notes and outlines of the Municipalities? A. Yes.

Q. What does that mean? A. Is shown on here.

- Q. Is shown on R 78? A. Here it is, here is Keewatin there.
- Q. Is that in it? A. Yes, that is one of them.
That is on the west side here.
- Q. On the west side here? A. Here, I remember that. There is another boundary.
- Q. You find these boundaries in this book, do you not? A. Yes.
- Q. And do you not find anything else in the book except the boundaries of the Municipalities? A. I do not know if there will be something.
- Q. Look at the book and tell us? A. Chaining north astronomically
10 through line run by John McLatchie.
- Q. John McLatchie set a boundary line? A. Yes, here was Keewatin, and here is Rat Portage.
- Q. That was the boundary line? A. Yes.
- Q. Now, I am saying to you these are the field notes of the boundary lines of the Municipalities and they are not the field notes of the traverse you made at all? A. Well, sometimes the traverse is put on the plan alone, you know.
- Q. But there is nothing on that plan (referring to R 78) of your traverse?
- A. On that plan—
- 20 Q. I mean this plan, R. 78? A. No.
- Q. There is nothing on the plan of Keewatin or Kenora or Rat Portage and Keewatin, there is nothing on that plan of your traverse? A. No.
- Q. And there is nothing—? A. Not on this plan, but there is on the other one (sheet one), the tracing.
- Q. But there is on the other one. Now then, you come to these mill races, and these mill races are shown with the boundary lines, as they might be run with the boundary line as if you had run them across the boundary line—did you find anything in this book, being your field notes of your Municipal survey, with regard to these raceways at all, have you? A. Not in this book,
30 so far as I have seen, they are in the other.
- Q. So you have nothing in this book, so far as you are aware, there is nothing now to show where you made a survey that gave the measurements for this raceway, because—? A. Here is the traverse line.
- Q. But we have not the field notes for that, have we? A. We call these the field notes, there is the line, 22.20, that is the line.
- Q. Are these all the field notes you had? Are your field notes all on this tracing, Exhibit 28, which Exhibit 28 is a part? A. I think so.
- Q. So you have no field notes except those that are there? A. I would not say that.
- 40 Q. But those you have—
- HIS LORDSHIP : Mr. Stewart, you must have had field notes, because you could not carry these figures in your head? A. No.
- Q. You must have had field notes some place? A. What I mean is this, maybe this was put right on this tracing, these measurements are all on here, and it was a traverse line—
- MR. TILLEY : Q. Now, Mr. Stewart, if there is anything you have as field notes that would—I would like to see what you have measured, because

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there is rather an important distinction between these two plans which I may bring to your attention otherwise? A. Of what?

Q. Are there any field notes of this plan you are now looking at, being the plan of which Exhibit 28 is taken, (sheet No. 1)? A. I would like to see those other sheets, to see if there is anything more.

MR. TILLEY : These other sheets are only different parts of it, they are not the same part?

A. I cannot remember whether I furnished any other field notes to the tracings, because it is marked on here. It is marked on here, and that is the scale. 10

Q. No, it is marked on, you are looking on the wrong one, it is marked on the western one? A. 6.28 is.

Q. Yes, 6.28, or 29 links from one point to another, but it does not say how much of that is the raceway. A. It is drawn to scale.

Q. I am testing whether it is or not, and whether you had any field notes that you turned in to the department, because if you did they are not produced, showing any measurement in the work you did on these race-ways?

A. That is saying a good deal, showing no measurements, showing the race-ways, if you take the scale there, it would show how far it is.

Q. At any rate, that was done in Collingwood? A. I do not mean 20 there was anything manufactured there, they are copies of what I did.

Q. Now, Mr. Stewart, I see a marked difference between the location of the Dick & Banning mill on one plan and the other, and the distance of the mill from Darlington Bay on the one side, and Portage Bay on the other—in one case it is about half way between the two, and in the other case it is close to the Winnipeg River? A. Where is that?

Q. Here—now, which is right? A. This is Dick & Banning's?

Q. Yes, they are not the same at all, are they, they both cannot be right—they cannot both be to scale, I mean. A. You mean the line comes in closer here than it does— 30

Q. Mr. Stewart, you are pointing to places on this map—now, I am asking you, these places cannot both be right, can they? I mean accurate?

A. Well, I see very little difference.

Q. Do you? A. In that location, from there to there, and from here to here.

Q. "From there to there"—there is the mill, is it not? A. Yes.

Q. There is the mill, and you see where the mill stands. A. This is on a smaller scale.

Q. I know it is on a smaller scale? But you do not say they are both right, do you? A. This would be— 40

MR. MCCARTHY : Q. When you say "this"? A. Would be the correct one.

HIS LORDSHIP : Exhibit 28.

MR. TILLEY : Sheet 1?

A. The one that has all the measurements on, the tracing.

Q. Why? A. Because I think that shows it there.

Q. But you cannot show me anything that entitles you to put it there?

A. Well, I had the notes when I made those lines there, showing the traverse.

MR. TILLEY : Have you got the notes, Mr. Jarvis?

A. I have notes on the traverse.

MR. TILLEY : Q. Have you the original notes there? A. They are prepared.

MR. TILLEY : Q. Have you the original notes from which they are prepared?

MR. JARVIS : No, Mr. Stewart would have them.

10 MR. TILLEY : Q. And you have not got them now? A. No, not with me.

Q. Now, Mr. Stewart, where is the C.P.R. on this plan? A. Here it is.

Q. Canadian Pacific Railway, this red line? A. The red line is the centre.

Q. Now, would you just show—the red line is the centre? A. Yes, the red line is the centre.

Q. Now, do you say the red line of the C.P.R. crosses an expanse of water such as that? A. At that time.

Q. At that time? A. It was a mill pond.

20 Q. Where is your mill pond in this map of the township? A. It does not show it there.

Q. And the C.P.R. runs across—the C.P.R. runs right across the race-way? A. Oh, yes.

Q. And in this case, it runs across, according to you it runs across a pond? A. No, I do not say that.

Q. The centre line is the red line? A. The centre line of the C.P.R. is a red line.

30 Q. Now, does that line, being the centre line of the railway, does it or does it not cross what you call a pond? A. That was shown—my recollection was something 300 or 400 feet, or perhaps less, I would not say exactly. but it was quite a distance across a trestle work.

Q. Then this plan R 78, is that correct? A. There may be.

MR. TILLEY : One or other is wrong. One or other is wrong, that is obvious, is it not?

A. This is evidently correct, sheet one, that is from the tracing, from the measurements.

MR. MCCARTHY : When you say “this”?

HIS LORDSHIP : He means Exhibit 28.

WITNESS : The other has not the measurements on it.

40 MR. TILLEY : And the Dick & Banning mill is correctly shown with reference to Darlington Bay, with reference to this sheet one?

A. I judge so.

Q. You judge so, it is, is it? Do you say it is so? You say this is an accurate plan, is it shown the right distance from Darlington Bay? A. The mill site?

Q. The mill site is what I am asking you? A. Well, I have said it is shown right there (indicating).

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Q. Is it correctly shown there? A. Yes, I will say it is.

Q. And would you say it is that far away from Darlington Bay? A. It is very difficult for me to remember that far back, but my notes show it to be there.

Q. Mr. Stewart, you do not suggest, do you, that you actually measured the distance from the mill to Darlington Bay? A. From the mill to Darlington Bay?

Q. Yes? A. I certainly measured the distance from the railway, where my traverse line went up to this location.

Q. Up to the mill? A. Yes.

Q. Now, did you measure up to the mill from the race-way? A. Up to the mill? 10

Q. From the mill, or from your traverse line? A. I must have, or I would not have known where to put the mill.

Q. You might have it in the wrong place, I am suggesting? A. Not by measure.

Q. Did you measure it? A. I did. I state in my report, that is one of the things I was to do, to show the buildings, and so on as I went along on this traverse.

Q. Now, what does this mark mean, between the mill——? A. Which 20 mark?

Q. This red mark? A. I do not think that is my mark. I think it is a reference to something in the department.

Q. Here is another one here? A. Yes, is that not "R.R."?

Q. Is that not marked? A. Not in my recollection. I did not have that.

Q. You were not instructed to measure from the mill to Darlington Bay? A. There were no definite instructions.

HIS LORDSHIP : Are there any measurements there?

MR. TILLEY : There are no measurements on this plan to show the loca- 30 tion of the mill?

WITNESS : Except the scale.

HIS LORDSHIP : We ought to figure it out from the scale of the map?

A. Yes.

MR. TILLEY : Q. And you are not suggesting there was water in the tail race of that mill, are you? You are not saying from memory you can tell the Court there was water that day when you made the survey? A. No, I cannot remember whether it was or not, but I have shown it there.

Q. You have said to Mr. McCarthy, it showed there was water there?

A. So it does. If there was water there, it shows it. 40

Q. But you do not know if there was water? A. Yes, I do.

Q. How do you? A. There was water in the Bay, and there would be water there in the same way.

Q. Is there always water in the tail race? A. There generally is, if it went through, if there was water in the head race, there would be water in the tail race.

Q. It might be if they were operating the mill? A. The water has got to go through.

Q. So whatever goes in at the head must go out at the tail.

MR. TILLEY : All right, Mr. Stewart, that will do.

MR. TILLEY : Now, have we a copy of this in?

MR. McCARTHY : A copy of the report will be in.

EXHIBIT No. 31. Letter dated 20th December, 1889, E. Stewart to A. S. Hardy, Commissioner of Crown Lands, report accompanying plan and tracings (Exhibit 28).

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10 HIS LORDSHIP : Mr. McCarthy.

MR. McCARTHY : Shall I go on?

HIS LORDSHIP : I am satisfied for another half hour or so, if you wish to.

MR. McCARTHY : Then I propose to put in, my Lord, the Order-in-Council approved by the Lieutenant-Governor on the 9th of July, 1874,

“The Committee of Council have had under consideration . . . adopted and ratified by your Excellency.”

MR. McCARTHY : This was submitting for ratification a temporary Provincial Boundary of the Province of Ontario, and adopting a system for the sale of lands and adjusting disputed rights in the territory claimed by both

20 Governments.

HIS LORDSHIP : That will be Exhibit No. 32.

MR. McCARTHY : Your Lordship will find that in the Ontario Boundary papers of 1882.

MR. TILLEY : I submit, my Lord, after reading it that cannot affect us. We have two patents in now.

HIS LORDSHIP : I suppose the object of Mr. McCarthy is to show the necessity for issuing the patents, and this was by authority.

MR. TILLEY : It was an Ontario patent, we both have Ontario patents.

30 HIS LORDSHIP : Does either of you question the validity of the right of the grantee of the others patent?

MR. TILLEY : No.

MR. McCARTHY : No.

HIS LORDSHIP : You may question the right of the validity to issue the patent against yourselves in respect to something the patent purports to give.

MR. TILLEY : Our rights under the patent may be one thing.

HIS LORDSHIP : But not in the right of the grantor.

MR. TILLEY : No, whether it is in the Dominion or the Province.

MR. McCARTHY : Your Lordship sees these rights were given us prior to the question of the ownership being determined.

40 HIS LORDSHIP : Whatever rights you had were given to you while the whole matter was in a state of flux.

MR. TILLEY : My friend has the patent from Ontario after the dispute was decided.

MR. McCARTHY : I say that—

MR. TILLEY : That is the end of it.

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MR. McCARTHY : If we have a Dominion right, confirmed by the Ontario I say our rights go back to the Dominion patent.

MR. TILLEY : There was no Dominion patent.

HIS LORDSHIP : I will allow it. If it is objected to, subject to the objection, and it will be a matter for discussion afterwards, I suppose, Mr. McCarthy.

EXHIBIT No. 32. Order-in-Council dated 9th July, 1874, and approved by the Lieutenant-Governor and is certified by Mr. Scott, Clerk of the Executive Council, Ontario.

HIS LORDSHIP : From the King's Printer? 10

MR. ROBINSON : I would rather it did not go in, because it belongs to me. These are copies from that.

HIS LORDSHIP : Perhaps you can arrange it with Mr. Tilley.

MR. TILLEY : Certainly, if I am asked, certainly let him take the book, let him have a look at it.

HIS LORDSHIP : That is the arrangement regarding the conventional boundary between the Dominion and the Province, temporarily?

MR. McCARTHY : Yes, my Lord, and attached to that—perhaps it would be convenient to add them, if your Lordship thinks well. Attached to that would be a report of the Privy Council, approved by the Governor-General on the 8th of July, 1874. 20

HIS LORDSHIP : Is it pursuant to that the Order-in-Council is issued?

MR. McCARTHY : Yes, my Lord, and I have got the copies of the Exhibits.

“Report of a Committee of the Privy Council, approved by the Governor-General on the 8th day of July, 1874 (Sess. papers, Ont. 1875—6 Number 14 P. 9).”

“The Committee have had under consideration a memorandum, dated 29th June, 1874 . . . Certified (sgd.) W. A. Hinsworth, C.P.C.”

MR. McCARTHY : Now, this is a memorandum that was accepted by both Governments, the Government of the Dominion of Canada, having by Order-in-Council, dated 26th June, 1874, “Memorandum of agreement for Provisional Boundary in respect of Patents of lands. (*Ibid.*, P. 10). The Government of the Dominion of Canada, . . . Signed in duplicate this 26th day of June, 1874. (Sgd.) David Laird, Minister of the Interior, T. B. Pardee, Commissioner of Crown Lands.” 30

EXHIBIT No. 32. Order-in-Council (Ontario) 9th July, 1874.

Report of Committee of Privy Council, 8th July, 1874.

Memorandum of Agreement signed by Minister of Interior and Commissioner of Crown Lands, dated 26th June, 1874. 40

MR. McCARTHY : The three can go together, the copies of two Orders-in-Council and the Memorandum agreed upon.

HIS LORDSHIP : The lands in question lie which way from this line that was named—east and south, or west and north—the lands that were conveyed, could you tell me just off hand?

MR. MACINNIS : West of Hunter's Island, my Lord.

MR. McCARTHY : I will call Mr. Cory.

WILFRED M. CORY : sworn

EXAMINED BY MR. McCARTHY.

Q. Now, Mr. Cory, what is your position? A. Assistant Solicitor, Department of the Interior.

Q. And you have been asked to produce the plan made by John McLatchie. Have you a copy of it here? A. Yes.

Q. What is this plan you are producing? A. This is of the sections 19 and 20, Township line, range 22, east, and showing traverse of Lake of the Woods, to east branch of Winnipeg River, together with suitable locations for water power, and also the property of the Keewatin Lumbering and Manufacturing Company.

Q. And what is the date of this plan? A. It is dated 14th of May, 1881.

HIS LORDSHIP : Are you putting in a copy?

MR. ROBINSON : I have a certified copy.

MR. McCARTHY : Q. And made by whom? A. John McLatchie, D.L.S.

MR. McCARTHY : Possibly, so as not to injure the original plan, we will now use the certified copy.

HIS LORDSHIP : This certified copy comes from the Department?

MR. ROBINSON : Yes, my Lord, and is certified by the Surveyor-General.

HIS LORDSHIP : What did you say was the date of this plan?

WITNESS : It is the 14th day of May, 1881.

MR. McCARTHY : Q. You can wrap that original up, and we will deal with this certified copy.

EXHIBIT No. 33. Certified copy plan dated 14th May, 1881, by John McLatchie, D.L.S., of sections 19 and 20, Township 9, range 22 east showing traverse of the Lake of the Woods to east branch of the Winnipeg River.

MR. McCARTHY : You asked several times about this title, that is Macaulay—that is "C".

HIS LORDSHIP : That afterwards became Dick & Banning?

MR. McCARTHY : That afterwards became Dick & Banning.

HIS LORDSHIP : Where was the other one?

MR. McCARTHY : It was in there (indicating). You were asking several times about the other mill. That is the original Keewatin Lumbering and Manufacturing Company. They got their water down through here. They were the pioneers.

MR. McCARTHY : Q. Now, Mr. Cory, have you got—Mr. McLatchie, I believe is dead? A. I am instructed so.

Q. Have you got the instructions issued by your department to Mr. McLatchie for this plan? A. Yes.

Q. What are the date of the instructions?

HIS LORDSHIP : The plan was dated the 14th of May, 1881.

MR. McCARTHY : 25th of February, 1881.

MR. TILLEY : I do not know whether it is necessary to object. Your

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Lordship has not ruled. I do not know what this is aimed at. Would it not be better to start with whatever documents emanated from the Dominion and see if there is anything else that is material.

HIS LORDSHIP : This, I understand is the plan upon which Mr. McCarthy is basing some portion of his defence, and he says McLatchie is dead, and the instructions given to McLatchie by the Department upon which he prepared this plan are so and so, and he will argue from that something.

MR. TILLEY : That cannot affect the Plaintiff.

HIS LORDSHIP : I do not know, it might perhaps give some explanation, the same as what is written on the plan. You say this is so and so, but it will be a matter for argument how much weight is to be attached to it. 10

MR. MCCARTHY : Q. The 25th of February, 1881? A. Yes, Mr. McCarthy, I have it.

MR. MCCARTHY : Let me have it.

HIS LORDSHIP : Exhibit 34, is copy of instructions given to McLatchie by the Department.

MR. MCCARTHY : I will read them. You tell me if I am correct. I have a certified copy.

“John McLatchie, Esq.; D.L. Surveyor, Winnipeg, Man. Sir,—By direction of the Minister, I have the honour to instruct you to make a survey . . . I have the honour to be, Sir, Your obedient servant, (sgd.) Lindsay Russell, Surveyor General.” 20

MR. MCCARTHY : That is Exhibit No. 34.

Q. Have you got Mr. McLatchie's report? A. Yes.

HIS LORDSHIP : Is there much to be obtained from this witness. I suppose he has got to be back tomorrow morning.

MR. MCCARTHY : I am afraid he has.

HIS LORDSHIP : Mr. Tilley is going to engage him in conversation.

MR. TILLEY : I do not think so.

HIS LORDSHIP : In that case if you are only going to be two or three minutes, you might finish with him, and let him get away tonight. 30

MR. MCCARTHY : We won't finish with him tonight. I will just finish by putting in that McLatchie Report, and clean that up. I have a certified copy of it, Mr. Cory.

HIS LORDSHIP : This will be Exhibit No. 35.

MR. MCCARTHY : The report is dated the 14th of May, 1881, from Winnipeg, and is addressed to the Minister of the Interior.

He says, “I have the honour, in accordance with instructions, in the instructions.”

He says the weather was very mild, and “after determining . . . boundary of section twenty.” 40

Then he says, “The east boundary of section 19 having . . . the road allowance on this line.”

Then he speaks of his traverse, and so on, and I will skip the unimportant parts. Then he goes on, “I also traversed the east shore of the west branch . . . and field notes of survey.”

I will show your Lordship (indicating).

“The cost of construction . . . in red shaded lines.”

He says, “I also ran traverses across the neck of land . . . marked ‘A’, ‘B’, ‘C’ and ‘D’.”

I will point these out to your Lordship on the map. Perhaps tomorrow.

EXHIBIT No. 35. Copy of McLatchie’s report.

HIS LORDSHIP : Will that do for tonight then?

Court adjourned until 10.30 tomorrow morning.

Court resumed, May 18th, 1927, 10.30 a.m.

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WILFRED M. CORY : Examination continued.

10 BY MR. MCCARTHY.

MR. MCCARTHY : Your Lordship will remember we put in this plan as Number 33, and put in McLatchie’s report, and you will recall he referred to several places C. and D. the two suggested mill sites, and one at A and one at B—

HIS LORDSHIP : In connection with this, these are profiles of prospective channels or canals that would be convenient for prospective water powers.

MR. MCCARTHY : What I wish to show your Lordship A and B he says the cost would not be very great.

HIS LORDSHIP : That is about the locality.

20 MR. MCCARTHY : I am calling your Lordship’s attention to that in the case of the next Exhibits, which I propose to put in, which are Mather’s reports on the same subject.

MR. MCCARTHY : Then the next document which I am asking Mr. Cory to produce are four letters, passing between Mr. John Mather and the Minister of the Interior, and Mather’s report to the Minister of the Interior on this same subject.

MR. TILLEY : My Lord, I do object to further documents of this kind being attached to the Record. I submit they are quite irrelevant to any matters we have got to consider.

30 What my friend has shown now is this, if he has succeeded in making his point, and that is that there was a time when the boundary line to the west of Ontario was in doubt, that there was an arrangement possibly having no particular legal sanction, but nevertheless a *modus vivendi* arranged that east of a certain point the patents should be granted by Ontario, and west of that point they should be granted by the Dominion, and that when the true boundary was determined the proper authority would grant a patent.

Now, Ontario did grant a patent to Dick & Banning of the property that we are now dealing with.

HIS LORDSHIP : One of them, at any rate.

40 MR. TILLEY : One of them “C”. I take it that on your Lordship’s ruling yesterday in order to see what was done your Lordship would let the evidence go a certain distance, but the Dominion patent gave him nothing. It would be a matter of failure to carry out the arrangement made between the Province and the Dominion if the Province declined later on to make the grant in accordance with its promise to the Dominion, but we are going back of that. Now, the correspondence with individuals and the Dominion, that cannot throw any light at all, not in the remotest way, on the rights conferred

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to parties by the Ontario patent. Your Lordship will remember that they put in the Ontario patent to Dick & Banning as being their title to Mill "C". Now, historically, possibly, it is not objectionable to say that there was an earlier patent to Macaulay issued by the Dominion, at the time that there was a *modus vivendi*, but how can it matter to go back of that and show all the correspondence that took place with the Province. I submit it would not be material in the case of the Province, but why should it be evidence at all to go back and show the Departmental correspondence with regard to these matters?

HIS LORDSHIP : Mr. Tilley, frankly my offhand view, knowing what little I do of it would be that perhaps it is not strictly admissible as evidence, at the same time, I am not prepared at this stage to say that it might not be of some value, or of some assistance, either to me or some other Court at some later stage. 10

MR. TILLEY : It cannot be of assistance unless it is evidence.

HIS LORDSHIP : It should not be a difficult matter in some of these aspects to be evidence. Now some question has been raised as to how these channels originated, and this may possibly, I do not know, but it might possibly have some bearing on the origin of the other channel, which was not then constructed.

MR. TILLEY : I am not objecting to any plans that help to fix a date as to when channels were there, and your Lordship has it now that at a certain time, Mr. Stewart gave some evidence yesterday, that at a certain time he made a survey. I shall have something to say about the accuracy of the work he did later on, but he said that at that date there were two mills on two channels, of course, any evidence of that kind, I am not objecting to at all, but how a channel came to be built or constructed, my submission is it is quite immaterial if it is shown by correspondence between individuals and the Dominion Authorities, not shown in any grant, and certainly not carried forward and shown in any grant by the Province. 20

HIS LORDSHIP : Do you mean by that that you take the position that even if these letters may be of record in one of the Departments of Government, and are executed and copied down there as containing definite statements that they are not in full sense evidence in a Court, or that they simply do not affect the question we have before us? 30

MR. TILLEY : I have not made myself clear. They do not affect the question. If they had taken place between the parties and the Province, they would not have affected the rights of the parties, under the patent, but in addition to that there is the objection they did not take place between the parties, and the authority that had any right to make the grant. It might be a grant for cutting— 40

HIS LORDSHIP : At that particular time it seems to have been in a state of doubt as to who had the right.

MR. TILLEY : Quite, but that does not—

HIS LORDSHIP : And they made what you spoke of as a *modus vivendi*, the arrangement being that whenever the right should be established in one or other, then that one or other should be bound by whatever sales had been made.

MR. TILLEY : Not that they should be bound, they could give a grant— one authority could give a patent, and later on, if the patent was invalid, the patent would be given by the other authority.

HIS LORDSHIP : My expression was not apt. The effect was the same.

MR. TILLEY : That does not make this evidence.

HIS LORDSHIP : No, but it may be it would be useful as showing what the atmosphere, the environment was at that time.

MR. TILLEY : Atmosphere, I submit, is very vague. I wonder does it affect Courts. I have had Counsel sometimes accuse me of developing atmosphere against him intentionally. I never did that myself.

MR. MCCARTHY : Not intentionally.

HIS LORDSHIP : I do not know that non-jury Courts admit that atmosphere has effect.

MR. TILLEY : I do not want to take up more time in making the objection.

HIS LORDSHIP : Mr. Tilley, just as I ruled in regard to the question that you raised at an earlier stage in the action, I think that in view of the modern practice in regard to the admission of evidence of what may not be thought to be evidence strictly speaking at the time, I think it is my duty, unless I am very clear that anything submitted is not evidence, that I should let it in for what it may be worth.

MR. TILLEY : Or not worth.

HIS LORDSHIP : Or not worth, or what really it may be worth, and regard it or disregard it as I ultimately may conclude is proper, and any other Court can deal with it. It is not a question of credibility or otherwise, the Court can deal with it just as well as I can.

MR. MCCARTHY : In that connection, and probably on what my friend said just now. My friend said we may get as many channels as we like on our property but that when it comes to letting water through these channels it was entirely another matter. Now, this was the property that during the time that the boundary was in dispute was assigned to the Dominion to deal with, and what I propose to do is to show your Lordship briefly by this correspondence, that there was a comprehensive scheme on the part of the Dominion to create water powers and the channels through this particular gate, and that my friend's patent in 1894, when it excludes him from certain rights it expressly refers to these particular gates, and your Lordship will also note, in Exhibit 31, which I filed yesterday, it is not a question of the Government agreeing to issue a patent or not, it is a question of which respective Government shall confirm and ratify.

HIS LORDSHIP : It is not the issue of a new patent, it is a ratification of the one already issued.

MR. MCCARTHY : It is confirmation by the Ontario Government of what the Dominion Government had already done.

The two Orders-in-Council, I propose then to put in first of all, my Lord, a letter from John Mather to the Deputy Minister of the Interior, Ottawa, dated 2nd of April, 1881, and I perhaps might say in passing that Mr. John

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Mather was the pioneer of that country as to the power as would appear by evidence which I will submit later.

HIS LORDSHIP : His letter is to whom?

MR. McCARTHY : His letter is to the Deputy Minister of the Interior at Ottawa, and it is dated 2nd April, 1881, and Mr. Cory is producing the original, and I am offering a certified copy. The letter is written from Keewatin Mills and says, "Yours of the 22nd inst. (ulto?) duly reached me, . . . but I will do it as soon as I can."

EXHIBIT No. 36. Certified copy letter dated 2nd April, 1881, John Mather to Colonel Dennis, Deputy Minister of the Interior, Ottawa. 10

MR. ROBINSON : Would it be a convenience for your Lordship to have copies of these letters?

HIS LORDSHIP : I am making note, just as I can come to the very pertinent content of the letter. I may perhaps later ask Counsel to give me a book or a gathering together of the correspondence that they think is important.

MR. McCARTHY : Yes, my Lord, we will do that, just for convenience of handling.

MR. McCARTHY : The next letter is also a letter from Mather to the Deputy Minister and dated the 21st of April, 1881, in which he says, "Yours 20 of the 2nd inst. got here yesterday, . . . complete the report next week."

EXHIBIT No. 37. Certified copy letter John Mather to Deputy Minister of the Interior, dated 21st April, 1881.

MR. McCARTHY : I regret that I have not got copies of the letters written by the Department. They are not on the file. There are no copies on the file, and I am afraid the others were probably lost in the fire which took place at the Mills there, sometime ago.

Then the next Exhibit, I will put them in together, if your Lordship approves, it is the letter of Mr. Mather of the 28th of April, enclosing his report of the 27th of April, 1881. 30

EXHIBIT No. 38. Certified copy letter dated 28th April, 1881, John Mather to Deputy Minister of the Interior with accompanying report dated 7th April, 1881.

"Keewatin Mills, 28th April, 1881, Col. J. S. Dennis, Deputy Minister of the Interior, Ottawa. Sir,—I have the honour to send you my Report . . . (sgd.) John Mather."

MR. McCARTHY : Now then, the report is of the 27th of April, 1881, and I may say, unfortunately, the Mather map has also been lost. I understand with the result one has to read the Mather Report in connection with the McLatchie map, and as I pointed out to your Lordship a few moments ago, 40 your Lordship will see what Mather really does is try and combine canals or outlets A and B as suggested by McLatchie.

"You were pleased to request me . . . there is a depression clear across Tunnel Island at"

That of course refers, I do not think to the exact location that the Plaintiffs occupy today, but on the same branch of the river.

HIS LORDSHIP : It is that branch.

MR. McCARTHY : "There is a depression clear across Tunnel Island at where Trusting that this report will meet with your approval and contains all the information you require, I have the honour to be, Sir, Your Obedient servant, (sgd.) John Mather."

HIS LORDSHIP : He appears to have been a man with some vision.

MR. McCARTHY : As your Lordship will see, by the Minute later, it was Mather himself insisting at one period at one time actually conceived the idea of transferring this power to Winnipeg long before anyone else had thought of transmitting power that distance.

10 HIS LORDSHIP : I noticed in reading that report with the plan, he thought they should cut a canal from above and bring it out below and in that way make a plant that was adopted at Chippewa.

MR. McCARTHY : I think he should be called the Adam Beck of Kenora.

Q. Then, I ask you, Mr. Cory, to produce a memorandum from the Minister of the Interior recommending a grant of seventy-five square miles to Macaulay, dated the 16th of April, 1878—

Mr. Cory has the original. I will put in a certified copy. I do not propose to read all these documents to your Lordship ; I will try and extract the important parts.

20 HIS LORDSHIP : That will be Exhibit 39, and consists of what?

MR. McCARTHY : A memorandum from the Minister of the Interior, recommending a grant to Macaulay.

Macaulay's mill site, I think, being the second mill, or I may be wrong, it may be the third mill site. It is either the second or third mill to be erected.

HIS LORDSHIP : The date, Mr. McCarthy?

MR. McCARTHY : It is dated 16th April, 1878.

There is a lot I think, of unnecessary matter in it with regard to the area to be granted, and I think the important part is this, "As Mr. Macaulay has announced his desire . . . upon the same being surveyed and reported."

30 HIS LORDSHIP : That is his timber.

MR. McCARTHY : That is the only suggestion Mr. Macaulay wants to get on with the erection of mills before the railway reaches there.

HIS LORDSHIP : The seventy-four odd square miles is the timber?

MR. McCARTHY : Yes, my Lord.

"And of course, it is understood . . . the limits now granted."

HIS LORDSHIP : From what you have read there is no definite reference to the mill site?

MR. McCARTHY : No, my Lord, only the desire of Macaulay to get on at once with the erection of his mills.

40 That is Exhibit 39.

EXHIBIT No. 39. Memorandum dated 16th April, 1878, Report by David Mills, Minister of the Interior to Council.

"Department of the Interior, Ottawa, 16th April, 1878. Memorandum : The undersigned has the honour . . . Respectfully submitted. (Sgd.) David Mills, Minister of the Interior."

MR. McCARTHY : Then, just to complete the record, I will put in the

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lease to Macaulay of the seventy-five square miles of timber which is dated the 1st of May, 1878.

MR. TILLEY : Are you not going much further than his Lordship's ruling?

HIS LORDSHIP : I do not know how this can help us, Mr. McCarthy.

MR. MCCARTHY : My only object in putting this in is to show that this lease was first made of the timber, and then the mill site given him for the purpose of cutting.

HIS LORDSHIP : May we not state on the record that Mr. Macaulay was cutting timber at a certain date, without putting this in.

MR. MCCARTHY : I won't put this in as an Exhibit, I will simply state, 10
"according to the Records, Macaulay was granted seventy-four odd square miles of timber limits in the District of Keewatin, dated May 1st, 1878, and recorded on May 10th, 1878, and the grant is made on the conditions mentioned in the fifty first section of the Dominion Lands Act."

HIS LORDSHIP : What does that touch, Mr. McCarthy, the fifty-first section? Does it touch us in any way?

MR. MCCARTHY : No, my Lord, it just shows the authority of the Dominion to make the grant. Your Lordship wanted the reference.

Now the next is a letter from W. J. Macaulay to Sir John A. Macdonald, dated 5th November, 1878, in which he makes his request, asking permission 20
to make the water power.

HIS LORDSHIP : This is a letter?

MR. MCCARTHY : From Macaulay, dated the 5th November, 1878, to Sir John A. Macdonald. He says, "Dear Sir. I have a timber limits a bridge of forty or fifty—"

MR. TILLEY : That should be "station".

MR. ROBINSON : It says "section" in the original, just a misprint.

MR. MCCARTHY : "What I now ask for is that a bridge of forty or fifty feet of seeing you."

MR. MCCARTHY : I think that has reference to the railway cutting there, 30
and your Lordship will remember the railway originally crossed that on a trestle, and I think what Mr. Macaulay then complains of was, they were going to make a fill instead of a trestle.

EXHIBIT No. 40. Copy letter, W. J. Macaulay, dated 5th November, 1878, to Sir John A. Macdonald.

MR. MCCARTHY : Q. Then the next I put in is a report dated November 23rd, 1880.

It is a report by a man called Otis B. Davidson, to the Minister of Crown Lands, Ontario, but is in the files in Ottawa, and I am asking Mr. Cory to give me a certified copy. 40

It is dated "Rat Portage, Lake of the Woods, 23rd November, 1880, and is addressed—"

MR. TILLEY : This is all subject to the objection, my Lord. I suppose your Lordship is going to admit it.

HIS LORDSHIP : I think I will allow this kind of thing in, Mr. Tilley, and I will decide afterwards.

MR. MCCARTHY : Q. He says, "Sir, I beg leave to report the survey

of a block of land at Keewatin, for W. J. Macaulay of Winnipeg, Man., for a water power mill yard and piling ground. It lies immediately adjoining to the east of a location surveyed by me for G. R. Fellows—plans of which have been forwarded to your Department yesterday——”

MR. MCCARTHY : I understand they are not available, Mr. Cory?

A. No.

HIS LORDSHIP : They cannot be found?

WITNESS : They cannot be found.

MR. MCCARTHY : “It is connected with the Canadian Pacific Railway
10 I have the honour to be Sir, Your obedient servant, (sgd.) Otis B. David-
son.”

EXHIBIT No. 41. Letter dated 23rd November, 1880. · Otis B. Davidson
to Minister of Crown Lands, Toronto.

MR. MCCARTHY : I suggest I put in the portion of the field notes which refer to the canal. I have copies of all the field notes here, if my friend wants it in, well and good.

HIS LORDSHIP : Field notes that are referred to in Exhibit 41.

MR. MCCARTHY : Yes, my Lord. As your Lordship will see there are a
20 lot of these have no reference to the canal—the only one that has reference
to the canal is page five.

HIS LORDSHIP : Yes. Well, subject to what Mr. Tilley may say, I am satisfied with the one you suggest. The other apparently would not be of any service, Mr. Tilley may want them for cross-examination.

MR. MCCARTHY : I will give them all, and if we do agree on putting in page 5, may we attach it to Exhibit 41 ?

HIS LORDSHIP : Yes, let it go with the report itself.

EXHIBIT No. 42. Survey of lands at Keewatin for W. J. Macaulay, water power and mill ground dated 20th October, 1880, by Otis B. Davidson, field notes.

30 MR. MCCARTHY : Then I put in next, my Lord, an agreement for sale between Macaulay and Dick and Banning, dated 14th November, 1881, which will be Exhibit 43, and the only significant part of that agreement is the third paragraph in which it is recited, “And whereas there is situate and being has agreed to obtain from the Minister of the Interior of Canada, for the parties of the second part”—your Lordship will see he had not yet——

MR. TILLEY : One would think that was not evidence against any person.

HIS LORDSHIP : I do not see that it is binding in any way, but that it is perhaps more narrative than anything else. It is perhaps historical.

MR. TILLEY : Atmosphere.

40 MR. MCCARTHY : No, we are getting water now.

MR. TILLEY : I have not had time to check over these field notes. We had better have them. We can only use what we wish.

HIS LORDSHIP : Are they not in as part of Exhibit 41 ?

MR. MCCARTHY : They are too bulky.

HIS LORDSHIP : It is with regard to the one site only.

MR. TILLEY : That is the Mill “C” site.

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MR. McCARTHY : “And that he the said party of the first part shall and will, . . . reserved to the Government under said leases.”

EXHIBIT No. 43. Agreement W. J. Macaulay and Dick and Banning, November 14th, 1881.

“This Indenture made in duplicate this fourteenth day of November, . . . Signed, sealed and delivered in the presence of (sgd.) R. Cassidy, as to the execution by all parties. (sgd.) W. J. Macaulay (seal), (sgd.) W. R. Dick (seal), (sgd.) W. W. Banning (seal).”

MR. McCARTHY : Now, just by way of explanation, there is a lot of correspondence passing between Macaulay, and the Department in the effort to get this ground. There is a hold back there of \$20,000, and we now have the correspondence between Macaulay and Sir John A. Macdonald and others urging that this ground be given and finally it is given. 10

HIS LORDSHIP : Mr. Tilley, you object there is too much political atmosphere.

MR. TILLEY : Really, it is more far-reaching than that. I have not asked to stop the proceedings. I think there were only a few that will be useful. We are getting into a mass of documents, there is ample authorities for this—the Patent cannot be construed on any of these negotiations or documents—the highest authority, I would be prepared to submit— 20

HIS LORDSHIP : I do not understand, Mr. McCarthy, that you want to put in the rest of this correspondence showing all of the negotiations that went on.

MR. McCARTHY : There are one or two letters that I think are important. I do not want to put it all in.

HIS LORDSHIP : Suppose you show these to Mr. Tilley and limit them as much as possible.

MR. McCARTHY : I think, my Lord, in fact there are only five or six I want to put in out of a whole raft of correspondence. There is a stipulation the C.P.R. shall not fill across this opening, which apparently had some bearing and finally the recommendation of the Minister and the granting of the patent. 30

MR. TILLEY : There is ample authority we are getting into a field that is not proper, it just shows the difficulty of drawing any line if one embarks in an attempt to get at what is meant by a solemn grant by the Crown by Departmental correspondence.

HIS LORDSHIP : There is something, however, to be said in regard to that, when we come to construe, as doubtless we will have to, the provisions in the patent or patents where they say nothing is to interfere with or prejudice so and so, and it is not to be exclusive, or getting at this, that and the other thing that are not defined. 40

MR. TILLEY : If your Lordship pleases, what we are now at is my friend's grant, and that is what we are construing, not my grant—this departmental correspondence is surely the most remote thing one can imagine to determine my grant, because I am not a party to this at all. This is not correspondence that comes in in any way to influence me when I am no party to it, and have

nothing to do with it—my friend is now on his own ground, and on the rights therein.

HIS LORDSHIP : I suppose I have been hearing so much in the past days that I have not been able to carry so much, but in your grant there is some language used which would seem to indicate that further rights either had been or were to be given.

MR. TILLEY : Well, yes, quite, but, my Lord, this is not the way to prove the giving of any water power.

HIS LORDSHIP : No, but suppose that these others, as appear by Departmental correspondence, were under consideration at the time or something of that kind—I do not say that is the situation, but in that way it might be—I am not prejudging—it might perhaps be admissible as showing that these were the very things that were under consideration, and were had in mind but without defining them.

MR. TILLEY : I do not want to be too urgent about it, I will try and not do that, but surely my grant cannot be construed as creating rights in some person else.

HIS LORDSHIP : They would have to show, following afterwards.

MR. TILLEY : On the point we are on now, my grant should be forgotten, it has not anything to do with the point my friend is on now. He is proving some legal right in his client, or attempting to prove it, and my exception cannot help him or hurt him on that, and he does not prove it either as vesting a right in himself as against the Crown or against any person else.

HIS LORDSHIP : Why cannot it affect yours in this way, that if your grant contained certain exceptions or expresses certain exceptions—

MR. TILLEY : I do not think quite that, my Lord. May I just ^{read} leave the clause, because it is a little different from that, and it says, “And subject also to the condition and understanding that nothing herein contained shall be construed as conferring upon the grantees exclusive rights elsewhere upon the said Lake of the Woods or upon other streams flowing into or out of said Lake.” Now that cannot improve on the point we are on now. This grant does not confer upon me exclusive rights elsewhere than where my grant is.

Then it says, “Or shall confer upon said company power or authority to interfere with or in any way restrict any powers or privileges heretofore enjoyed by us.” Now that is the grant. “Or which may hereafter be granted or demised”—if it had already been granted or demised, the grant would be there, and that would precede me, of any water powers or privileges heretofore—it does not say water powers or privileges hereinafter enjoyed by us—“or which may hereafter be granted or demised to any other person or company in respect of any other water power on the said Lake of the Woods or any other stream flowing out of or into said Lake;”—“provided that any such powers or privileges which may hereafter be granted shall not destroy or derogate the privileges hereby granted”.

Now, my friend claims his grant precedes mine and he produces his patents—one is 1891 and the other is 1892—and since these patents were granted by Ontario his rights were complete in his patent. Now then that is not, whatever they were, insofar as they took precedence over me, of course I am

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bound by that, but there is nothing in this patent which confers upon him any other right, nor is there anything in this patent that takes away from me any right I have got in respect of that water-power—it says, “You shall not get, you shall not have exclusive rights by this grant elsewhere”, and it says “rights heretofore enjoyed by the Crown shall be reserved,” and it says, “the Crown may hereafter grant further rights but not to impinge on yours”. Now my friend can only affect me by showing he has rights vested in him as against the Crown before my patent, because he is the prior grantee according to him, and therefore my submission is, we are really embarking on an inquiry that can only confuse the issue. It cannot help us construe his patents, and his rights are determined by the Ontario grant. If he did not get by the Ontario grant all that he should have by virtue of any arrangement by the Dominion, it would be a case for him having his patent reformed, and he has made an effort to bring in the Crown in order to have it reformed, but the Crown is not here, and he cannot, in my submission, succeed in setting up any claim as against me, except after showing he has it within his patents. 10

Now I do not want to, but I am sure your Lordship knows I do not want to protract the matter. I appreciate a lot of this documentary material can be put in shortly, and in the end, if it is to be disregarded, it will be disregarded. I know that, but your Lordship is now on a line of evidence that has not been opened to me for some reason, and I know nothing of what correspondence my friend has with regard to it. It is nothing I could have learned at any time. There is no estoppel with me in regard to my patents. He has not set up that, and I am no party to it in any shape or form. My predecessor in title is no party to it, and I fail to see how I can be bound by it. If it affects his patent. If my friend says my patent is ambiguous, and I am going to clean up an ambiguity, then we can deal with it, but the patent is not in any way ambiguous. It is a patent to a certain area of land, and so far as it can be material, all this would only show that some person had it in mind that water power rights through the eastern channel ought to be secured, but apparently they were not secured if our contention is correct. 20 30

HIS LORDSHIP : Mr. McCarthy, would you make clear to me just what your purpose is in putting in this correspondence.

MR. MCCARTHY : My purpose is two-fold, in the first place I think I am entitled to show your Lordship how they were dealing with “C,” how this canal originated.

HIS LORDSHIP : I thought it was historical, and it was in that respect I was interested in it without approaching the question as to whether it was strictly admissible or not.

MR. MCCARTHY : Your Lordship will realize in the patent from Ontario it speaks of a mill site, but there is no reference in the patent to the water power. The plan, of course, shows the canal. Now, my friend says “all right, you have a mill site, and you have a canal, you can have as many canals and mill sites as you can.” 40

MR. TILLEY : I do not say we can.

MR. MCCARTHY : My friend says “you can have a canal and have a mill site on the property which your grant gives you”. Now, I want to go a step

further and show in addition to the canal and the mill site, we were in addition granted a water power as appertaining to and going with the canal and the mill site and this is the correspondence tracing the history of what Mr. Mather and Mr. McLatchie called, "A comprehensive scheme for making powers for the development of this district" of which our predecessor Mr. Mather was the pioneer.

HIS LORDSHIP : Upon this language particularly, you purpose basing the argument subsequently, that by reason of this reference to mill sites, whatever the reference may be—

10 MR. McCARTHY : The canal and mill site.

HIS LORDSHIP : It is to be given a more comprehensive meaning than it would on the ordinary language be given.

MR. McCARTHY : Yes, my Lord. Then, my second point is this, that in reading this in connection with my friend's patent, the clauses which he has just read, we say what the Government had in mind in making this grant were these very reservations, and these very water powers which were granted, as I propose to show by the Dominion Government, while this strip of land was under their jurisdiction.

MR. TILLEY : Mine is a Provincial patent.

20 MR. McCARTHY : I said so.

MR. TILLEY : "Heretofore enjoyed by us," does not mean the Dominion.

HIS LORDSHIP : I must confess that I have had a good deal of doubt in my mind as to the strict admissibility of a lot of the documentary evidence which is going in now, but at the same time, I do not want to preclude for myself or another Court having it accessible if it should be deemed to be properly admissible as evidence. You say you have some four or five additional letters ?

MR. McCARTHY : Yes, my Lord.

HIS LORDSHIP : Can they be put in in one Exhibit ?

30 MR. McCARTHY : Yes, my Lord, they can.

HIS LORDSHIP : I think I will admit them. Frankly I have to say to you, Mr. McCarthy, that my inclination, my mental inclination all along has rather been against allowing in all this material to affect the construction to be put on the document as finally in issue, but that does not mean that my mind is closed to any argument which may be advanced, and you may convince me that I am entirely wrong.

The letters will be Exhibit 44.

MR. McCARTHY : The letters which I propose to put in as Exhibit 44—

HIS LORDSHIP : If you say how many there are.

40 MR. McCARTHY : If your Lordship will pardon me.

HIS LORDSHIP : Surely, when you are ready.

MR. McCARTHY : I have now, my Lord, succeeded in reducing the Exhibit 44 to four letters, because there is a great deal of repetition in the different letters.

HIS LORDSHIP : Are they between the same parties ?

MR. McCARTHY : Not all. The first one is between the Chief Engineer

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of the Canadian Pacific Railway and the Department of Railways and Canals dated 2nd of May, 1882.

EXHIBIT No. 44. Letter dated 2nd May, 1882, Collingwood Schrieber, Engineer-in-Chief, Canadian Pacific Railway, to Secretary, Department Railways and Canals.

“Canadian Pacific Railway, Office of the Engineer in Chief, Ottawa, May 2nd, 1882. Sir,—With respect to the letter from Mr. J. Ryan, M.P. I have the honor to be, Sir, Your obedient servant (sgd.) Collingwood Schrieber, Engineer-in-Chief.”

MR. MCCARTHY : The next is from Macaulay, W.J., to Sir John A. 10
Macdonald, and is dated 3rd May, 1882.

EXHIBIT No. 45. Letter dated 3rd May, 1882, W. J. Macaulay to Sir John A. Macdonald.

“St. Paul, Minne., May 3rd, 1882. The Right Honourable Sir John A. Macdonald, K.C.B., Dear Sir,—I intended leaving for Ottawa this week I am, yours very truly (sgd.) W. J. Macaulay.”

MR. MCCARTHY : And the next is Macaulay's petition for a mill site and so on to the Honourable the Minister of the Interior.

HIS LORDSHIP : Is this petition for a mill site and so on.

MR. MCCARTHY : Yes, my Lord, it is without date. It is evidently in 20
between—and following a letter of Sir John Macdonald.

EXHIBIT No. 46. Petition without date by W. J. Macaulay to the Minister of the Interior.

“To the Right Honourable, The Minister of the Interior.

“The Humble petition of William James Macaulay And your Petitioner will ever Pray. (Sgd.) W. J. Macaulay.

WITNESS : A. Ferguson.

“Certified to be a true copy of the original of Record in the Department of the Interior. (Sgd.) B. M. York, Controller, Timber and Grazing Lands Branch.” 30

MR. MCCARTHY : The next is a certified copy of a report of a Committee of the Privy Council, of the 18th of March, 1884. That will be Exhibit No. 47.

EXHIBIT No. 47. Certified copy of report of Committee of the Privy Council approved 18th March, 1884.

MR. MCCARTHY : Now these are the only four that I would put in as that Exhibit, and I will vary that by putting in the petition as a second Exhibit.

HIS LORDSHIP : Is there anything in that ?

MR. TILLEY : My friend suggests that we mark that separately. This that we are dealing with just now ?

HIS LORDSHIP : They will be marked Exhibits 44, 45, 46 and 47. 40

MR. MCCARTHY : And then Exhibit 46, is the Petition which is more or less a rehearsing, but it is his Petition asking for a grant and it recites everything he has done since the year 1878.

HIS LORDSHIP : In other words, he backs up his request with every argument that he can advance.

MR. MCCARTHY : Just this one point, perhaps your Lordship would

not—the mill is now and has been in operation during the whole sawing season since it was compleeted.

MR. TILLEY : How far down is that ?

MR. McCARTHY : Perhaps I should fix the date the mill was built. “That in the Autumn of the year 1878 your Petitioner selected the site for his said mill at ‘old Rat Portage,’ between ‘The Lake of the Woods Bay’ and ‘Mink Bay,’ on the Winnipeg River, and communicated such location to the then Minister of the Interior.

10 “That in the Autumn of the year 1880, your Petitioner relying upon his having secured said location for mill site and adjacent piling ground as shown in the plan furnished to your Department, commenced the necessary work to establish a water power at said point, and completed same in the Spring of the year 1881, and in the same spring proceeded to the erection of a saw mill on said location which was completed by your Petitioner in the Fall of 1881. The said mill has been and is now in operation during the whole sawing season since it was completed.”

MR. McCARTHY : I will endeavour to fix the date of the Petition by its acknowledgment. I do not know as it is necessary to put in the acknowledgment.

20 HIS LORDSHIP : It can be read on the Record.

MR. McCARTHY : I see the Acting Secretary acknowledged it in August, 1883.

“I have the Honour by permission of the Minister to acknowledge receipt of your Petition of the 19th ulto” (which would fix that as the 19th of July, 1883).

Then the Petition itself has gone in as Exhibit 46.

30 And the next Exhibit, 47, is a certified copy of the report of the Committee of the Privy Council which is dated the 18th of March, 1884—that has been put in as Exhibit 47. Now that recites the Memorandum dated the 11th of March, 1884 from the Minister of the Interior, submitting the application of W. J. Macaulay for the lease of a parcel of land near Rat Portage on the south shore of Winnipeg Bay, and extension of Winnipeg River for a mill site, and the necessary land, adjacent thereto as a piling ground, also for a certain portion of Portage Bay, Lake of the Woods, for booming purposes.

“And the Minister of an annual rental of \$100,” and that is certified by the Department, Mr. Cory, having the original.

MR. McCARTHY : Now then, the patent—I won’t put in the letter sending the patent, it only accumulates Exhibits. We have the letter enclosing the patent.

40 MR. TILLEY : What date ?

MR. ROBINSON : The date of the letter is 30th May, 1884.

MR. McCARTHY : And the patent is recorded—

MR. ROBINSON : The date of the patent is 19th of May, 1884.

EXHIBIT No. 48. Patent to William James Macaulay, dated 19th May, 1884, from the Deputy Governor John J. McGee, by the Deputy Minister of the Interior and by Command of the Under Secretary of State.

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HIS LORDSHIP : From the Acting Deputy Minister of the Interior to William James Macaulay.

MR. McCARTHY : Now, your Lordship will notice I have skipped over one of the documents, of Letters Patent issued to Macaulay, containing a wrong or defective title.

HIS LORDSHIP : This recites that, and that this is a correction ?

MR. McCARTHY : There is no use putting one in just to be corrected—this recites the correction of the title.

MR. TILLEY : I do not just follow you. Are you putting in the incorrect one ?

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MR. McCARTHY : No, I am putting in the corrected one.

MR. TILLEY : Do you know the date of the prior one ?

MR. McCARTHY : And it says, "Whereas our Letters Patent did therefore contain a wrong or defective description unto the said William James Macaulay, his heirs and assigns forever," and then it gives the description of the mill site.

MR. McCARTHY : The first thing that it grants is the mill site.

I think the only thing I need refer to in the document is the description as it is shown on the accompanying certified tracing signed by Edward Deville, for Surveyor General, and dated 14th May, 1884, taken from the plan of survey of John McLatchie, Dominion Land Surveyor, dated Winnipeg, 14th May, 1881, and of record in the Department of the Interior—that plan, your Lordship will remember is Exhibit No. 33.

This is the plan which is attached (plan inspected by His Lordship).

EXHIBIT No. 48. "Canada. John J. McGee, Deputy Governor. (Seal.) Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, etc., etc., etc.

MR. McCARTHY : Then, just while Mr. Cory is in the box, and this is the last document I want to ask him about, and so far as I am concerned, he is at liberty to go. I do not know whether I need it, but just in case my friend wishes to see it—

This is a certified copy of the report of the 5th April, 1887.

HIS LORDSHIP : Bearing on what ?

MR. McCARTHY : Bearing upon the erection of the first dam, what is known as the old roller dam on the site of the plaintiff's present dam. I do not know whether it was the exact site, it may not be the exact site, it was in the west branch, and I want to put that in.

HIS LORDSHIP : In what way are we affected by it.

MR. McCARTHY : It has this connection, to show that Mr. Mather, who was at this time connected with all the companies operating at all these gaps, was concerned with the elevation and the regulation of the waters of the Lake of the Woods to supply these gates with water.

HIS LORDSHIP : This dam was being put in, having that partially as the object.

MR. McCARTHY : Having this partially as the object, as that shows, the roller dam.

This will be Exhibit No. 49, and is as follows : "On a memorandum

40

dated 4th April, 1887, from the Minister of Public Works, Clerk of the Privy Council.”

EXHIBIT No. 49. Certified copy report of Committee of Privy Council dated 5th April, 1887.

MR. McCARTHY : There is just one other point I would like to point your Lordship's attention to, if your Lordship would not mind making a note, that in August, 1884, the Privy Council handed out its Award.

HIS LORDSHIP : In August ?

MR. McCARTHY : In August, 1884, the Privy Council handed out its
10 Award in regard to the Boundary Dispute and awarded this particular portion of the disputed territory which heretofore had been assigned to the Dominion, to be administered by it pending the dispute to the Province of Ontario and that hereafter the correspondence will be with the Province, but you will also note that the last Exhibit, although after the Award is addressed to the Dominion, and I presume because it refers to the notification.

MR. McCARTHY : Now, that is all I have to ask Mr. Cory. I do not know whether my friend wants to get any documents from Mr. Cory.

CROSS-EXAMINED by MR. TILLEY :

Q. I have not had an opportunity of seeing Mr. Cory's documents. I
20 do not know why we should not have seen them. Now that we have them here, there is no reason we should not inspect them ? A. None whatever.

MR. TILLEY : Then might I ask Mr. Cory that we should see the documents ?

HIS LORDSHIP : You may want to see them.

MR. TILLEY : We were told we could not see these documents.

MR. McCARTHY : Who said that ?

MR. TILLEY : Because we had sent a letter to the Inland Department, and we could not see them.

MR. McCARTHY : Who said that ?

MR. TILLEY : We may find out after a while, but we will be able to see
30 them now.

HIS LORDSHIP : They will be kept in the custody of the Court for the time being, and in case you wish to cross-examine him at a later period.

MR. McCARTHY : Mr. Cory won't wait at our expense.

HIS LORDSHIP : He probably cannot do anything but wait.

MR. McCARTHY : He hoped to catch the two o'clock train, my Lord.

MR. TILLEY : He cannot catch the two o'clock train. We can deal with that now.

HIS LORDSHIP : We will have to settle that later, as to any lengthy stay.
40 These can be kept in the Court in the care of the Registrar.

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MR. McCARTHY : Now, I propose recalling Mr. Edward M. Jarvis now, to get the production of certain documents from Ontario.

So far, your Lordship will realize that so far the documents put in have related to Mill "C."

HIS LORDSHIP : That is since we stopped showing the chain of Title.

MR. McCARTHY : Yes, my Lord, and there is only one document that I am asking Mr. Jarvis to produce in regard to Mill "C." It goes back some distance—to the 5th of May, 1880. And is a letter from the same Mr. Otis Davidson, who made report to the Ontario Crown Lands which got into the Dominion files. It is his letter to the Commissioner of Crown Lands in Ontario reporting on the mills of the Keewatin Lumber Company.

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EDMUND M. JARVIS, Recalled. Examined by MR. McCARTHY :

Q. Have you got that letter, Mr. Jarvis—Reference 348 ?

A. This is it, 348.

MR. McCARTHY : I just put in this certified copy. It is from Mr. Otis B. Davidson to the Honourable Mr. Pardee and written from Rat Portage on the 5th of May, 1880.

EXHIBIT No. 50. Certified copy Report Otis B. Davidson to Honourable T. Pardee.

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"Rat Portage, Lake of the Woods, 5th May, 1880. Sir,—I beg leave to submit the following Report . . . I have the honour to be, etc. (Sgd.) Otis B. Davidson, D.L.S.

"Certified a correct copy. (Sgd.) L. V. Rorke, Director of Surveys, Surveys Branch, Apr. 30, 1927. (Sgd.) L. V. Rorke, Director of Surveys."

MR. McCARTHY : I understand you have neither the field notes nor the plan ? A. The field notes or plan ?

Q. That was mentioned—do I understand they are not in your files ? I do not know ? A. No, as I understand—I am not sure but there is a plan there that covers part of it. I do not know who it is compiled by.

30

Q. You cannot identify it in any way with this ? A. No.

MR. McCARTHY : Perhaps my friend may want to see it, my Lord.

HIS LORDSHIP : What is it—in connection with the mills of the Keewatin.

MR. McCARTHY : In connection with the mills of the Keewatin Lumber and Manufacturing Company.

MR. McCARTHY : The other document by this man (Exhibit 41), although it is a report to Mr. Pardee, was sent to Ottawa.

Q. I do not know whether you have a duplicate of that in your files or not ? It is Exhibit 41, as it is now, it was found in the files of the Minister of the Interior.

40

MR. McCARTHY : Q. I was wondering whether there is a duplicate of that in your files, of a report dated 23rd November, 1880.

At any rate, I will put this in in the meantime, and this will be Exhibit No. 50.

HIS LORDSHIP : Exhibit No. 50 will be certified copy of letter.

MR. McCARTHY : The next letter comes from Ontario. Your Lordship

will note it is after the Award. This is an application by Dick and Banning, and the reason I put this in is because it brings on a dispute and leads to the Mather application and shows the dispute which entered in the Lake of the Woods getting their Patent from Ontario. I will describe it as I go along, as it is a little complicated. It will be Exhibit No. 51. Certified copy application, Dick & Banning to Commissioner of Crown Lands, Toronto.

MR. MCCARTHY : It is in the form of an application, dated the 23rd of January, 1885.

10 (27) "I hereby make application for a small piece of land and contains twenty-seven acres"—then he gives the particulars of the description. I do not think I need read that to you.

Q. You have the original plan, Mr. Jarvis? A. I have, this is probably it.

Q. "The property is we think too hilly for piling ground."

EXHIBIT No. 51. Application Dick & Banning dated 23rd January, 1885, to the Commissioner of Crown Lands, Toronto.

MR. MCCARTHY : Now, the next letter is the beginning of Mill "A."

HIS LORDSHIP : We have been dealing with Mill "C."

MR. MCCARTHY : We have been dealing with Mill "C," and that last 20 letter is more or less of an explanatory nature, which subsequently resulted in an arbitration of which I will tell your Lordship shortly.

This is a letter from Mr. John Mather, Vice-President of the Lake of the Woods Milling Company (Limited). Your Lordship already has the language of the Articles of Incorporation.

He says, "Please to find enclosed a plan and field notes of a survey, I can remit you the amount.

"I am, Sir, your obedient servant (sgd.) John Mather, Vice-President Lake of the Woods Milling Company (Limited)."

HIS LORDSHIP : Is he writing as President?

30 MR. MCCARTHY : He is writing as Vice-President of Lake of the Woods Milling Company, and signs himself as such. The letter is dated 3rd May, 1887, and is directed to the Honourable T. B. Pardee, Minister of Crown Lands, Toronto..

EXHIBIT No. 52. Letter dated 3rd May, 1887, John Mather, Vice-President Lake of the Woods Milling Company to T. B. Pardee, Minister of Crown Lands.

MR. MCCARTHY : And the same day, Mr. Mather writes, apparently a personal letter to Mr. Pardee, on the letter paper of the Keewatin Lumbering and Manufacturing Company Limited.

40 "I have written you today as Vice-President of the Lake of the Woods Milling Company, Limited"—

HIS LORDSHIP : Do you mean the predecessor of the Plaintiff?

MR. MCCARTHY : No, for the parties—your Lordship will remember the plaintiff who purchased the Keewatin Lumbering and Manufacturing Company, but their mills are not in question in this action. They are the mills down on Portage Bay, but to tie that up, Mr. Backus explained the mill was burned, and he bought them and operated the Minnesota Limited.

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MR. TILLEY : Just so we have it in mind, this is the company that made the agreement that preceded our patent. Our patent followed on the agreement and they are our predecessor in title.

MR. McCARTHY : Mr. Mather was writing on this letter paper, he being the President, and I think owner of that company at that time. He was apparently using their letter paper.

"I have written you today as Vice-President of the Lake of the Woods Milling Company Limited, . . . (Sgd.) John Mather."

EXHIBIT No. 53. Letter dated 3rd May, 1887, from John Mather to T. B. Pardee, Minister of Crown Lands. 10

MR. McCARTHY : Then the next one is a letter from Mr. Aubrey White, the Assistant Commissioner, addressed to Mr. Alexander Mitchell, the President of the Lake of the Woods Milling Company, and dated the 23rd of May, 1887. He is called "Asst. Commissioner"—In this letter he says, "Having reference to conversation had with you on Saturday last, Yours very truly, (sgd.) Aubrey White, Asst. Commissioner."

EXHIBIT No. 54. Letter dated 23rd May, 1887, Aubrey White, Asst. Commissioner to Alexander Mitchell, President, Lake of the Woods Milling Company.

MR. McCARTHY : For your Lordship's convenience, and so that you may be kept in touch with what was going on, we will later prove that on receipt of that letter the construction of Mill "A" was commenced. 20

The next one is on the same date, also written by the Asst. Commissioner, and addressed to Dick & Banning, Keewayden, Ont., in connection with letter of the 23rd January, 1885.

This is Mr. White's answer to Exhibit 51. This is the beginning of the dispute between Dick & Banning and the Lake of the Woods for two and one-half acres which dragged on for some years, but during which time the Lake of the Woods went on.

HIS LORDSHIP : From Aubrey White to Dick & Banning of the 23rd May, 1887. 30

MR. McCARTHY : Yes, my Lord.

"Having reference to your letter of the 23rd January, 1885 Your obedient servant, (sgd.) Aubrey White, Asst. Commissioner."

EXHIBIT No. 55. Letter dated 23rd May, 1887, Aubrey White, Asst. Commissioner to Dick & Banning, being copy of letter contained in file Number 1596.

HIS LORDSHIP : You say that is the same two and one-half acres.

MR. ROBINSON : Perhaps I can show his Lordship this, which would help.

This is only a rough tracing that was made for me of the sketch which Dick & Banning sent. Your Lordship sees that is the two and one-half acres, which is the green, they wanted to get another piece to the west of the piece which they had already got from Macaulay. The pink is what they got from Macaulay, and the green is as they applied in 1885; it was that application which caused the dispute. 40

MR. McCARTHY : Then, I put in Mr. Mitchell's reply, of the 26th of May, 1887, to the Asst. Commissioner.

HIS LORDSHIP : That is in reply to Exhibit Number 54.

MR. McCARTHY : This letter is of the 26th of May, 1887, and addressed to Mr. Pardee, Minister of Crown Lands, Toronto.

"I have received your letter of the 23rd inst. Yours very truly, (sgd.) A. Mitchell."

EXHIBIT No. 56. Certified copy letter 26th May, 1887, A. Mitchell to T. B. Pardee, Minister of Crown Lands.

MR. McCARTHY : Q. Now this is Dick & Banning's letter to the Asst. Commissioner of the 30th May, 1887.

10 Your Lordship will remember Dick & Banning made their application, which is Exhibit No. 51. Then Mr. Aubrey White asked them to state the reason they wanted the land, which I think is Exhibit Number 55, and now this is Dick and Banning's letter to him of May 30th, 1887, which will be Exhibit No. 57.

"Replying to your letter of May 23rd, inst., Yours truly, (sgd.) Dick & Banning & Co."

EXHIBIT No. 57. Certified copy letter dated 30th May, 1887, Dick, Banning & Co. to T. B. Pardee, Commissioner of Crown Lands, Toronto.

20 MR. McCARTHY : Then the next is a letter from John Mather of the 30th of May, 1887, to Mr. Aubrey White, Asst. Commissioner.

Now, I do not think I need read all this, as it is quite a long letter, but the first three paragraphs :

"Mr. Alexander Mitchell of Montreal, President of the Lake of the Woods Milling Company, has sent me an account of his interview All of the ground applied for in this location is wanted."

Then he goes on about some other matters which I do not think I need refer to, except this : "Referring to the grant made by the Dominion Government on 28th May, 1884, to W. J. Macaulay I am, Sir, Your obedient
30 servant (sgd.) John Mather."

EXHIBIT No. 58. Letter dated 30th May, 1887, John Mather to Aubrey White, Asst. Commissioner, Crown Lands, Toronto.

MR. McCARTHY : Your Lordship will see a reference to the Paper Mill.
HIS LORDSHIP : Yes, that is the first mention of it.

MR. McCARTHY : The original intention was to make "A" a paper mill, but the Lake of the Woods took it up as a flour mill company.

MR. ROBINSON : The original site was for a paper company.

HIS LORDSHIP : How much of this did your people ultimately get, Mr. McCarthy ?

40 MR. McCARTHY : How much of the land in dispute ?

HIS LORDSHIP : Of the land in dispute.

MR. McCARTHY : We got all of it, and one acre and three-quarters of the area that Dick & Banning were claiming.

There was an arbitration, after a great deal of dickering, the Ontario Government instituted Arbitration, the arbitrators Awarded us one and three-quarters acres, and made us pay, and that gave us the control of the outlet of our canal.

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—continued.

MR. TILLEY : And Dick & Banning got the remainder.

MR. McCARTHY : Yes.

Now the next letter is apparently a letter from the Commissioner to Dick & Banning of the 4th of June, 1887—

HIS LORDSHIP : That is the Commissioner of Crown Lands, Ontario.

MR. McCARTHY : Mr. Jarvis will show your Lordship what he has. Apparently at this particular time, they did not keep copies of letters, but they kept what is called "a draft approved by the Commissioner," and that is the only copy that is on hand, and that apparently was sent out, and the copy is the draft that is filed in the record. It is from the Commissioner. 10

"Gentlemen : I have your letter of the 30th ult., in connection with Department letter "This draft approved by Commissioner A. W."

HIS LORDSHIP : I was just looking at the draft, and seeing what form it is in—it is initialed by Aubrey White, I see, at the bottom.

EXHIBIT No. 59. Certified copy draft letter dated 4th June, 1887, Aubrey White, to Dick, Banning & Co., Winnipeg.

MR. McCARTHY : Then the next one I put in, my Lord, is the letter of the 8th of June from Mr. Aubrey White, Assistant Commissioner to Mr. Mitchell at Montreal, the same year, 1887. Mr. Mitchell was President of the Lake of the Woods Milling Company. 20

"The Department has received a communication from Mr. Sutherland, placed by him at about \$333.00."

EXHIBIT No. 60. Letter dated 8th June, 1887, Aubrey White, Assistant Commissioner to A. Mitchell, Montreal.

MR. McCARTHY : Then the reply from Mr. Mitchell to Aubrey White, Assistant Commissioner, is dated the 9th of June, 1887, of the same year, in which he acknowledged receipt of the letter and says,

"Dear Sir, I have received your letter of the 8th inst. . . . A. Mitchell, President, Lake of the Woods Milling Company, Limited."

EXHIBIT No. 61. Certified copy letter 9th June, 1887, A. Mitchell, 30
President, Lake of the Woods Milling Company, to Aubrey White,
Assistant Commissioner.

MR. McCARTHY : Then the next is a reply from Mr. White to Mr. Mitchell, which I won't trouble your Lordship with reading, dated the 23rd of June, 1887.

HIS LORDSHIP : Acknowledging that?

MR. McCARTHY : Acknowledging that, and advising the sum of \$333.00 be paid. There is nothing further in the letter which requires your Lordship's attention, just connecting up the correspondence.

"Department of Crown Lands, Toronto, 23rd June, 1887. Sir, Refer- 40
ring to your letter of the 9th inst. . . . (sgd.) Aubrey White, Assistant Com-
missioner."

EXHIBIT No. 62. Letter Aubrey White, Assistant Commissioner, dated
23rd June, 1887, to A. Mitchell, Montreal.

Court adjourned for one hour for lunch.

Court resumed two o'clock p.m.

MR. MACINNES : The last was Exhibit No. 62. Following that will be Exhibit No. 63, which is a letter from A. Mitchell, President, Lake of the Woods Milling Company, dated 24th June, 1887, to Aubrey White, Assistant Commissioner Crown Lands, Toronto. (Certified copy).

He acknowledged letter of 23rd, "I readily assent to the Commissioner's recommendation (sgd.) A. Mitchell, President, Lake of the Woods Milling Company."

10 EXHIBIT No. 63. Certified copy letter dated 24th June, 1887, A. Mitchell, President, Lake of the Woods Milling Company, to Aubrey White, Assistant Commissioner, Crown Lands, Toronto.

MR. MACINNES : Exhibit 64 is the reply from Mr. Aubrey White, to Mr. Mitchell, dated the 28th June, 1887.

"I have the honour to acknowledge the receipt of your letter of the 24th inst. . . . (sgd.) Aubrey White, Assistant Commissioner."

EXHIBIT No. 64. Letter dated 28th June, 1887, Aubrey White, Assistant Commissioner to A. Mitchell, Montreal.

20 MR. MACINNES : Exhibit No. 65 is a further letter from Mr. Aubrey White to Mr. Mitchell, under date of the 20th of July, 1887. "I have the honour to acknowledge the receipt of your letter of the 18th inst. . . . (sgd.) Aubrey White, Assistant Commissioner."

EXHIBIT No. 65. Letter dated 20th July, 1887, Aubrey White, Assistant Commissioner, to A. Mitchell, Montreal.

MR. MACINNES : Exhibit No. 66 is a certified copy of a memorandum signed by Mr. George Kirkpatrick, of the Crown Lands Department, Surveys Branch, Toronto, and is dated the 23rd of July, 1887, and is headed, "Memo re Lake of the Woods Milling Co., Keewatin. Sir, In accordance with instructions received from you. . . . (sgd.) George B. Kirkpatrick."

30 EXHIBIT No. 66. Certified copy Memorandum re Lake of the Woods Milling Company by George B. Kirkpatrick of Crown Lands Department, Toronto.

MR. MACINNES : Exhibit No. 67, is a further communication from Mr. Mitchell to Aubrey White, Assistant Commissioner, dated the 8th of October, 1887,

"I am obliged for your letter of the 4th inst.

"I was hoping that Mr. Pardee. . . also remains unsettled."

EXHIBIT No. 67. Certified copy letter dated 8th October, 1887, A. Mitchell to Aubrey White, Assistant Commissioner.

MR. MACINNES : Then Exhibit No. 68, is Mr. Aubrey White's reply, dated 14th October, 1887,

40 "I have to acknowledge receipt of your letter dated 8th inst. . . . Your obedient servant, (sgd.) Aubrey White, Assistant Commissioner."

EXHIBIT No. 68. Certified copy letter Aubrey White, Assistant Commissioner, to Alexander Mitchell, dated 14th October, 1887.

Then a letter from Mr. White to Mr. Mitchell, dated June 1st, 1888, "Re Lake of the Woods Milling Company, Keewatin, it has been represented to this Department. . . the road fit for travel again."

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EXHIBIT No. 69. Certified copy letter dated June 1st, 1888, Aubrey White, Commissioner, to A. Mitchell.

MR. MACINNES : Then Exhibit No. 70 is the answer of Mr. John Mather, who signs for the Lake of the Woods Milling Company, Limited, as Vice President, and dated 6th June, 1888, to Mr. Aubrey White.

HIS LORDSHIP : The other was to Mr. Mitchell, the President. No. 70 is by Mather?

MR. MACINNES : Mr. Mather is writing from Keewatin, and he is the Vice President, and he is saying,

“Mr. Alexander Mitchell of Montreal has sent me . . . I am, Sir, your 10 obedient servant, For the Lake of the Woods Milling Co., Limited, (sgd.) John Mather, Vice President.”

EXHIBIT No. 70. Certified copy letter dated 6th June, 1888, John Mather, Vice President, Lake of the Woods Milling Company to Aubrey White.

MR. MACINNES : The next, my Lord, is one from Mr. John Mather, to Honourable A. G. Hardy, who had become Commissioner of Crown Lands, and is dated the 16th of May, 1889, written from Ottawa. It goes over the matter again, my Lord, and I put it in so as to keep up the chain.

“Ottawa, 16th May, 1889. Sir, The writer representing the Keewatin 20 Lumbering and Manufacturing Company of Keewatin . . . all settled and arranged.

“I have the honour to be, etc., (sgd.) John Mather.”

“Ottawa, 17th February, 1888, Honourable T. B. Pardee, Commissioner of Crown Lands, Toronto. Sir:—

“I hereby again take the liberty . . . money will be wanted.

“I have the honour to be, Sir, Your obedient servant, (sgd.) John Mather.”

EXHIBIT No. 71. Certified copy letter John Mather to Honourable A. G. Hardy, Commissioner, Crown Lands, dated 16th May, 30 1889, with enclosure of copy letter 17th February, 1888, John Mather to the Honourable T. B. Pardee.

MR. MACINNES : Then, my Lord, Exhibit 72 will be a certified copy of an Order-in-Council of the 3rd July, 1889, reciting, “Upon the recommendation the Honourable, the Commissioner of Crown Lands, A. S. Hardy, Chairman.”

That refers to Mr. Kirkpatrick’s second visit in 1889 and his first visit was in 1887.

EXHIBIT No. 72. Order-in-Council (certified copy) dated July 3rd, 1889, with certificate attached. 40

MR. MACINNES : The next my Lord, is the book of the evidence taken by Mr. Kirkpatrick as Commissioner.

MR. TILLEY : I do submit, my Lord, this is not evidence here.

HIS LORDSHIP : No, I do not think so.

MR. TILLEY : One can understand that any of the statements in these letters, so far as the statements of fact are proven, by the production of the

letters—but it is going very far to put in a record written by some person of the evidence of witnesses. I submit that is not evidence at all.

MR. MACINNES : Under the provision of the Public Lands Act, my Lord, it is provided that a Commission may issue, it is in somewhat different form for the moment, but this is the Public Lands Act, Chapter 24 of R.S.O. 1887, the legislation at the time, and Section 45 provides, copies of records, documents, books or papers belonging to or deposited in the Department, attested under the signature of the Commissioner or the Assistant Commissioner shall be competent evidence in all cases in which the original documents, books or
10 papers can be evidence.”

The previous section having been, “The Commission may authorize under its hand and seal any person who is employed in the service of the Crown Lands Department to take evidence in any part of Ontario in respect to any matter of enquiry, having respect to the business of the Department, or any matter in which the Department is interested.”

That is the section, my Lord, which was referred to in the Order-in-Council, Chapter 17—I submit therefore these papers, these records deposited by Mr. Kirkpatrick as a result of that Commission are part of the evidence. I do not propose to put in the whole, only with regard to these matters and just
20 that which relates to what was directed to be done in that Order-in-Council in dealing with this matter for the Department.

HIS LORDSHIP : Is it part of your contention that *viva voce* testimony taken before him at that time would be evidence here of the fact of which the witnesses purported to swear?

MR. MACINNES : That would be evidence, my Lord, if it was sworn at that time, that that was the material, that their evidence was the material which was reported by Mr. Kirkpatrick, on which the decision of the Minister and the Government Officials was based.

That is the state of facts with which they dealt in subsequently adjudicating on this. It seems to me that is what the purpose of the Statute is for, my
30 Lord.

HIS LORDSHIP : I could understand that documents which may have been deposited on the hearing before him, and accepted as of Record in the Department, and forming part of Departmental records might be producible here, not as proof of the truth of what they contained, but as evidence of their contents, to be judged as to truth or false evidence which may be properly admissible, but I do not understand from that if John Smith appeared before that Commissioner and gave his evidence there on oath, that therefore between
40 other parties here, what he swore to there, because it is of record in the Department should therefore be accepted here as evidence.

MR. MACINNES : I feel, your Lordship, the way I am putting it is as if Mr. Kirkpatrick made his report, this was the situation he found.

HIS LORDSHIP : Is not his report, and what his report states producible here as an official record of the Department, and is not that the extent to which you can go in availing yourself of the provision of the Act.

I do not see how I am in a position to admit here as evidence what he saw fit to admit then as evidence on the issue that was then under trial before him.

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I do not see how that is thereby made admissible on the trial before me between different parties.

MR. MACINNES : Except, my Lord, in this way, it becomes part of his report. He reports this. He reports the result of his investigations which is put not only in his own language, but put in the language of the people who are brought before him and deposed to it under oath. He makes that his report.

HIS LORDSHIP : I think his report would be admissible—what have you got to say about it, Mr. Tilley?

MR. MACINNES : It is here, in the form—

10

HIS LORDSHIP : I understand this is his report on the effort he made to reconcile these people in their differences.

MR. TILLEY : It is his Award.

MR. MACINNES : I would not say that was it, my Lord, he was instructed to do under the Order-in-Council.

HIS LORDSHIP : He was appointed a Commissioner to take evidence in regard to the different claims.

MR. MACINNES : Generally to take evidence and to report to the Department.

HIS LORDSHIP : Then he reports to the Department. I cannot see that 20 what he takes as evidence I can admit here.

MR. MACINNES : Would you not, my Lord, really be getting close to what the facts are.

HIS LORDSHIP : If I had these people really before me, and they came and gave their testimony in regard to the matter, I would be getting it at first hand, but I do not at present see how we can admit what they said.

MR. MCCARTHY : Not evidence of the truth of what they said, but this is a record and the basis of the Kirkpatrick Report.

HIS LORDSHIP : Suppose it is the basis, suppose I come to the conclusion that his report was ill-founded—how would it help or hurt, his report is there, 30 and doubtless acted on by the Department, and the report no doubt speaks for itself, but what it is based upon—and the Department presumably acted upon it, and did something—now, can I go behind the report and investigate or consider the basis on which it was founded?

MR. MCCARTHY : He reports the evidence.

HIS LORDSHIP : I might find myself sitting in an Appellate capacity on Mr. Kirkpatrick.

MR. MCCARTHY : I think, by virtue of the provisions of the Act, anything that he takes under oath, or affirmation is of matter of Record in the Department, provided by the Departmental Officers, and therefore evidence 40 in this case, not evidence of the truth or falsity of it, but simply as a matter of Record.

MR. MACINNES : Here is the Report, my Lord, of which we have a copy made, to put in, dated 4th July, 1889.

HIS LORDSHIP : What does it purport to contain?

MR. MACINNES : It is signed, my Lord, 23rd November, 1889—the file

on the back is 4th July, "Having been appointed by the Honourable the Administrator of the Province of Ontario, a Commissioner to examine into all applications for mining locations, mill sites, lands and building lots in the vicinity of Rat Portage, Keewatin, and the adjoining part of the Lake of the Woods, etc., such Commission bearing dated July 8th, 1889, I have the honour to report that on July 10th, I left Toronto for Rat Portage for the performance of the above service——"

HIS LORDSHIP : You are putting in the report?

MR. MACINNES : I am putting in the report, my Lord.

10 MR. TILLEY : The report is subject to my objection, but I appreciate your Lordship has ruled that sort of thing in.

HIS LORDSHIP : This report will go in as Exhibit No. 73, the report only, for the time being. The report dated when, Mr. MacInnes?

MR. MACINNES : The report dated November 23rd, 1889.

HIS LORDSHIP : And you said it was filed at a later date.

MR. MACINNES : No, my Lord, the file is of an earlier date, contains the Order-in-Council—it would only be confusing to take that date, so that the 23rd November, 1889, is the date of the report. He states he remained two days at Port Arthur making arrangements for hearing with several parties
20 there who had claims in the vicinity of Rat Portage. "I arrived at my destination on Monday, July 15th, having previously announced in the Public Press that I would be there on that date. I opened the Commission on Tuesday, July 16th, at the Court House, which had been kindly placed at my disposal by Judge Legon.

"I also had some notices printed and circulated stating when and where I would sit to investigate claims and requesting all parties having claims to attend and give evidence as to the same."

Your Lordship will see it was all done in a very formal manner.

30 "To His Honour the Lieutenant-Governor of the Province of Ontario. Sir:—Having been appointed by the Honourable the Administrator of the Province of Ontario, . . . "I have the honour to be, Sir, your obedient servant, (sgd.) Geo. B. Kirkpatrick, Commissioner.

"Toronto, November 23rd, 1889.

"Certified a true copy, (sgd.) J. Hutcheon for Director of Surveys."

EXHIBIT No. 73. Report of Mr. George B. Kirkpatrick, dated November 23rd, 1889.

MR. MACINNES : Then, with that goes this book.

MR. TILLEY : It does not say so.

40 MR. MACINNES : It is dated the 16th of July, and it is possible, by its contents to identify that as evidence taken by Mr. Kirkpatrick on this Commission, some of which contains the evidence taken with respect to this matter in controversy and form I submit, a chain in the history of this transaction.

My friend, Mr. McCarthy puts it in this way, it contains representations made by our officers, by Mr. Mather of the Company on what they had done, and what they proposed to do.

It seems to me it is in the same position as if it were—a stronger position than if it were in the form of a letter.

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—continued.

MR. TILLEY : I do not want to interrupt, but it possibly shows the danger when we get away from the actual documents that control the rights of the parties. My friend's best argument for it is that this is better than something he has already got in in the shape of letters, but that is not a very good argument. I submit my friend is rather confusing facts when he refers to the Act. I am not objecting to a copy—this Act deals with the use of a copy where the original if produced would be evidence, and I am not raising any technical question about that. If the book, which is the original book is evidence, then, of course extracts that were a copy are admitted with our consent, if our consent be necessary, but what I do object to is anything 10 more than the action taken being evidence. I submit it is not evidence at all, but to the extent to which it is evidence it can only be the actual action taken as a result of taking evidence that can have any bearing upon any matters in question here.

I think it is all irrelevant, but if it has any force at all, it must be that as a result of an enquiry set on foot the Commissioner made a report, and he reported thus and so, and that something else happened, if it did happen.

Now to the extent we have, so to speak, some actual events in the history that are made evidence for what it may be worth, but when it comes to all the depositions of witnesses who are not before your Lordship at all, who 20 might give the most misleading evidence, reading it just from the notes, and probably whose evidence was entirely disregarded by the Commissioner, I submit it is a most dangerous thing to allow in. You have not anything at all except a transcript made by the Commissioner in long hand, in narrative form. It is not question and answer, it is his narrative, and I suppose he took down what he thought was necessary to carry in his mind certain matters, but he has now made his report, that is now in, and if any action was taken as a result of his report, I presume my friend will put that in, but how can the action taken be coloured by any evidence that was given. Certainly the evidence is not proof of any facts deposed to here. 30

MR. MACINNES : My Lord, if I might state shortly my position on the point of that is this. This is not evidence generally. This is statements made under oath by an Officer of this company to a representative of the Ontario Government. It surely is in the same situation. I would say possibly stronger situation than if correspondence had passed between the Government and this company—it surely is a part of the circumstances under which this Patent issued, circumstances under which, your Lordship knows the Letters of Harker and others are admissible, both in connection with our Patent here, and also in connection with the meaning of the restriction or condition in the plaintiff's patent, and this, it seems to me is not evidence 40 generally as my friend described it, but are statements made under oath by the President or Vice-President, whichever he was at the time of the Lake of the Woods Milling Company, to Mr. Kirkpatrick, appointed Commissioner as the Government instructed.

MR. TILLEY : Surely reported evidence of witnesses is under the surrounding circumstances, in the light of which documents must be construed, which documents, so far as we know are entirely unambiguous.

MR. MACINNES : These are statements, my Lord, made by our officers to the representative of the Government and again taken—

HIS LORDSHIP : I have not changed my view in regard to it. I have great respect for the views expressed by Counsel—I think that under the ruling which I gave some time ago, the report given by the Official of the Department, Mr. Kirkpatrick, may be admitted along with the correspondence, and so on, which are on file in the Department as part of the file, in reference to these matters, not because—and I say it quite frankly—not because I am convinced that they have any direct bearing or influence upon what I have to determine, but because another Court may entertain the view somewhat different to the one which I entertain at the present time, but I do not think I ought to extend that any further than I have done. I am satisfied to admit the report, and have done so, but I am not prepared to go any further, or to admit here, as connected with the report the evidence which was taken by the Commissioner, or the papers which the Commissioner accepted, as proper to be admitted before me, and allow them to go on the record here as part of the evidence in this case. I do not think I should do it, and so far as this particular matter is concerned, I would limit the admission of material to the certified copies, or the copy of the report of the Commissioner, Mr. Kirkpatrick.

MR. MACINNES : My Lord, then, so as to make it quite clear what is tendered and refused—an extract from book marked “George Kirkpatrick”, produced by the witness Mr. Jarvis, “Evidence taken at Rat Portage, July 16th”—the year is torn off, but I take it is in 1889, beyond any question—at page 142, and the heading of what I tender in evidence is as follows, I will simply read the heading, my Lord, “In the matter of the application of the Lake of the Woods Milling Company for land at Keewatin as shown on plan of survey of Provincial Land Surveyor Seagar, dated 29th April, 1887, John Mather, Vice President and Managing Director of the Lake of the Woods Milling Company, being duly sworn, deposes :”

MR. MCCARTHY : And might I add just this, my Lord.

HIS LORDSHIP : Yes.

MR. MCCARTHY : In this particular case we are urging that easements of a certain class do not necessarily depend on the terms of the grant itself, but the circumstances under which the grant was made, and that this is evidence of the intention of the parties from which the easement may be implied.

HIS LORDSHIP : Will you repeat that, Mr. McCarthy, I want to make sure I am appreciating the significance of it.

MR. MCCARTHY : Q. That this is a kind of case in which easements may be implied, not necessarily from the terms of the grant itself, but from the surrounding circumstances, and the intention of the parties.

HIS LORDSHIP : This is to be part of your argument subsequently, I presume.

MR. MCCARTHY : Yes, my Lord, and that is why we are urging that this should be put in, that this, being a statement of Mather of the reasons why—

MR. TILLEY : I object to Mather’s statement.

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—continued.

MR. McCARTHY : Then I will say it may contain statements as to his reasons and intentions in applying for the grant. In other words, if Mr. Mather had written to the Department giving his reasons and intentions, your Lordship would admit the letter, not as evidence of the truth of what it contained, but as evidence of what Mather said his intentions were. Now, instead of writing the letter the Department said, "Do not write us any more letters, we are going to send a man up there on the ground, go and make your statement to him." Mr. Kirkpatrick takes down the statement which Mather had made to him in long hand, and we urge that is evidence of the intention for which the easement may be implied.

10

HIS LORDSHIP : Then, that I may know as we go along, your contention, Mr. McCarthy is going to be, roughly speaking, that there were such circumstances connected with the giving of the Crown Grant—

MR. McCARTHY : Yes, my Lord.

HIS LORDSHIP : As to entitle you to say an easement—this was intended.

MR. McCARTHY : Yes, my Lord.

HIS LORDSHIP : "We are entitled to this easement because it is evident from the surrounding circumstances it was intended we should have it."

MR. McCARTHY : That is only one, of course.

HIS LORDSHIP : I understand, but on that particular phase of it.

20

I want to say here, that as Counsel who have been living with the case for some time will appreciate, I find it extremely difficult to get the matter clearly in mind unless Counsel will bear with me more or less as we are going along, and endeavour to assist me to appreciate the evidence when going in, because one gets a mass of evidence, and unless one assimilates it as we go along it will be a hopeless matter.

MR. McCARTHY : Coming into it comparatively recently—

HIS LORDSHIP : Have you a certified copy of this report to go in?

MR. MACINNES : No, my Lord.

HIS LORDSHIP : Then a certified copy of the report will be Exhibit 73, 30 when you get it.

MR. McCARTHY : Do I understand by your Lordship's ruling.

HIS LORDSHIP : Yes, I will allow the report of the 23rd of November, 1889, to go in, not the evidence submitted.

MR. MACINNES : The next Exhibit my Lord, is a letter of the President of the Lake of the Woods Milling Company, Robert Meighen, who evidently has taken Mr. Mitchell's place as President, dated 27th June, 1890, to the Honourable A. S. Hardy, Commissioner of Crown Lands, Ontario. This is the next year.

"Our Vice President, Mr. John Mather. . . . An early reply will much oblige, Yours very truly (sgd.) Robert Meighen, President, Lake of the Woods Milling Company, Limited."

EXHIBIT No. 74. Certified copy letter dated 27th June, 1890, Robert Meighen, President, Lake of the Woods Milling Company, Limited, to A. S. Hardy, Commissioner of Crown Lands, Toronto.

MR. MACINNES : Then, my Lord, Exhibit 75 is a letter from Mr. A. S.

Hardy, Commissioner of Crown Lands to Messrs. Dick, Banning & Co., dated 3rd July, 1890,

“Referring to the question of the Patent . . . and the whole matter be brought to a termination.

“I have the honour to be, Your obedient servant, (sgd.) Arthur S. Hardy, Commissioner.”

EXHIBIT No. 75. Certified copy letter dated 3rd July, 1890, A. S. Hardy, Commissioner Crown Lands to Dick, Banning & Co., Keewatin.

10 MR. MACINNES : Then Exhibit 76, is substantially the same letter from Mr. Hardy to the Lake of the Woods Milling Company, under the same date, saying he has notified Dick & Banning there should be an arbitration.

EXHIBIT No. 76. Certified copy letter dated 3rd July, 1890, Arthur S. Hardy, Commissioner, to the Lake of the Woods Milling Company.

“Toronto, July 3rd, 1908, Gentlemen:—

“I have the honour to acknowledge receipt of your letter of the 27th ult. . . . property owned by Dick, Banning & Co.

“I have, etc., (sgd.) Arthur S. Hardy, Commissioner.

“P.S. The two acres to be on the west side of your plot and north of the Colonization Road.”

20 MR. MACINNES : Then Mr. Meighen, as President of the Lake of the Woods Milling Company replies to Mr. Hardy on the 9th July, 1890, “Yours of 3rd July received for which I am obliged . . . as early a date as possible.

“I am, Yours truly (sgd.) Robert Meighen, President, Lake of the Woods Milling Company.

EXHIBIT No. 77. Certified copy letter 9th July, 1890, Robert Meighen, President, Lake of the Woods Milling Company, to Honourable A. S. Hardy, Commissioner of Crown Lands, Toronto.

MR. MACINNES : There were two of the 3rd of July, my Lord.

30 HIS LORDSHIP : One to Dick, Banning & Company, and the other to the Lake of the Woods.

MR. MACINNES : Then, following that comes the agreement of arbitration as directed by the Government, which is signed by Dick, Banning & Co., and by John Mather as Vice President of the Lake of the Woods Milling Company, Limited, made on the 1st day of August, 1890, the agreement for arbitration. It is not very long so I might read it to your Lordship :

“Whereas disputes and differences have arisen In witness whereof we hereby set our hands and seals.

(Seal) Dick, Banning & Co.

40 (Seal) John Mather, Vice President, Lake of the Woods Milling Company, Limited.

“Signed, sealed and delivered in the presence of Frank E. Bray, George T. Hastings.

EXHIBIT No. 78. Certified copy agreement for arbitration between Dick, Banning & Company, Lumber Manufacturers of Winnipeg of the first part, and the Lake of the Woods Milling Company of Keewatin, of the second part, dated the 1st day of August, A.D. 1890.

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MR. MACINNES : Then we get the Award, which is dated the 16th of August, 1890.

It is signed by the two arbitrators, Mr. Graham and Mr. Atkinson—apparently it was not necessary to appoint a third arbitrator.

“*Re* Arbitration, Dick, Banning & Co., and the Lake of the Woods Milling Company, Limited.

“We, the undersigned referees, In witness whereof we have hereunto set our hands and seals this sixteenth day of August, 1890.

“Signed, sealed and delivered in the presence of Fred Sprado, Witness.

“(Signed) George A. Graham (seal)

“(Signed) Rufus Atkinson (seal)”

10

EXHIBIT No. 79. Certified copy Award dated 16th August, 1890, by Graham and Atkinson.

MR. MACINNES : Then, Dick, Banning & Co., write to Mr. Hardy, the Commissioner on the 11th September, 1890, saying, “Acting on your wishes We hope to receive your early reply favourable to our just claim. Yours truly (sgd.) Dick, Banning & Co.”

EXHIBIT No. 80. Certified copy letter dated 11th September, 1890.

Dick, Banning & Co., to Honourable A. S. Hardy, Toronto.

MR. MACINNES : Evidently a letter showing their disappointment at the result of the arbitration. 20

Then the Commissioner, Mr. Hardy, replies to Dick & Banning on the 18th of September.

“I have the honour to acknowledge the receipt of your letter . . . I expect his return early in October.

“I have the honour, etc., (sgd.) A. S. Hardy.

EXHIBIT No. 81. Certified copy letter A. S. Hardy, Commissioner, to Dick, Banning & Co., Winnipeg, dated 18th September, 1890.

MR. MACINNES : Then a letter from Mr. Mather, Vice President of the Lake of the Woods Milling Company, to Honourable A. S. Hardy, Commissioner of Crown Lands, dated 3rd October, 1890, “In connection with the water power, flour mill and elevators there . . . The patent to issue in the name of ‘The Lake of the Woods Milling Company (Limited) Keewatin.’ 30

“I have the honour to be, Sir, Your obedient servant, (sgd.) John Mather, Vice President, Lake of the Woods Milling Company (Limited).”

EXHIBIT No. 82. Certified copy letter John Mather, Vice President, Lake of the Woods Milling Company, to A. S. Hardy, Commissioner, Crown Lands, Ontario.

MR. MACINNES : Just for your Lordship’s information while they are looking for the plan, the result of the arbitration—Dick, Banning & Co., were claiming this area (indicating) claiming it had been added on to their property, which your Lordship will see controlled the outlet of the water. The arbitration resulted in this piece, which is marked by the description in our patent, and twenty feet beyond the canal, and they are getting this little piece along there, the south boundary of which is the station yard. 40

HIS LORDSHIP : Is this the Award?

MR. MACINNES : No, my Lord, it is just to explain. They will find out

later. Your Lordship will see that little piece there was taken out of the Dick & Banning land, which was considered not of value to them, whereas it would block the mill that was the alternative of paying for the channel, they could only get out by channeling through there.

HIS LORDSHIP : As the result of the Award?

MR. MACINNES : As a result of the Award the Government proceeded to issue the patents in 1891 and 1892, one for Dick & Banning for what has been excluded and the other to the Lake of the Woods Milling Company for what they applied for.

10 HIS LORDSHIP : This is "A" property still?

MR. MACINNES : Then a letter from Mr. Mather again, to Mr. A. S. Hardy, the Commissioner, dated the 11th October, 1890, with a receipt attached to it, or I had better give a separate number—no, I think it had better be attached, because it is of a different date, the letter and receipt. The receipt is dated 6th of October, 1890.

"I wrote you on 3rd inst. . . . I have the honour to be, Sir, Your obedient servant, (sgd.) John Mather, Vice President, Lake of the Woods Milling Company, Limited."

"Keewatin, October 6th, 1890.

20 "Received from the Lake of the Woods Milling Company, Limited, . . . our right and title to said property. (Sgd.) Dick, Banning & Co., Witness, Geo. T. Hastings."

And attached to the letter and receipt is a certified copy of a plan showing the property conveyed and which Dick & Banning had claimed.

MR. MACINNES : Have you got the plan? A. I wonder if that is it?

MR. MACINNES : Yes, my Lord, here is the original of the letter I have just read, and the receipt, and here is the plan referred to in the letter attached to it. We will put in a certified copy. This is the plan referred to in the letter as being what was in the arbitration.

30 This (indicating) is showing what was covered by the arbitration, this corner.

MR. MACINNES : I think we had better put the letter, enclosed receipt and plan in.

MR. ROBINSON : We will have to get a certified tracing of that plan.

HIS LORDSHIP : It will go in as part of No. 83.

MR. MACINNES : Attached to, and as part of Exhibit 83.

HIS LORDSHIP : This is the plan of the property for which they were to pay the \$1,375.

40 EXHIBIT No. 83. Certified copies letter dated 11th October, 1890, John Mather, Vice President, Lake of the Woods Milling Company, to Honourable A. S. Hardy, Commissioner of Crown Lands ; Receipt dated 6th October, 1890, Dick, Banning & Co., to the Lake of the Woods Milling Company for the sum of \$1,375, also plan showing area of property awarded for which Lake of the Woods Milling Company were to pay \$1,375 to Dick & Banning.

MR. MACINNES : To complete the chain of correspondence, a further letter of Mr. White to Mr. John Mather, of the 19th of December, 1890, in regard to the issue of the Patent, and dealing with the acquisition of the land

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by the Lake of the Woods Milling Company from certain squatters on the property, which says, "Referring to the conversation had at this Department yesterday . . . of record in the Department of Crown Lands.

"I have the honour to be, Your obedient servant, (sgd.) Aubrey White, Assistant Commissioner."

EXHIBIT No. 84. Certified copy letter Aubrey White, Assistant Commissioner Crown Lands, to John Mather.

MR. MACINNES : Then a letter of the 20th of June, 1891, from the Lake of the Woods Milling Company, Limited, by Robert Meighen, President, to the Honourable A. S. Hardy, Commissioner of Crown Lands, "We have a letter from our Vice President, (sgd.) Robert Meighen, President." 10

EXHIBIT No. 85. Certified copy letter dated 20th June, 1891, Lake of the Woods Milling Company, to A. S. Hardy, Commissioner.

MR. MACINNES : Now, what I would call your Lordship's attention to, "He has therefore suggested that the description in the Patent to be issued should correspond with the plan of Record in the Crown Lands Department. The land referred to is shown on the tracing from the Departmental map and includes the two islands in the Bay." There was some discussion about that yesterday.

Then there is Exhibit 86, a letter from Mr. John Mather, Vice President of the Lake of the Woods Milling Company, to Aubrey White, Assistant Commissioner of Crown Lands, dated 26th August, 1891. 20

Here again it is interesting to note that he writes on the note paper of the Keewatin Lumbering and Manufacturing Company, Limited, the predecessors of the Plaintiffs.

"Sometime ago the Lake of the Woods Milling Company . . . two days ago.

"I am, Sir, Your obedient servant, (sgd.) John Mather, Vice President of the Lake of the Woods Milling Company, Limited."

EXHIBIT No. 86. Certified copy letter John Mather, Vice President, Lake of the Woods Milling Company, to Aubrey White, Assistant Commissioner, dated 26th August, 1891. 30

MR. MACINNES : Then the next, which will be Exhibit 87, is an agreement dated the 24th November, 1891, *re* Tunnel Island, between the Crown and the Keewatin Lumber and Manufacturing Company.

MR. TILLEY : Is that a certified copy, I might ask?

MR. MACINNES : I think so.

MR. TILLEY : Then I object, my Lord.

MR. MACINNES : It is a certified copy.

(To the Witness) : Is that certified to by your Department? A. It looks like it. 40

MR. TILLEY : Will you produce the document that it is certified from.

MR. MACINNES : There is some mystery in this.

MR. TILLEY : No, no mystery, just apparently it is—

WITNESS : I got you a copy of that.

MR. TILLEY : I am asking for the original?

A. It was with the Public Works Department, that was the 27th—

That is the one I guess we had not the original of.

MR. TILLEY : Do my friends get certificates put on that differ from our certificates. This is certified a true copy, and you have not got the original?

A. Presumably they had it at that time.

MR. MACINNES : This is dated when?

MR. TILLEY : The 19th of February, 1926.

WITNESS : This was with it, and the way I found it, going over the papers subsequently.

MR. TILLEY : I would like the original produced of this one.

10 HIS LORDSHIP : You are entitled to have the original produced.

WITNESS : That may be with the Public Works Department.

MR. TILLEY : Your Department certifies to it.

MR. MACINNES : Your Department has certified to it, which makes it evidence for what it is worth under the Statute, as being in the custody of that Officer.

MR. TILLEY : We got a certified copy also which was certified to be a copy of a copy, and it was not allowed in.

20 MR. MACINNES : I produce to the Court a copy certified to be a true copy by L. V. Rorke, certified a copy of a document, of an agreement made on the 24th day of November, A.D. 1891, between the Keewatin Lumber and Manufacturing Company Limited, of the first part, and Her Majesty the Queen as represented by the Province of Ontario of the second part.

MR. TILLEY : It is certified to be a true copy of something. Mine is certified to be a true copy of a copy. You objected to mine, which is exactly the same document which you are now putting in. If you appreciate the difficulty sufficiently, I will consent to it going in.

MR. MACINNES : I did not hear the discussion that was going on between you and my colleague on Monday.

MR. TILLEY : I accept your apology.

30 MR. MACINNES : That is simply the agreement that is recited in the patent to the Plaintiff, my Lord.

HIS LORDSHIP : This is the document that Mr. Tilley wanted to put in the first day, and was refused.

WITNESS : What is the date of that?

HIS LORDSHIP : This is the document, or a copy of the document which Mr. Tilley wanted on the first day, and now since they objected to yours going in, you do not see why theirs should get in.

MR. TILLEY : I thought they were wasting time at the time we were discussing it.

40 HIS LORDSHIP : You just do not want them treated any differently to yourselves.

MR. TILLEY : Excepting with my consent.

HIS LORDSHIP : Then this will appear on the Record as going on the Record with Mr. Tilley's consent. He is seeking to heap coals of fire on his opponents' heads.

This is a copy of an agreement, I want to know the date?

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MR. MACINNES : Copy of agreement dated 24th November, A.D. 1891, between the Keewatin Lumber and Manufacturing Company and the Crown.

HIS LORDSHIP : This is recited in the Plaintiff's Patent?

MR. MACINNES : Yes, my Lord, in the Plaintiff's Patent.

MR. MACINNES : It is put in now just because that was the date, it has nothing to do with our chain of title.

Then on the 7th of March, 1892, there is a letter from Mr. John Mather.

EXHIBIT No. 87. Agreement between Keewatin Lumbering and Manufacturing Company, Limited, and Her Majesty the Queen, 24th November, 1891.

10

—continued. "Agreement *re* Tunnel Island between the Crown and the Keewatin Lumber and Manufacturing Company.

"This agreement made and entered into this twenty-fourth day of November, A.D. 1891 . . . their corporate Seal and to be signed by the President and Secretary thereof.

"Signed, sealed and delivered in the presence of (Sgd.) F x St. Jacques (Sgd.) Frank Yeigh	(Sgd.) Richard Fuller, President (Seal of Company) (Sgd.) John Mather, Acting Secretary. (Sgd.) Arthur S. Hardy, Commissioner, etc."
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20

MR. MACINNES : Then, on the 7th March, 1892, there is a letter from Mr. John Mather, as Vice President of the Lake of the Woods Milling Company—

MR. TILLEY : In the agreement there is a reference to another document. I was going to ask the witness to let me have a copy of the other document. Your Lordship will remember there is a provision in the Deed—may I just have one moment—which bears this,—

"AND WHEREAS the said company Assignees of Richard Fuller and 30 others . . . due west to a point on the opposite shore thereof"—

HIS LORDSHIP : The Company surrenders property previously held in exchange for others they are now getting.

MR. TILLEY : All the said islands. I thought the surrender should be put in if that document goes in.

MR. MACINNES : The surrender of what?

MR. TILLEY : Of the Islands. Here is a copy certified, and here is the original, so you may compare it—a certified copy of the agreement which relates to Exhibit 87.

HIS LORDSHIP : This will go in as Exhibit 88, put in by Mr. Tilley. 40

MR. TILLEY : The date is the 22nd of July, 1875. That is the Lease.

EXHIBIT No. 88. Lease of islands in north-west territories in favour of Richard Fuller, John Ross and John Dennis, dated 22nd July, 1875.

"CANADA. Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, etc.-etc.-etc. . . .
AT OUR GOVERNMENT HOUSE IN OUR CITY OF OTTAWA, this twenty-second

day of July in the Year of Our Lord, One thousand eight hundred and seventy-five and in the Thirty-ninth year of Our Reign.

BY COMMAND

(Sgd.) R. W. Scott,
Secretary of State.

(Sgd.) E. A. Meredith,
Deputy of the Minister of
the Interior."

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MR. TILLEY : Then there was an assignemt from Dennis of that lease——
HIS LORDSHIP : You are putting these in as separate Exhibits?
MR. TILLEY : If your Lordship pleases.
10 HIS LORDSHIP : Then the lease will be 88, and the assignment will be
Exhibit 89.

MR. MACINNES : What is the date of their assignment?

MR. TILLEY : The date of the assignment, Dennis, Fuller and Brouse
and Mather, to the Keewatin Lumbering and Manufacturing Lumber Com-
pany, dated 14th August, 1879—the document Exhibit 87 effects a surrender
of that lease.

HIS LORDSHIP : The agreement operates as a surrender?

MR. TILLEY : Yes, my Lord.

MR. MACINNES : Exhibit 87 is our document which contains the sur-
20 render.

MR. MCCARTHY : Exhibit 88 is the lease, and Exhibit 89 is the assign-
ment.

EXHIBIT NO. 89. Deed dated 14th August, 1879, John Dennis and others
to Keewatin Lumbering and Manufacturing Company.

THIS INDENTURE made in duplicate the fourteenth day of August in the
year of our Lord One thousand eight hundred and seventy-nine :

IN WITNESS whereof the said parties hereto have hereunto set their hands
and seals.

SIGNED, SEALED and delivered
30 in the presence of
as to the execution by John Dennis,
Richard Fuller and John Mather,
(Sgd.) Alec C. Beasley. } John Dennis Seal
As to execution by William H. } Richard Fuller Seal
Brouse, } William H. Brouse Seal
(Sgd.) Charles Plumb, Jr." } John Mather Seal

Received on the day of the date of this Indenture from the said parties
of the second part the sum of Sixty Thousand dollars being the full considera-
tion therein mentioned.

40 Witness (Sgd.) John Dennis.
As to execution by John Dennis, Richard Fuller
Richard Fuller and John Mather.
(Sgd.) Alec C. Beasley. W. H. Brouse
As to execution by William H. John Mather."
Brouse.
(Sgd.) Charles Plumb, Jr.

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EXHIBIT NO. 89. Indenture of Assignment, Dennis *et al* to Keewatin Lumbering and Manufacturing Company, 14th August, 1879.

HIS LORDSHIP : That lease was from Her Majesty to Dennis, Fuller and others.

MR. TILLEY : The lease was from Her Majesty to Fuller, Ross and Dennis.

HIS LORDSHIP : And what is it supposed to cover?

MR. TILLEY : That practically covered all the islands in the Lake of the Woods. It is a very large number of islands. We would have to have some person explain it who knows the local geography, including the timber on the island, and then a release of that subject to certain rights that were observed. 10

MR. MACINNES : The next number is Number 90—which will be a letter from Mr. John Mather, the Vice President of the Lake of the Woods Milling Company, to Mr. Aubrey White, Assistant Commissioner of Crown Lands, dated 7th March, 1892.

“I called on Mr. Kirkpatrick the other day, . . . as you can conveniently do so and oblige, Sir.

“Your obedient servant, (sgd.) John Mather, Vice President, Lake of the Woods Milling Company, Limited.” 20

EXHIBIT NO. 90. Certified copy letter dated 7th March, 1892, John Mather, Vice President, Lake of the Woods Milling Company, to Aubrey White, Assistant Commissioner, Crown Lands.

MR. MACINNES : Mr. Mather writes again, on the 11th of April, 1892, but this time to Mr. A. S. Hardy, Commissioner of Crown Lands, Mr. Mather again writing on the letter paper of the Keewatin Lumbering and Manufacturing Company, Limited, “We are at work. . . . An early answer will oblige.

“Sir, your obedient servant, (sgd.) John Mather, Manager.”

EXHIBIT NO. 91. Certified copy letter John Mather, Manager to Keewatin Lumbering and Manufacturing Company, to A. S. Hardy, Commissioner of Crown Lands, dated 11th April, 1892. 30

HIS LORDSHIP : Was not the patent issued that year?

MR. TILLEY : On the 10th of May, my Lord.

HIS LORDSHIP : We must be getting pretty near the end of these.

MR. MACINNES : This is not an Exhibit, my Lord, it is just a statement of fact.

On the 5th of January, 1891, an Ontario Patent was issued of Mill “C” to Messrs. Dick & Banning, who are the ones, my Lord, who were the assignees of Macauley who held the Dominion patent.

HIS LORDSHIP : Is that not in? 40

MR. TILLEY : As Exhibit 12, my Lord.

MR. MACINNES : That is not the only thing, as I would like to be allowed to put in the certificate so as not to duplicate the whole thing, but put it into the evidence of perhaps what is in, I expect it is all in, *viz.*, the certificate of the Registration in the Lands Titles Office.

In other words, in order to prevent a duplication of the putting of a certified copy from the Government Branch, and a certified copy from the original party.

MR. TILLEY : Let us attach it to Exhibit 12, finding it in the evidence is sometimes difficult.

HIS LORDSHIP : The certificate of registration of this patent?

MR. MACINNES : It should have been on the patent.

HIS LORDSHIP : It may be put in on Exhibit 12, so that it will be part of it. It should be written right on the Exhibit. That is Dick & Banning's 10 patent, Exhibit 12, dated the 5th of January, 1891, covering Mill "C" property.

MR. TILLEY : It think it is desirable to put the certificates on the documents.

HIS LORDSHIP : You had better not have it loose.

What are the particulars of that registration, Mr. MacInnes, can you tell me? and I will enter it here. Is it a Land Titles Registration?

MR. MACINNES : A Land Title registration, certificate, registered on the 16th of February, 1891, as number 308 at Kenora.

MR. MACINNES : Then, your Lordship has already been informed, on 20 the 10th of May, 1892, in the following year, a Patent was issued to the Lake of the Woods Milling Company of what we have been speaking of as Mill "A" including the piece of land covered by the arbitration.

In the same way I would like with my friend's permission, to put on the Exhibit already filed as Number 20, Crown Grant to the Lake of the Woods Milling Company, the certificate that it was registered as Number 459 at Kenora. It is a matter of no importance, but this certificate stated in it that it was registered on the 31st of May, which was a few days earlier than the Patent itself, but that was subsequently corrected to show that it was registered at Port Arthur on the 3rd of June, 1892, and then registered at Kenora 30 on the 6th of June, 1892, as Number 459—that is the way the certificates read. It is Number 459, Port Arthur, the 3rd of June, and at Kenora on the 6th of June, 1892.

HIS LORDSHIP : That is in, already, it is to be put on the back of Exhibit No. 20—Mr. MacInnes ; that certificate should be put on the back of Exhibit 20 that is in already.

MR. MACINNES : I will see that that is done, my Lord. That finishes the documents I was reading, my Lord.

HIS LORDSHIP : Mr. Tilley?

MR. TILLEY : Have you Exhibit 9 there, Mr. McCabe?

40 THE CLERK OF THE COURT : Exhibits 9 and 10 were to be put in.

HIS LORDSHIP : Certified copy of agreement?

MR. TILLEY : I had that here this morning to put in and I have mislaid it.

I am sorry to say, I had Mr. Jarvis certify to it, but we gave it back.

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Q. You gave us one copy, Mr. Jarvis? A. No, I have just got the original.

Q. But you did give us a certified copy? A. Yes, we gave you a certified copy.

MR. TILLEY : I have mislaid it for the moment, so I will mention it again—here it is—Exhibit 9, certified copy of agreement dated the 22nd of June, 1898.

HIS LORDSHIP : That was the agreement by the Company to put in stop-logs regulating water in the lake. 10

MR. TILLEY : That was by arrangement with the Ontario Government. Then following that was a notice—

HIS LORDSHIP : A notice terminating that agreement.

MR. TILLEY : Now, I was furnished with a copy of that, of a notice that I understood had been sent by my own office, but I cannot just find that it was actually sent, and I think the reason for that possibly was that in 1921 the Act was passed declaring these works at the outlet of the Lake of the Woods, to be work for the general advantage of Canada, and in 1895 the arrangement was made that Mr. Backus spoke about with the Department at Ottawa, so that Exhibit 10, I have not yet been able to find which was actually sent us, I must withdraw that. 20

HIS LORDSHIP : You gave it as of the date May 18th—

MR. TILLEY : Yes, I had a copy drawn in my own office, but apparently the Dominion Statute had declared them to be works for the general advantage of Canada, and apparently it was not sent.

HIS LORDSHIP : Then Exhibit 10 is not in. It is no part of the Record, and the number will be cancelled.

MR. TILLEY : I am sorry, unless I can find that it was sent.

Your Lordship will find the Statute I refer to in the Statutes of 1921, Chapter 38, Dominion Statute, it is an Act respecting the Lake of the Woods and other waters. 30

“This Act may be cited as Lake of the Woods regulation Act of 1921”—so that brought it under the Dominion jurisdiction, your Lordship sees, and your Lordship will remember I was to furnish the plan that was referred to in the grant to the Hudson’s Bay Company of 1887—Exhibit 5, I think.

HIS LORDSHIP : Exhibit 5, Grant to the Hudson’s Bay Company—you did not have the plan.

MR. TILLEY : I am now attaching the plan, my Lord. If I might have Exhibit 87. 40

Your Lordship will remember that the rights under the agreement of the 24th November, 1891, were recited in our Patent, to have been transferred to the Plaintiff Company.

I possibly should put in the assignment. Mr. Jarvis has it, and I am producing a certified copy. The assignment is dated the 22nd September, 1893, and is from the Keewatin Lumbering and Manufacturing Company.

HIS LORDSHIP : An assignment of the agreement?

87. MR. TILLEY : Of the agreement of the 24th of November, 1891, Exhibit

HIS LORDSHIP : Your assignment is dated what?

MR. TILLEY : It is dated the 22nd September, 1893, and is between the Keewatin Lumbering and Manufacturing Company and the Keewatin Power Company, Limited.

HIS LORDSHIP : Is that Lumbering Company a Limited Company?

MR. TILLEY : Yes, my Lord, a limited company.

That will be Exhibit Number 92.

10 EXHIBIT No. 92. Assignment dated 22nd September, 1893, Keewatin Lumbering and Manufacturing Company, Limited, to Keewatin Power Company, Limited, of an agreement dated 24th November, 1891.

“This indenture made this twenty-second day of September, A.D. 1893....

IN WITNESS WHEREOF the said Companies have hereunto set their CORPORATE SEALS :

Witness

(Sgd.) Harry B. Witton

Richard Fuller, (Seal)
President, Keewatin Lumbering and Manufacturing Co., Ltd.

Richard Fuller,
President.”

20

MR. TILLEY : I think that is all we require, Mr. Jarvis, thank you.

HIS LORDSHIP : The next witness.

MR. ROBINSON : The Minute Book of the Keewatin Power Company which my friend furnished us with yesterday, I have looked through, and there are parts of that Minute Book in which I am interested, and which I want to get on the record, and I am not quite sure which is the most convenient way of dealing with it. I have had no opportunity to make copies, of course, of the parts that I want.

30

MR. TILLEY : We agreed, I thought, that we would make copies of any parts.

MR. ROBINSON : Yes, but I assume you will want to know what parts I require.

HIS LORDSHIP : Could you not prepare a memo of what parts you would like copied.

MR. ROBINSON : Your Lordship sees the point, it is somewhat difficult—suppose I say page 42—there is may be only a small paragraph on page 42 I require, and the Motions are not numbered. What I would really have to do would be to take the book down to my office, and have copies made of the parts I am interested in.

40

HIS LORDSHIP : Cannot that be done, and then these put in as separate Exhibits.

MR. MCCARTHY : It all goes in as Exhibit 6. It is provided for.

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Cross-Examination
18th May, 1927.

—continued.

*In the
Supreme
Court of
Ontario.*

Defendants'
Evidence,
No. 14.
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Jarvis.
(Recalled)
Cross-
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—continued.

MR. MACINNES : If I may leave it in that way. I may take the Minute book for the present, and I can arrange about that.

MR. ROBINSON : Just so that your Lordship will see what the point of this is, all that I am interested in about the Minute Book is the position in and apparent activities and authorities in the Keewatin Power Company of Mr. John Mather.

MR. TILLEY : I do not see any spot where we are interested in. It is only taking up the time of the Court.

HIS LORDSHIP : Mr. Robinson is to keep me seized of what he is doing as we go along. 10

MR. TILLEY : Let us get your Lordship seized, when we file it.

HIS LORDSHIP : I am proverbially good natured.

MR. ROBINSON : Then, my Lord, I will put in as Exhibit 93, a certified copy of the Letters Patent incorporating the Ottawa Gold Milling and Mining Company Limited.

HIS LORDSHIP : Ontario Patent?

MR. ROBINSON : It is an Ontario Incorporation, yes, my Lord, dated the 9th of April, 1897.

HIS LORDSHIP : They appear in your chain of title don't they?

MR. ROBINSON : Yes, they appear in our chain of title. 20

EXHIBIT NO. 93. Letters Patent, dated 9th April, 1897, Incorporating Ottawa Gold Milling and Mining Company Limited.

MR. MCCARTHY : I will call Mr. Mather.

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DAVID L. MATHER : sworn

EXAMINED BY MR. MCCARTHY

HIS LORDSHIP : The last document, Mr. Robinson, was with respect to Mill "C" in the chain of mills?

MR. ROBINSON : It is really not part of the title papers, your Lordship.

HIS LORDSHIP : I understand that company did appear in the chain of title of Mill "C." 30

MR. MCCARTHY : Q. Mr. Mather, you are a son of the late John Mather? A. Yes.

Q. Who was one of the pioneers of the Kenora and Lake of the Woods District? A. Yes.

Q. Now, do you remember when your father first went up there?

A. Well, it would be the summer of 1877 or 1878, I am not very sure.

Q. The summer of 1877 or 1878? A. Yes.

Q. At that time what enterprises was he interested in up there?

A. Well, he was interested in some timber owned by Fuller and Dennis and Ross. 40

Q. He was interested in timber? A. He went in with the idea of being interested, that is why he went up there.

Q. He went up there with the idea of being interested in some timber with Fuller, Dennis and Ross? A. Yes.

Q. And did he subsequently become interested in that timber? A. Yes.

Q. What other enterprises? A. Well, as time went on, he was interested in the Keewatin Paper Company, the Lake of the Woods Milling Company, the Ottawa Gold Milling and Mining Company.

Q. What was the first milling enterprise that he became interested in?

A. Well, the Keewatin Paper Company was the first that was talked of but it never came to anything, I think it was organized, and then it was dropped.

Q. Was he interested in the Keewatin Lumbering and Manufacturing Company? A. Yes.

10 Q. Was that the first enterprise that was started? A. Yes.

Q. Was that the enterprise that was manufacturing the timber that you spoke of? A. Yes.

Q. So that, if I understand you aright, he went up there in 1877, with the idea of becoming interested and with these people in timber and then with the Keewatin Manufacturing Company? A. He purchased into that timber, the Keewatin Lumbering and Manufacturing Company was formed, and they began to operate in the Fall of 1879.

Q. In the fall of 1879 they began to operate, and where was the mill situated? A. It was situated at the west end of Portage Bay, Lake of the
20 Woods.

HIS LORDSHIP : This Lumbering company was formed to operate on the timber with Fuller, Dennis and Ross? A. Yes.

Q. In 1879? A. Yes.

MR. MCCARTHY : In 1879 they began to operate? A. Yes.

Q. And what was your Father's position with that company? A. Well, I think he was Vice President and General Manager, that was his title.

Q. Now then, when did you yourself go up there first? A. I got there on the first of October, 1879.

Q. You got there on the 1st of October, 1879, and what were you engaged in at that time throughout? A. I was Assistant Manager.
30

Q. Of what? A. Of the Lumber Company.

Q. Of the Keewatin Lumbering and Manufacturing Company? A. Yes

Q. And how long did you remain there at that time? A. I was there until 1893.

That is, being connected with the company.

MR. MCCARTHY : Q. Which company? A. The Keewatin Company.

Q. You were there from 1879, October, until 1893, connected with the Keewatin Lumbering and Manufacturing Company? A. Yes.

MR. MCCARTHY : Q. And may I use McLatchie's plan, so that it will
40 be in your Lordship's mind? I think it is in McLatchie's Plan. There is Portage Bay, there is the mill site (indicating on the plan).

WITNESS : There is where our mill site was, and the mill was located there. There was a little pond, and the sawmill was there (indicating).

Q. At the point marked "saw-mill" between Mink Bay and Portage Bay, was the site of the old Keewatin Lumbering and Manufacturing Company? A. Yes.

Q. And the part marked red was the timber area?

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A. No, that was our mill location.

MR. MCCARTHY : Q I thought they had some timber in Minnesota and some in Ontario ? A. That Minnesota timber was acquired later. Reference to Exhibit 33, McLatchie's plan.

Q. Then what other enterprises did your father become interested in later ? A. The Lake of the Woods Milling Company was the first active one that he became interested in.

Q. The Lake of the Woods was the first active one he became interested in—do you remember what that company was first ? A. How do you mean ?

Q. Was it a milling company, was it always a milling company ? A. Yes, the Lake of the Woods Milling Company always was.

Q. Was there any other company before that ?

A. There was a projected Keewatin Paper Company.

MR. MCCARTHY : That possibly explains something that was in some correspondence that we did not understand.

Did that company do anything ? A. No.

Q. Then about the Lake of the Woods Milling Company was his first enterprise ? A. Yes.

Q. And what was his position in that Company ? A. Well, I am not very clear, but he was either President or Vice-President and General Manager of it.

Q. And where was that company's property situated ?

A. Well, they built on the site that had been intended for the Keewatin Paper Company, and it was on the north side of Portage Bay, a little farther east than the enterprise of the Lumber Company's power on Portage Bay.

Q. A little further east than the enterprise of the Lumber Company's Power on Portage Bay.

Q. A little further east than the Lumber Company's Power—were you there when the mill buildings were being erected ? A. Yes.

Q. Do you remember about when that was ? A. I do not know that I do. It was in the 80's.

Q. It was in the 80's, but you do not remember when ?

A. No, I do not remember the exact date.

Q. There is nothing that connects the beginning of the operation with any other event that you can remember ?

A. I think it would be about 1884 or 1885.

Q. You think it would be about 1884 or 1885, then how was that mill operated ? A. By water.

Q. And how was the water brought to the mill ? A. The cutting was made through the rock from Portage Bay to Darlington Bay.

HIS LORDSHIP : You mean it was made while you were there ?

A. Yes, sir.

Q. Could you get the time about that, sometime ?

MR. MCCARTHY : I think he said 1884 to 1885.

HIS LORDSHIP : That was when the mill started to operate—the mill buildings were erected—I do not know if he means it was at or about that

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time? A. The raceway was cut through during the same time that the building was being erected, all done at the same time.

HIS LORDSHIP: That is what I wanted to know.

MR. MCCARTHY: The raceway was being cut through while the buildings was being erected, and can you say, looking at this Exhibit No. 28, whether the mill race as it appears on this plan is approximately in the same position as the raceway, as it was constructed at that time? A. Yes.

Q. It is? A. Yes, sir, it is.

Q. Then, speaking from memory, can you say what about the approxi-
10 mate—

HIS LORDSHIP: This is what Exhibit?

MR. MCCARTHY: Exhibit No. 28, my Lord.

Q. Can you say approximately what the size of that mill race was?

A. About thirty feet wide.

Q. About thirty feet wide? A. And the depth, I could not say.

Q. Then, did that mill continue to operate during the time you were
there? A. Yes.

Q. And did you leave in 1893? A. I did not leave the neighbourhood,
I left Keewatin and moved to Kenora to live.

20 Q. You left Keewatin in 1893, and moved to Kenora to live.

HIS LORDSHIP: I thought Keewatin formed part of Kenora? A. No,
my Lord.

HIS LORDSHIP: Rat Portage and Keewatin.

A. The name does, but Keewatin never was incorporated with it.

HIS LORDSHIP: They were separate municipalities? A. Yes, and are
yet.

MR. MCCARTHY: Q. How far is Kenora from Keewatin? A. Three
miles.

Q. But they are separate municipalities? A. Yes.

30 Q. And you lived in Keewatin? A. No, in Kenora.

Q. Up to 1893? A. Yes.

Q. And you moved to Kenora and you lived in Kenora how long?

A. Until about 1905 or 1906.

Q. Now then who was the man who was in charge of the construction
and operation, or construction first of the mill site of the Lake of the Woods
and the cutting in the rock? A. Well, my father was, at least, he was not
actively in charge, but he was in charge over the men who were doing the
actual work.

Q. He was in charge not over the men who were doing the actual work?

40 A. I say he was in charge of the men who were in charge of the actual work.

Q. He was in charge of the men who were in charge of the men who were
actually doing the work, and after the mill commenced operations, what was
your father's interest? A. He still retained the same position.

Q. Did he still retain his position in the Keewatin Lumbering Company
as well? A. Yes.

Q. Then up to the time that you left Kenora was the mill of the Lake
of the Woods still in operation? A. Yes.

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- Q. And obtaining its power from the same source? A. Yes.
- Q. Now then, was there any other saw mill in that district at the time?
- A. Yes, J. W. Macaulay had a mill there first, and then Dick and Banning had the same one. He sold it to Dick and Banning.
- Q. When did W. J. Macaulay have his mill there first?
- A. That would be along about 1882, I think, somewhere—I am not going to be just positive within a month or two of the dates.
- MR. McCARTHY: Q. Which you say, was built about 1882?
- A. Either 1881 or 1882.
- Q. Anyway, it was after you came up there? A. Oh, yes. 10
- Q. And do you remember where that mill was located?
- A. Yes, sir.
- Q. Where? A. It was east of the site of the Lake of the Woods Milling Company.
- Q. East of the site of the Lake of the Woods Milling Company—was there any particular location selected for that site? A. Yes.
- Q. What? A. It is shown here.
- Q. What was it known as? A. It was the W. J. McAuley location then.
- Q. Where was this location? A. On the north side of Portage Bay. 20
- Q. Was it any particular portage? A. Yes, it was the old Rat Portage.
- Q. It was the old Rat Portage? A. Yes.
- Q. That is the old portage from which the town got its name? A. Yes.
- Q. And how long was that portage? A. Oh, I could not say, I would say it was about, between three hundred and four hundred feet.
- HIS LORDSHIP: When you say the old Rat Portage, you are not now speaking of the Municipality? A. No.
- Q. You are speaking of the particular thing?
- A. The local name of that particular place was the Rat Portage.
- Q. What was it from? A. An Indian name. 30
- HIS LORDSHIP: Muskrats crossing there? A. Yes.
- HIS LORDSHIP: And you said it was about three hundred or four hundred feet? A. Three or four hundred feet long from water to water.
- MR. McCARTHY: That would be from Portage Bay to Darlington Bay?
- A. Yes.
- Q. And what was the formation of the land at that point? A. Well, it was rock principally.
- Q. And what was the conformation? A. Well, I suppose it was sort of a hog's back that ran along there, I suppose it would be in the highest point, perhaps ten or twelve feet above the ordinary level of the Lake of the Woods. 40
- Q. It was a sort of a hog's back, with the highest point ten or twelve feet above the level of the Lake of the Woods and where was the highest point in regard to the portage? A. About the centre of it.
- Q. So we have a neck of rock, as it were, going from one Lake to the other forming a hog's back with the highest point about ten or twelve feet above the Lake Level at normal conditions? A. Yes.
- Q. Do you remember when Macaulay built his mill?

- A. Yes, that would be 1881 or 1882.
- Q. You knew the fact? A. Yes.
- Q. Where was the mill built? A. The mill was about the centre of the portage?
- Q. About the centre? A. Yes, about the middle.
- Q. Was that mill operated? A. By water.
- Q. How was the water brought there? A. They cut a channel through the rock.
- Q. They cut a channel through the rock—do you know that of your own knowledge? A. Yes.
- Q. And do you know about the size of that channel?
- A. I guess the entrance to it would be about twenty to thirty feet wide.
- Q. Now, had the C.P.R. come in at that time? A. Yes.
- Q. Do you remember when they came in? A. They ran their first train through there in the Spring, either in the Fall of 1880 or the Spring of 1881.
- Q. That was before the construction of the Macaulay Mill, was it?
- A. Yes, sir.
- Q. How did the Canadian Pacific Railway—I gather it ran across in front of the Macaulay Mill? A. Yes.
- Q. How did that cross that waterway there? A. On a trestle.
- Q. Then how did Macaulay get his logs into the mill?
- A. He towed them through the trestle.
- Q. And how were they hoisted to the mill? A. On a jack ladder.
- Q. And where was the dumping ground? A. The Portage Bay was the dumping ground.
- Q. Then about what space did the mill buildings itself occupy? A. Oh, I would say that it would be one hundred and twenty-five feet long, probably, the mill building.
- Q. And was it over the raceway? A. Yes.
- Q. Over the raceway and you say about the middle of the portage?
- A. Yes.
- Q. Do you know anything about the machinery in the mill at all?
- A. Oh, a little.
- Q. Then that mill was subsequently purchased by, we are told by Dick and Banning? A. Yes, sir.
- Q. And as far as you know, did they make any alterations in the conditions there? A. Oh, no material alterations.
- Q. Either in the mill race or in the mill itself? A. No.
- Q. And about how long did they occupy it? A. Oh, I think till about 1888 or 1889, somewhere about there.
- HIS LORDSHIP: And did you state at what time they got it? A. No, sir.
- HIS LORDSHIP: You do not remember that? A. No, I think Macaulay ran it about a couple of years, perhaps three years, and then they got it.
- MR. MCCARTHY: Q. You think Macaulay ran it a couple of years?
- A. Probably two years.
- Q. Well, you left Keewatin in 1893—

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HIS LORDSHIP : And went to Kenora ? A. Went to Kenora.

MR. MCCARTHY : Q. Were Dick & Banning away then ?

A. No, I do not think they were.

Q. Then what was the next change if any, that took place in the title to the property of the Dick & Banning Mill ? A. The Ottawa Gold Milling and Mining Company acquired it.

Q. The Ottawa Gold Milling and Mining Company acquired it—at what time, or about what time ? A. Well, that would be somewhere around 1893, around 1893, I think.

Q. You think it would be somewhere around 1893 ? A. Yes. 10

Q. And what was your father's position in that company ?

A. Well, he was President and General Manager or Vice-President and General Manager. He had charge of it, any way.

Q. And did you occupy any position in that company ? A. No.

Q. But your father had charge of it, whatever his office was ? A. Yes.

Q. And how long did that company continue to operate ?

A. Well, they built a reduction works there, and they—I would say, from memory, about three years.

Q. You would say from memory about three years, it was a Customs Plant ? A. A customs plant, yes. 20

Q. To mill the ore ? A. And then they had a mine of their own, from which they milled the ore brought to this reduction works.

Q. Now, do you know of any alteration made in the mill or in the race when the Ottawa Gold Milling and Mining Company took it over ? A. Nothing more than that they cleaned out the tail end of the race.

Q. Nothing more than that they cleaned out the tail race ? A. Yes.

Q. Do you know anything at all of the machinery which was installed there at that time ? A. No, I would not like to say anything about that.

Q. Then, on the completion of their term of two or three years, whatever it was what happened to the property then ? A. Then the Keewatin Flour Mills Company got it. 30

Q. The Keewatin Flour Mills Company took it over ? A. Yes.

Q. And do you remember what time that was—you would be living in Keewatin then ? A. Yes, but I was in touch with the thing in 1896, somewhere along there.

Q. And are you aware of any changes made by them at that time ?

A. They might have done a little more cleaning out of the tail race, but that was all.

Q. They might have done a little more cleaning out of the tail race, but that was all—then did you occupy any position with that company ? A. No. 40

Q. Did your father ? A. Yes, he was Vice-President, or President, and General Manager of it.

Q. He was Vice-President and General Manager of it—then we began with the Keewatin Lumber Company on the west end of Portage Bay, is it ?

A. Yes.

Q. And we then come to the Lake of the Woods—now here we have

come to the Keewatin Power Company—was there any other enterprise your father was interested in?

A. Yes, the Keewatin Power Company.

Q. The Keewatin Power Company on the western outlet of the Lake of the Woods? A. Yes.

Q. And what was his position in that company?

A. Well, he was Vice-President or President and General Manager of it.

Q. Will you just look, I forgot to ask you, at the location of what is called Dick & Banning's mill—would that be about the position of the old Rat Portage? A. Yes.

Q. (referring to Exhibit 28) : And what do you say whether that represents the position of the mill building as far as you recollect? A. Oh, I think so, I think that is approximately correct.

Q. And you think that is approximately correct?

A. I think it is, according to, it is approximately like my recollection of it.

Q. It is approximately like your recollection of it? A. Yes.

Q. Then speaking generally of the district, what was your father's position in the district with regard to these industries and water powers?

A. Well, he was "it," I suppose, I do not know how you would put it. He was interested in them all, and practically in charge of them all.

Q. He was interested in them all, and practically in charge of them all, and were they his individual schemes? A. I think they were.

Q. You think they were? A. Yes.

Q. What was his idea with regard to that district, do you know?

A. Well, he always looked upon that district as being a coming centre for milling and storing grain and all that kind of thing, for one thing he had great visions about that power.

MR. TILLEY : Q. What? A. He had great visions about the power, that is the Norman dam.

MR. MCCARTHY : Q. Then, do you remember at the time that the old Roller Dam was acquired by him? A. Well, it was built by us, by the Keewatin Lumber Company.

Q. It was built by the Keewatin Lumber Company? A. Yes.

Q. Do you remember what the object of that dam was?

A. It was to raise the level in the water of the Lake of the Woods, which had been very low for two years previous, and previous to that we could not operate the saw-mill to more than about half its capacity, and the idea of this Roller Dam was to raise the water and keep it up.

Q. Then, did you occupy any position in the Power Company? A. No.

Q. When did your father die? A. He died in 1906 or 1907—I am not sure about that.

Q. Then, up to the time of his death, did he still retain his interests in that north country? A. Yes.

Q. Did he spend his summers there, or what? A. Well, the last couple of years he did not spend it there very much, but previous to that, he always did.

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Q. And when did he sell out the Keewatin Lumbering Company, do you remember—or was that sold before his death? A. I think it was, I would not be positive about that.

Q. You would not be positive, but you think it was? A. Yes.

Q. Then, did he still retain his interest in the two flour mill companies up to the time of his death? A. Yes.

Q. And what about his power company? A. Well, he had interest in that, of course.

Q. Then, do you remember the circumstances under which the Power Company was sold to the, what I call the Backus interests, or perhaps I had better go a little bit ahead of that. Do you remember the time the Norman Dam was sold to the Backus interests? A. Well, yes, I do. 10

Q. You do—the Norman Dam was the only asset the Power Company had at that time? A. Yes.

Q. You had no buildings? A. No.

Q. And you never produced power? A. No.

Q. What was the first you had to do with the sale of the Norman Dam to Mr. Backus, or his interests? A. I went to Fort Francis and spent a day there, and talked a sale.

MR. TILLEY : I do not see how this is relevant, my Lord. 20

HIS LORDSHIP : I do not know what it is directed to. I am allowing Mr. McCarthy—I am sure he is heading somewhere—but I do not know just yet where it is.

MR. MCCARTHY : The evidence is very short, and there is a reason for it?

A. I went with Mr. McLeod, Mr. Backus' Manager to Fort Francis and saw him, and the object I had in going there was to discuss the sale of the Norman Dam.

MR. MCCARTHY : Q. That was during your father's lifetime?

HIS LORDSHIP : While your father was living?

A. No, I think that would be after it. That would be after his death. 30

MR. MCCARTHY : Did you go on your father's behalf or not? A. No, I went on the company's behalf.

Q. And you think your father was dead at the time? A. Yes.

Q. I think the outcome of that was, ultimately, an agreement for sale?

A. Not on that interview, that was the start of the negotiations, and eventually there was a sale.

Q. Ultimately I mean there was a sale to Mr. Backus?

A. Yes, but I had nothing more to do with it after that.

Q. Then, were you on the Board of the Power Company after your father's death? A. Yes. 40

Q. For how long? A. I was on for—I guess I was on up to the time of the transfer to the Backus interests although I never attended any of the meetings after I think about 1913.

Q. You never attended any of the meetings after about 1913? A. No.

Q. Then how were your father's shares held after that? A. Well, I held some, my brother had some, and my sister had some.

Q. Did you hold them in your own names? A. We did, yes.

MR. TILLEY : Q. What were your brother's initials ? A. A. G. Mather and R. A.

Q. And your sister's name ? A. Mrs. Robertson was my sister.

MR. MCCARTHY : Q. You say they were held in your names ?

A. They were issued in our names.

Q. Who held them ? A. The Bank of Ottawa held them.

Q. The Bank of Ottawa held them ? A. Yes. I am talking of my stock now.

Q. Well, what was the first you knew of the sale of the shares to Mr. Backus, or his interests ?

MR. TILLEY : Is that material, his first knowledge ?

HIS LORDSHIP : I do not see, as I understand it, there is no attack being made here on any sale at any time.

What is the relevancy here, Mr. McCarthy ?

MR. MCCARTHY : The relevancy is this—I wanted to show in Mr. John Mather's lifetime he would not have done anything against the rights of the company which he himself had created. It is suggested that this action was commenced by this company before Mr. Backus got control, there is the possible suggestion that this company originated this litigation by its own action, it is not usual to destroy the companies which had been created by the same interests.

HIS LORDSHIP : Would that not be presupposing the identifying of John Mather with an Incorporated Company—I do not say that, what John Mather may have had in mind, suppose he had instructed the issuing of that writ.

MR. MCCARTHY : I am not suggesting he was dead before this, but what I am suggesting is, Mr. Mather knew nothing whatever of the issue of the writ or the sale of the shares.

HIS LORDSHIP : Then this Mr. Mather may say that.

MR. MCCARTHY : That is what I am asking him.

HIS LORDSHIP : I do not know what effect it may have, the way it strikes me, we are dealing here with incorporated companies which are legal entities of themselves and to me it does not make a straw's difference, what individuals had stock in them may have thought or understood or knew or anything who else, it could not affect the company's legal position or obligation.

MR. MCCARTHY : It might not, but there is a possibility or an argument being based upon it against me, and I want to clear it up, and what I am asking this witness is, not anything about his father, his father was dead, it is whether he knew of the sale of his shares to the Backus interests ?

HIS LORDSHIP : He could say that he personally knew nothing about the bringing of the action.

MR. MCCARTHY : Q. Did you know about selling your shares to the Backus interests ? A. Yes.

Q. When ? A. Shortly before they were sold. I was asked by the Bank to agree to it, which I did.

Q. Then, did you ever know of the litigation, of the issuing of the writ ?

A. I heard about it incidentally, possibly a year after the writ had been issued.

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Q. But you did not attend any meetings where the matter was discussed? A. No.

MR. McCARTHY : Q. Then just, if I may, to sum up the evidence, so that your Lordship may have it in mind—I understand you to say that the Keewatin Lumbering Company was started about 1879? A. Yes.

Q. And then the Roller Dam, I do not think you gave me the date of that? A. I think that was about 1884, wasn't it.

Q. And the Lake of the Woods, you thought about 1885, or 1886? A. Somewhere along that.

MR. TILLEY : No.

MR. McCARTHY : We will see what he says?

WITNESS : I am not clear about those dates.

MR. McCARTHY : You are not clear—you said early '80's.

HIS LORDSHIP : The mill buildings were erected in the early '80's.

MR. McCARTHY : That is as far as he could go.

Q. Then, did you remember when the Norman Dam was built? A. The Norman Dam was started in the Fall of 1893.

Q. And the Gold Mining Company, I think you said, got the site of the Dick & Banning property in 1893?

A. Somewhere around there.

HIS LORDSHIP : 1893, he said.

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CROSS-EXAMINED by MR. TILLEY :

Q. Mr. Mather, you say your shares were hypothecated to the Bank?

A. Yes.

Q. Were your brother's shares? A. I do not know anything about that definitely, but I think so.

Q. You had two brothers? A. Two brothers.

Q. Are they both alive? A. No, sir, one of them is dead.

Q. Where does the other one live? A. In Ottawa.

Q. What are his initials? A. A. G.

Q. Was he a Director of the Company? A. Yes.

That is of the Keewatin Power Company?

Q. And he continued to be a Director down to the time the shares were sold? A. I think so.

Q. And he attended meetings? A. I think so, yes.

Q. And he is now in Ottawa? A. Yes.

Q. Now, you have given an account of the various mills—you are quite clear that the Roller Dam was constructed by the Keewatin ~~Power~~ Company?

A. I had charge of the building of it.

Q. Would you describe the location of it? A. It was located at the head of the, just where the western outlet leaves the Lake of the Woods.

Q. Just where the Western Outlet leaves the Lake of the Woods, that is at the south? A. At the north end of the Bay.

Q. The north end of the Bay, and the south end of the Island that makes the two branches? A. Exactly.

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40

Q. And which shore was it adjacent to or across from one shore to the other? A. Across from one shore to the other.

Q. And about how high was it? A. Well, when it was finished it was two feet, or thereabouts, over the then level of the Lake of the Woods.

MR. MCCARTHY: Is this the Roller or Norman? A. The Roller.

MR. TILLEY: Two feet over the low level, and was that the summer level or—? A. That was the low water level.

Q. And according to your recollection, how much did the Lake of the Woods vary on the average, two or three feet? A. Well, I have seen a
10 difference of twelve feet in the same season.

Q. A difference of twelve feet between the low level and the high?

A. Yes.

Q. So that it was a lake of considerable variation? A. Yes.

Q. In its natural state? A. Yes.

Q. And then this Roller way dam, as I gather, was a dam to preserve a certain amount of water in aid of navigation, and in aid of the industry?

A. And to prevent it getting down to its previous low levels.

Q. The previous low levels, I think from something I have read, that the low levels had been running for some years? A. Well, the summer of
20 1880, 1881, and 1882 were low level years.

Q. At least three years? A. Yes.

Q. And it had been getting a bit worse each year?

A. Well, I would not say that, but it was about as bad as it could be.

Q. Now then you were there of course when the Norman Dam was built? A. Yes.

Q. How much higher was it than the old crest of the Roller way dam?

A. I do not think I could tell you that.

Q. How much higher did it raise the water? A. Well, it did not raise the water any higher than the natural high level.

Q. It did not raise it any higher than the natural high level? A. That is, I had seen it as high before the dam was built as it has been since, except one
30 year.

Q. What year was it you say it was higher?

A. In 1916 was the year it was so very high, but it was either 1882 or 1883 when the previous high water was.

Q. Then you are comparing the flood of 1916 with the previous flood of about 1882? A. Yes.

Q. I thought you said 1882 was the low level?

A. So it was, it was low in the Spring, but it started to rise in August
40 and by the time of ice it was the highest I had ever seen it. It raised twelve feet in three months.

Q. What? A. August, September, and October.

Q. In August, September and October, the Lake of Woods raised over twelve feet? A. Yes.

Q. That seems surprising? A. It is, but it is a fact all the same.

Q. Then, you cannot tell us now to what level the Norman Dam raised the water? A. No, I cannot tell you that.

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Q. Approximately? A. It was approximately the same as the ordinary high water.

Q. Did it keep it steady at that? A. It kept it steady at that.

Q. That was the advantage of it? A. It kept it steady, that was what it was built for.

Q. And were you the officer of the company at that time? A. Which company?

Q. Of the Keewatin Power Company? A. No, I was a shareholder.

Q. You were what? A. I was a stockholder.

Q. You were a stockholder, not a Director? A. No.

10

Q. And you say your father had great hopes of the Norman Dam?

A. Yes.

Q. He thought that that was going to generate a great deal of power?

A. Yes.

Q. For plants in the vicinity? A. Yes.

Q. That is, I suppose, develop the power in the form of electricity and transmit it to the plants?

A. There was an idea at one time of doing that, and there was an idea of transmitting it to Winnipeg.

Q. Even as far as Winnipeg? A. Yes.

20

Q. Anyway a hydro electro proposition, it was not with the idea of using the power directly? A. That transmitting the power to Winnipeg would be a Hydro-electric proposition, but the rest of it was for using it locally.

Q. Locally, but nevertheless, it would be done by first developing the power? A. I do not know, that would be a matter of detail.

Q. You had not gone into that? A. No.

Q. When did your father first have the vision of an exceedingly good water power at Norman Dam? A. Well, he and I went down that, to Tunnel Island, that must have been about 1880.

Q. 1880? A. And he told me all about his schemes.

30

Q. At that time? A. At that time.

Q. 1880? A. That was before there was anything done at all with regard to acquiring the property, or building the dam.

Q. As a matter of fact, before anything was done about building any of the properties there? A. I think at that time, there was only our own sawmill there.

Q. Only your own sawmill? A. Yes.

Q. Was that the sawmill that you then refer to as the sawmill down at the west end? A. Yes.

Q. The Keewatin Lumbering Company sawmill, and at that time he had the view that the Norman Dam was a potential and a great thing? A. Yes, with power there.

40

Q. That was his impression? A. Yes.

Q. Now, can you tell me, do you know the channels from the Lake of the Woods—

MR. TILLEY: Will you let me have Exhibit 87?

MR. TILLEY : Now, we have a lease that was given to Fuller and Dennis and one other ? A. Ross.

Q. And you say your father was interested in that lease ? A. Yes, this became the limits that were lumbered by the Keewatin Lumber Co.

Now, this map of the Lake of the Woods will be what number, Mr. McCabe ?

Exhibit 94.

MR. MCCARTHY : It is proved.

MR. TILLEY : I will identify it by this witness—you recognize that
10 map as—

A. Recognize it as a public map of Lake of the Woods, but not very correct.

Q. It is reasonably correct ? A. Yes, it is reasonably correct—it is a map that has always been—

Q. A map that has always referred to ? A. Yes.

HIS LORDSHIP : Wait just a moment there—prepared by whom ?

MR. TILLEY : By the Province of Ontario.

MR. MCCARTHY : I do not know that this proves the accuracy of the map. I do not know what map. I do not know what he wants it for.

20 MR. TILLEY : It is just to identify the timber limits.

It is good enough for that purpose ? A. Yes.

MR. TILLEY : It is issued by the Department of Lands, Forests and Mines and has the Honourable Frank Cochrane's name on it ? A. It is the map that was accepted but there is a map by the Geological Survey, but that is good enough for what you want.

Q. Will you tell me where the properties are that are referred to in the lease ? A. The lease described them as "all of the islands in the Lake of the Woods, lying north of the steamboat channel leading into the North West Angle of said Lake"—

30 Q. Where is that ? A. That is about—this map does not go far enough.

Q. At any rate, show us where the boundary line is ?

A. The boundary line was the steamboat channel leading from the mouth of Rainy River.

Q. Where is that ? A. There is only Oak Island, it is twenty miles beyond that.

Q. Starting from a place beyond that, to the south west ?

A. To the south—there is the north-west angle, here is the boundary you see. You start at the North West Angle—

40 Q. At the bottom of this plan, and the left hand side ? A. Yes, you start the north west channel and follow that channel all the way through. Here is Oak Island, and then the channel turns this way.

Q. Turns south ? A. South to the mouth of Rainy River, and the Keewatin Lumbering and Manufacturing claim all the timber on all the Islands in the Lake of the Woods lying north of that line.

Q. Now the islands then would be commencing at the north west angle,

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and running to a point, is it Oak Island and then turning? A. Following the channel, then—

Q. Then you turn south there? A. To the mouth of Rainy River.

Q. And you claimed all the islands north of that? A. Yes.

Q. As being covered by your lease? A. Yes.

EXHIBIT No. 94. Ontario Provincial Government Map of Lake of the Woods District, 1911.

MR. TILLEY : Q. And that is what you surrendered in order to get the agreement of 1891? A. I think the surrender in the first place was the islands extending twelve miles south from Kenora. 10

Q. There may have been a provisional agreement, but the surrender we have here? A. Is of the islands, that is what was surrendered.

Q. That is what was surrendered in order to get the agreement of 1891?

A. Yes.

That is ~~not~~ right.

HIS LORDSHIP : That is to get agreement, Exhibit 87?

MR. MCCARTHY : Exhibit 88.

MR. TILLEY : Exhibit 88—Exhibit 87 is the agreement of 1891.

HIS LORDSHIP : It was by that that the surrender was made, and in exchange for that, the lease was obtained. 20

MR. TILLEY : Not in exchange, for ultimately a deed was obtained or patent.

HIS LORDSHIP : But it was what they got by the lease that was surrendered by Exhibit 87.

MR. TILLEY : In order to get Exhibit 87, they had to surrender what they had under the lease. I am not bothering about the exceptions.

WITNESS : I am not familiar with what was reserved.

Q. And that was a well-wooded territory? A. It had been, the timber was pretty well off.

Q. There was lots still there? A. Not the kind we were getting. 30

Q. Not the kind you got first, but like all other lumbering people, you got a poor lumbering timber, but you still got it? A. Yes.

Q. And it was a valuable lease at that time, the lease of these islands?

A. Yes.

Q. Now then, you were asked about the openings for the raceways and you gave the dates. I will not bother you about that again—you spoke about the raceways to one of the mills as being about thirty feet? A. Well, they are both about that.

Q. They were both about the same width? A. Yes.

Q. And were they both about the same depth? 40

A. Well, I would imagine so.

Q. And both in rock? A. Both in rock.

Q. And while they followed the line of least resistance, nevertheless they were excavations? A. They had to be blasted.

Q. They had to be blasted right through, and in each of them there were wheels, as places for obtaining? A. Power.

Q. The driving power? A. Yes.

Q. And were they put in when you were there—of course they were ?
 A. Yes.
 Q. And that applied to both mills ? A. Yes.
 Q. Do you know what wheels were in there ? A. No, I do not remember.
 Q. You cannot give that from memory, and I think Dick & Banning failed, didn't they ? A. No, I do not think they failed, I do not remember.
 Q. They closed up ? A. They closed up their plant.
 Q. Their plant was closed for sometime before the Gold Milling venture ?
 10 A. I do not remember.
 Q. Some years ? A. Yes.
 Q. But you cannot fix the exact years ? A. No.
 Q. But it was not being used at all ? A. I think the—no, I do not think it was being used at all.
 Q. You do not think it was used at all, then I think after the Gold Mining Company were running a time, it was closed again, before the ?
 A. Before the Four Mills took it over, yes.
 Q. For how many years ? A. I would not like to say, perhaps a couple of years, three years or two years.
 20 Q. Two or three years ? A. Yes.
 MR. TILLEY : That is all, thank you.

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HIS LORDSHIP : Tell me, Mr. Mather, what is the significance of a roller dam—what is a roller dam ?

A. A roller dam is a dam that is made without any openings in it, that the water just goes over.

HIS LORDSHIP : Just a solid dam which spills itself over the top.

I had never heard the expression before ? A. A rolling dam is what most people call it.

RE-EXAMINED by MR. McCARTHY :

30 MR. McCARTHY : One other thing, with your Lordship's permission, which I omitted to ask.

Q. At some time, there was a contribution, I think in 1911, by the different companies of repairs to the dam.

MR. TILLEY : By what ?

MR. McCARTHY : By the different companies.

MR. TILLEY : I think my friend should not suggest.

WITNESS : Yes, I have a recollection of that.

Q. Do you remember when that was ? A. In 1911.

40 Q. Do you remember what the occasion was ? A. Well, there was, they thought there was too much water going through the rock fill.

Q. What ? A. They thought there was too much water going through the rock fill.

Q. Yes ? A. And the occasion was to try to stop that.

Q. What was done at that time ? A. Well, the Lake of the Woods Milling Company did that.

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MR. TILLEY : Q. Did you have anything to do with this ?

A. I was President of the Keewatin Power Company and I signed the cheque to them for the proportion that had been agreed upon by the different parties that the Keewatin Power Company was to pay.

MR. TILLEY : Q. For what ? A. For the closing up of this rock fill.

HIS LORDSHIP : You mean the rock fill was leaking ?

A. Was leaking.

Q. And letting too much water through ? A. In the Norman Dam.

HIS LORDSHIP : Somebody fixed it ? And the Power Company paid part of it ? A. Yes. 10

MR. MCCARTHY : Q. Who contributed to it ? A. There was the Lake of the Woods Milling Company, the Keewatin Power Company, and the Ontario Government, as far as my recollection goes.

MR. MCCARTHY : Q. As far as your recollection goes—I show you a letter on the letter paper of the Keewatin Power Company and signed by the Secretary-Treasurer—does that—?

MR. TILLEY : This is my friend's witness, I think that is a very suggestive way to put it to him.

MR. MCCARTHY : Q. Will you look at that and tell me if that is the contribution referred to ? A. Yes. 20

Q. How much was each assessed for ? A. Well, \$333.33.

Being one-third of the expense of closing up the leak in the dam.

Q. And the other third was by the Power Company ?

A. And the other third by the Ontario Government.

Q. Now, what company did the work, do you know ?

A. The Lake of the Woods Milling Co. did the work.

EXHIBIT No. 95. Letter dated 9th November, 1911, H. P. Hill, Secretary-Treasurer, Keewatin Power Company to Lake of the Woods Milling Company.

“Keewatin Power Company, Limited, Secretary-Treasurer's Office, 30 110 Wellington Street, Ottawa, November 9th, 1911.”

“Lake of the Woods Milling Company, Keewatin, Ont. Dear Sirs,—Mr. D. L. Mather has asked me to have transferred to your credit in the Bank of Ottawa, Keewatin, the sum of \$333.33, being one-third of the expense of closing up the leak of the dam. I have given the necessary instructions to-day. Yours very truly.”

MR. TILLEY : Q. The dam, of course, was owned by the Keewatin Power Company ? A. Yes.

Q. And this dam maintained the water so that the Lake of the Woods Milling Company was interested in having some repairs made ? A. Yes. 40

Q. And in order to get repairs made, the owner of the dam contributed one-third, and the Government one-third and the Lake of the Woods one-third ? A. Exactly.

Q. Your Company was not deriving any revenue from it ?

A. No, that was reasonable enough under the circumstances.

The Ontario Government were really controlling. They took the regulation of the water out of the hands of the Keewatin Power Company.

- Q. Was that under the agreement that was made where the stop logs—?
 A. I cannot tell you that.
 Q. There was an agreement put in, about '98, where the Ontario Government contracted to have stop logs put in?
 A. They put them in and took them out under their supervision.
 Q. And this has been going on from the time the stop logs had first been put in? A. Yes, I think it has.
 Q. Right down to 1911? A. I think it had.
 Q. Therefore, it was under the Ontario Government control, and you
 10 were not getting a revenue from it? A. Exactly.
 Q. As a matter of fact, as I gather there were no stop logs in the dam, so that it did not hold back the water?
 A. Oh, yes, there were stop logs. The stop logs were all there.
 Q. Wait—there were no stop logs until the Ontario Government made an arrangement whereby they were put in?
 A. No, the Power Company put the stop logs in, but the arrangement they made was they would take them out and put them in to regulate the water.

MR. TILLEY: What is the number of that exhibit?
 20 Exhibit No. 9, certified copy agreement dated 22nd June, 1898, between Keewatin Power Company and His Majesty.

Q. Now, just let me read this agreement to you, it says, "Whereas the Company had constructed a dam across the west branch of the Winnipeg River at Tunnel Island at or near the Lake of the Woods, and whereas for the purpose of improving the navigation of said Lake it is expedient that the said dam should be improved by the addition of stop logs and otherwise.

"And whereas it has been agreed by and between the parties hereto that in consideration of the sum of \$400 and other stipulations and conditions herein contained that the said company will make all the necessary improve-
 30 ments and will also permit the same to be used for the improvement of such navigation as aforesaid ;—

"Now this indenture witnesseth as follows :—that the company covenant and agree to put in all necessary stop logs to fill the different openings, a sufficient height to maintain the water of the Lake of the Woods at ordinary summer level, together with not less than two windlasses or winches furnished with chains, racking and other necessary and latest appliances for raising and lowering the stop logs as far as the same may be required to properly regulate the height of the water, such winches or windlasses to be of such constructions as to enable any of the logs to be raised with ease by four men.

40 "The company also covenants to provide and lay all such tracks as may be necessary to enable the winches or windlasses to be easily moved from opening to opening throughout the entire length of the dam, and that they will put in all the stop logs, and properly test the appliances for taking them out and replacing them to the satisfaction of the engineer to be named by the Government of the Province, and that they will place the Commissioner in possession of the entire plant in thorough working order complete in every respect for use by him or the officers or servants of his department for the

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purpose aforesaid on or before the 25th day of August, 1898, and that they will also renew or repair the stonework or other permanent portions of the dam from time to time, as may in the opinion of said Engineer have become unsafe or unfit for further service."

And I gather from that agreement, that at that date, that is the date that fixes the time when the dam was finally completed, by the installation of stop logs produced, which you have got all wrong, because the stop logs were there, and they dealt in reference to putting them in and taking them out, no four hundred dollars would buy the stop logs.

I am not saying the \$400 paid for the stop logs, but in consideration of the \$400 and other stipulations and conditions herein contained the company will make all the necessary improvements and will also permit the same to be used for the improvement of such navigation as aforesaid—and the company agreed to put in all necessary stop logs? A. It was their duty to put them in.

Q. They had not been in use? A. I do not know whether they had been in use, but I know that they were part of the dam just as much as the masonry piers were, and they were there on the ground.

Q. Do you mean in their place? A. I think they were in their place, but they may have been piled on the top of the superstructure.

Q. This says that winches were to be provided? 20

A. That is to lift the stop logs, and lift them into their slots.

Q. Now were the stop logs actually in their slots and dropped down, before you had that? A. I am not very sure about that.

MR. TILLEY: That is all.

MR. McCARTHY; Q. Tell us what you had done when you had constructed the dam—what was the construction of the Norman Dam?

A. It was piers, stop logs, and the rock fill.

Q. How did you operate the stop logs? A. The Ontario Govern-
ment—

Q. Before that agreement? A. When the dam was finished the stop logs were certainly put in. 30

Q. Had the stop logs ever varied? A. The only variation would be the putting in of the stop logs and leaving them there.

Q. Who did that? A. The Keewatin Power Company.

Q. When? A. When they finished the dam.

MR. McCARTHY: As I understand, the Norman Dam, as usually built, you put in the masonry, and stop logs, a certain height, and just left them there.

HIS LORDSHIP: They were not in a proper sense, stop logs? A. Yes, my Lord. 40

HIS LORDSHIP: If they were just put in without provisions for taking them out? A. They were stop logs, but they required this machinery to lift them out and put them back when occasion required.

MR. McCARTHY: Q. At that time, was the machinery there? A. I remember that was got afterwards, because I went down to look it up.

Q. When? A. After the stop logs was in, I do not know, possibly some of the men who put them in are sitting here in this court room.

Q. Never mind, tell us when the machinery was put in, and why it was put in there? A. The machinery, as far as my recollection serves, the machinery was got there when the question arose of taking out some of the stop logs to regulate it.

Q. So that originally when the stop logs were put there they were left there? A. They were left there.

Q. As his Lordship says, a solid dam? A. Yes.

Q. And under the agreement my learned friend refers to, it enabled you to take them out and put them back? A. Yes.

10 Q. But the leakage referred to in 1911 was not the leakage by reason of the stop logs, but through the rock fill? A. Through the rock fill.

Q. And where were the repairs to the stop logs, or the rock fill? A. To the rock fill.

HIS LORDSHIP: Tell me, just before you go, you spoke of this first dam that was this old roller dam, and then you spoke of the Norman Dam—and you said that the old Roller Dam was down at the mouth—now where was the Norman Dam? A. The Roller Dam was up just where the Lake starts into the River.

20 Q. Right at the opening? A. And the Norman Dam must be half a mile further down at the rapids.

Q. The Norman Dam was half a mile further down?

A. Just at the crest of the rapids.

MR. TILLEY: Q. The Norman Dam would be about where the water was located at Darlington Bay? A. Darlington Bay?

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

MR. MCCARTHY: Here is Exhibit 33—will you show us where the Roller Dam was on Exhibit 33? A. Here is the Lake of the Woods—

Q. There is the Canadian Pacific Railway Crossing?

A. It would be right across there, I guess.

30 MR. TILLEY: Q. Where is the Lake of the Woods?

A. Here (indicating).

Q. The Norman Dam, or the Roller? A. The Norman Dam would be—wait a minute, I do not want to get rattled—here it is if we have a map with the Norman Dam marked on it, it is marked on one of our Exhibits, there is no doubt about it, at the rapids.

MR. MCINNIS: The word “Rapid” you refer to the Island? A. Yes, the Island formed part, they cut that Island away.

Q. The figure thirty-six, and “rapids,” and the Island, now where was the Roller Dam? A. Up here (indicating), across there.

40 Q. That is opposite, between the figures about 58 and 43.

HIS LORDSHIP: The Roller Dam was for water regulation and the Norman Dam was for power purposes? A. Yes.

MR. TILLEY: The Norman would be below, not above.

HIS LORDSHIP: Yes, below.

Court adjourned at 5 p.m., until 10.30 to-morrow.
Thursday, 19th May, 1927, 10.30 a.m.

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MR. McCARTHY : I am calling Mr. Cherry, my Lord, but only as to the case in which the Lake of the Woods is defendant.

Mr. Mather's evidence of course covered the ground pretty well, generally.

MR. TILLEY : I submit my friend cannot call a witness in one case so that I cannot cross-examine him, only in the one case.

HIS LORDSHIP : You may cross-examine him as to anything, given in evidence up to the present time.

MR. McCARTHY : That is going to place me in a very difficult position. These cases were not consolidated, and I understood your Lordship was going to take the evidence up to a certain point, and where necessary, we were to divide. If I am to call a witness in one case, and he is to be examined in another, that is entirely improper I submit, but if my friend wants to call him in the other case, he can. 10

HIS LORDSHIP : I see what you mean.

MR. TILLEY : I have every right to cross-examine in one case anyway, and I certainly understood that we were so far as witnesses were speaking of things material to both cases, the evidence was in in both cases, but my friend as to title deeds has drawn no distinction.

HIS LORDSHIP : The evidence which is in up to the present time, except where it has been distinct, as applying to one case only, that is with respect to title papers and so on, has been evidence which was common to both cases—that is, the witnesses were called, for instance, this last witness, Mather. 20

MR. McCARTHY : I told your Lordship he could give evidence in regard to both cases.

HIS LORDSHIP : Now you are calling this witness to give evidence with respect to the defence of the Lake of the Woods Milling Company and their action ?

MR. McCARTHY : Yes, my Lord.

HIS LORDSHIP : And you do not propose asking him any questions which deal with the defence of the other company ? 30

MR. McCARTHY : Not at all.

HIS LORDSHIP : I think in that case, Mr. Tilley, your cross-examination would be restricted just as it would be if I were trying the Lake of the Woods Milling Company case with the right to call this witness, if you see fit, in the other case.

MR. TILLEY : I submit my friend cannot put me in that position at this stage of the trial. He has put in evidence that is material in both cases.

HIS LORDSHIP : You have had every right of cross-examination with regard to it.

MR. TILLEY : Now, if my friend is proceeding on the theory that certain 40 things only are relevant to one case, I quite appreciate it, but he cannot, I submit, call a witness and, say, I am calling him so that his evidence, although directly bearing on the other case, either directly or by inference, that it is not to be read in the other case or used in the other case—I submit my friend cannot do that.

MR. McCARTHY : These cases are not consolidated in trial for any purpose and the one case may be appealed and the other not.

MR. TILLEY : You cannot separate the evidence of the other witnesses.

MR. McCARTHY : There are only two witnesses called and they are common to both.

HIS LORDSHIP : Up to the present time, except in the matter of documents, there has been no difference made. The evidence is common to the two cases. What I mean, Mr. McCarthy, is this, I have given no direction that the actions are to be tried together in the ordinary sense, that the evidence is all common to both actions.

Now, I am still of opinion, Mr. Tilley, that if Mr. McCarthy chooses, as
 10 a matter of saving time, and convenience, I have been taking evidence in the two cases, but not strictly speaking trying them together. I am not disposed to insist that the witness who is called in the Lake of the Woods action must therefore stand cross-examination in the Keewatin action. I do not think it is necessary. I do not think it would be proper to insist upon it. If you wish to recall the witness, or call a witness in the other action to give evidence in regard to it, there will be no difficulty in the way of your doing so, but I do not think that you are entitled to cross-examine in both cases, that is provided the witness, when he is being put in the witness box is stated definitely to be a witness in the one action or the other.

20 MR. TILLEY : I think it will turn out to be a very embarrassing way of trying the actions, and my submission is that if a witness who is put in the box, this man is General Manager of both companies, and then to say that this witness is only to be treated as giving evidence on behalf of one of his companies, is a very embarrassing way of giving evidence.

I have allowed evidence to go in by witnesses, I do not know what would be the result of it if I had been told now certain individual witnesses may be called afterwards in one case, I think I would have had the right to object to a witness speaking on the other case—I do not know what position I could have got the case in, in order to compel Mr. Cherry to give evidence in both cases.
 30 I have assumed that witnesses were called to speak generally when they were called, generally in both actions.

HIS LORDSHIP : I do not see.

MR. TILLEY : I have never heard of a case—I can quite understand a witness being called, and his evidence, in so far as it relates to one action only, being treated as evidence in that action, but I have never known of a case where they were proceeding in this way and the witnesses called, where they stated that his evidence is only to be evidence in one action, and not in the other.

40 HIS LORDSHIP : As I understand it, his evidence is to be given in the Lake of the Woods action only, and in regard to the defence of the Lake of the Woods, the evidence he is to give has no bearing on the affairs of the Keewatin Flour Mills. It would be a different thing if he gave evidence which touches upon the defence of the Keewatin Flour Mills to be used in connection with their defence—then I would feel differently about it. I can quite see the awkwardness of it, but I do not know, unless we had started out and given a lot of evidence twice, nor I do not see how I could have avoided it very well, for I do not think I have any right to insist when they call a

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witness to give evidence in one case, he must be open to cross-examination in the other.

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THOMAS JOSEPH CHERRY, Sworn. Examined by MR. McCARTHY :

HIS LORDSHIP : Now, Mr. McCarthy, I think this, that if you are going to, as apparently you are, with this witness as least, put in witnesses who are to give evidence with respect to the defence in the one action only, that I should have the witnesses in that defence one after the other.

MR. McCARTHY : I am going to, my Lord.

HIS LORDSHIP : In other words, I do not want this witness in the Lake of the Woods, and then another in the Keewatin. 10

MR. McCARTHY : No, my Lord, I am going to exhaust my evidence so far as the Lake of the Woods is concerned.

HIS LORDSHIP : Then, do I understand, that you have completed the evidence in defence that is common to both.

MR. McCARTHY : No, there is one witness who is common to both.

HIS LORDSHIP : Then that witness won't be called until after you have put in the evidence with regard to the Lake of the Woods.

MR. McCARTHY : If more convenient I will call him now.

HIS LORDSHIP : I think it would be better to give all the evidence that is common to both, or put him after all the others are through. 20

MR. McCARTHY : It would be more convenient, my Lord. Mr. Mather was on the general situation. I have one more witness on that point if your Lordship would rather clear that up.

HIS LORDSHIP : I would rather it should be so, and of course, it would be understood all the evidence that is given by witnesses in the Lake of the Woods case is not available in the Keewatin case.

MR. McCARTHY : Quite so, my Lord.

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NELS J. HANSEN, Sworn. Examined by MR. McCARTHY :

Q. Mr. Hansen, when did you first go to Keewatin? A. In 1887. 30

Q. In 1887, and what work were you doing then?

A. Well, I was working as a constructor, the Reid Construction Company.

Q. What work were they doing, Mr. Hansen? A. What they called "A" Mill.

Q. And with what particular work were you connected in doing? A. I was engaged in blasting out the channel.

Q. Blasting out the channel? A. Yes.

Q. That channel runs from what point to what point, do you remember?

A. Well, what we call the Bay of the Lake of the Woods through to what they call Darlington Bay. 40

Q. And you were engaged in blasting out the channel were you?

A. Yes.

Q. Then, can you tell us about how wide the channel was, as blasted?

A. Well, off-handed, I did not measure it, but it was always understood to be thirty feet wide.

Q. And about how deep? A. And fifteen deep, that is what it was supposed at that time, to be.

Q. And it was blasted out of the solid rock. A. Yes.

HIS LORDSHIP : About thirty feet wide, and fifteen feet deep? A. Yes.

MR. MCCARTHY : Q. Blasted out of the solid rock? A. Yes.

Q. And what was the channel for? A. To convey the water down to the Power House.

Q. Then, how long did that work take? A. To the Spring of 1888.

Q. To the spring of 1888? A. Yes.

10 Q. And you were engaged on the construction work generally, and the blasting work particularly, were you—then, when did the mill start operation, that is “A” Mill? A. Well, in the Fall of 1888.

Q. And what did you do after the construction work was finished?

A. Well, I got a job with the Lake of the Woods.

Q. You got a job with the Lake of the Woods? A. In the Mill.

Q. And remained with them for how long? A. Well, up to date.

Q. You are still with “A” Mill? A. Well, in the both of them.

Q. What? A. I am between the two of the mills.

20 Q. In what capacity? A. As pipefitter and looking after fire extinguish-
ers and boilers.

Q. As pipefitter and looking after fire extinguishers and boilers, in both mills? A. Yes.

Q. Then, has there been any change in the cut in the rock, the cut or canal as made by you up to the year 1916?

A. No, not to any extent, by that I mean—

Q. Was there any change made between the time you cut it and the year 1916? A. No, not to my knowledge.

Q. Not to your knowledge, the canal is the same width and the same length? A. Yes, and the same width.

30 Q. Any change in the depth, in the floor of the canal?

A. Well, no, not in the main channel, there has not been any.

Q. Up to the year 1916? A. No.

Q. No change that you know of? A. No, not that I can know of.

HIS LORDSHIP : You say not in the main channel?

A. That is the main flume. I do not say in the ends of it or anything.

Q. You do not say in the ends? A. The main flow of the channel.

Q. Yes? A. It is a long channel, and it has been cleaned out, something has cleaned out the rock or what in the bottom of both ends like.

40 Q. In both ends the rock has been cleaned out of the bottom, is that what you say, so there was cleaning out of the bottom? A. Just the loose rock.

Q. The loose rock was cleaned out of the bottom at both ends? A. Yes.

MR. MCCARTHY : Q. Where is the Power House situated?

A. Down at Darlington Bay, at the end.

Q. Is there any tail race, or does it flow right into Darlington Bay?

A. It goes through the pen stock, or the wheel pit.

Q. What? A. It goes through the pen stock?

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- Q. And then goes to Darlington Bay? A. It falls through the wheels.
- Q. Then, you were at Keewatin at the time that the mill known as Mill "C" was in operation in 1887, who was operating Mill "C"? A. Well, the Lake of the Woods were operating in 1887.
- Q. In 1887? A. No.
- Q. Who was operating Mill "C"? A. Well, it was Dick & Banning's saw-mill.
- Q. And then were you familiar with the situation there at Dick & Banning's time? A. No, not particularly.
- Q. Not particularly? A. No. 10
- Q. Well, did you know the situation or condition of affairs when the Ottawa Mining and Milling Company were operating? A. No, I do not know anything about that.
- Q. Well, when did the Lake of the Woods, or when did the Keewatin Flour Mills take it over? A. In 1906, I think.
- Q. In 1906? A. Yes.
- Q. Then, were you engaged in the operations there at that time?
- A. Well, I was sent down there, yes.
- Q. Now, you see the Railway carried across the opening in this, to Mill "C"? A. Over the intake. 20
- MR. TILLEY : Over what did he say?
- MR. McCARTHY : Over the intake.
- Q. How was it carried on a fill, or trestle or what? A. It was a single track, steel bridge.
- Q. In 1906? A. Yes.
- Q. How had it been carried before that? A. A wooden trestle.
- Q. On a wooden trestle?
- MR. TILLEY : That was before what year?
- A. That was away back in Dick & Banning's time when that happened.
- Q. That was away back in Dick & Banning's time when that hap- 30
pened? A. Yes.
- Q. Well then, do you remember when the steel span was put in, and the fill? A. No, I cannot do that.
- Q. Now, are you familiar with the work that was done at Mill "C" in 1906? A. Well, I did not have anything to do with that, that was under the McDonald Construction Company.
- Q. What? A. The McDonald Construction Company did it.
- Q. I know the McDonald Construction Company did it, but did you do anything about it? A. No.
- Q. Had you anything to do with the work? A. Yes, in the front part. 40
- Q. What do you mean by the front part? A. At the stop logs there, doing some—
- Q. Where were the stop logs? A. In the front of the mill.
- Q. In the front of the mill? A. Yes.
- Q. How far in front of the mill? A. Oh, about fifteen feet, I guess.
- Q. About fifteen feet, you guess? A. I won't be sure.

Q. What did you do with the stop logs? A. They put in stop log gates there.

MR. TILLEY : Q. Who did?

MR. MCCARTHY : Q. Who put in a gate? A. The Lake of the Woods.

Q. Is that the only work you did in connection with it? A. Yes, of the operations.

Q. Now, was any change made at that time in the head race? A. Well, this would be the head race we were working at.

Q. Except the stop logs was any other change made in the head race?

10 A. No.

Q. And what work did you do in connection with the stop logs, can you tell me? A. Well, we just blasted out a little further to get the sill in, and of course it was built of rock on the side to, in an effort to get a straight run in.

Q. You said you blasted out a little to get the sills in? A. Yes.

Q. That is the sills that hold the logs? A. Yes.

Q. And you did what else? A. Well, we built up the wall on the sides.

Q. Built up what? A. Built up the dry stone wall on each side of the water intake.

20 Q. You built up a dry stone wall on each side? A. Yes.

Q. Which side, on the south side, or north side? A. On both sides.

Q. A dry stone wall extending how far? A. Up to the railway bridge.

Q. Up to the railroad bridge? A. Yes.

Q. That is from the sills, do you mean? A. From the stop logs yes, from the sills.

Q. From the sills which held the stop logs? A. Yes.

Q. You built a dry stone wall up to the railroad bridge? A. Yes.

HIS LORDSHIP : What did you say was the object of that dry stone wall?

A. Just to straighten the tunnel up.

30 MR. MCCARTHY : Q. To straighten the channel up? A. Yes, to straighten the flow and out.

Q. What was the condition of the flow before that, what was it like before that? A. I cannot say, because the water was out of it. The cofferdam was in the front when I came down there.

Q. And what you did, as I understand, was to put in the stop logs, how long are the stop logs—what is the distance between the sills? A. I think it is sixteen feet each, about thirty feet, you mean the width.

Q. I mean the width? A. Yes.

HIS LORDSHIP : How long was the stop logs?

40 A. I think it was thirty feet opening, that was the two.

MR. MCCARTHY : Q. How many piers are there? A. There are just two gateways.

Q. There are two gateways? A. Yes.

Q. Is that right? A. Yes, there is a pier in the centre.

Q. A pier in the centre and two gateways, and how wide is each gateway? A. I think—I could not exactly—

Q. You can give me some idea? A. About fifteen feet.

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Q. You mean each gateway? A. Yes.

HIS LORDSHIP : The opening that was to be closed with the stop logs?

A. Yes.

HIS LORDSHIP : That is what I understand the opening, which was to be closed by the stop logs was about fifteen feet in each of them, and there were two of them—thirty feet between the two of them?

A. Yes.

MR. TILLEY : That is what I understand.

MR. MCCARTHY : Q. Then, witness, listen to me, before you put your wall in, running from the stop logs to the bridge, what was the condition of the surrounding land and rock? A. Oh, there was kind of muddy bottom on the west side and deeper down. 10

Q. What? A. It was kind of muddy ground on the west side of the channel.

Q. Yes. And more rock on the east, and muddy ground on the west side? A. Yes.

Q. And what you did was to run two dry——? A. Walls,

Q. Two dry walls there, at end of the sills, of the stop logs, down to the bridge? A. Yes.

Q. And what would be the width between the walls? A. Well, I do not know, we narrowed it up quite a considerable, to fill in the roadway. 20

Q. What? A. We narrowed it up to give a roadway for the bridge.

Q. Can you give me the distance between the walls? A. No, I could not say that.

Q. Then you say you narrowed the thing up to get a roadway around underneath the bridge? A. Yes.

Q. What is that roadway for? A. To run around to the other property of the Lake of the Woods.

Q. To Mill "A"? A. Yes.

Q. So you have a roadway coming down on which side of the race, would that be? A. On the west side. 30

Q. You have a roadway coming down which goes under the bridge?

A. Yes.

Q. And then turns west and goes up to the other mill? A. Yes.

Q. And you say the race was narrowed down to enable you to make that roadway under the bridge? A. Yes, it was filled in there.

Q. That is the opening under the bridge—what width is the opening under the bridge? A. Well, I cannot——

Q. Did your dry stone walls go right to the edge of the sills under the bridge? A. It comes right up, yes. 40

Q. Right up to there? A. Yes.

Q. Now, was any change made in the bottom or the floor of the race?

A. No.

Q. No change? A. Not to my knowledge.

Q. Well, you were working there, weren't you? A. Yes.

Q. And the race was unwatered at the time? A. It was unwatered, yes, there was no——

- Q. You had a coffer-dam across the front? A. Yes.
- Q. And were you there all the time that the work was going on?
- A. Yes.
- Q. And it was completed during your time? A. Yes.
- Q. And you say no work was done on what you might call the floor of the race? A. No.
- Q. Then, is that the only work you did in connection with the mill?
- A. Yes.
- Q. You had nothing to do with the construction of the building itself?
- 10 A. No.
- Q. That was all done by the McDonald Engineering Company?
- A. Yes.
- Q. And the only work your company did was the work you have told us in connection with the coffer-dam, at least with the stop logs and the wall, that is all south of the mill buildings? A. Yes.
- Q. Now, were you familiar with the situation before the Railway Company put the sills there, when the trestle was there? A. Well, I had seen it, but I cannot just—
- Q. Well, how long was the trestle, about, do you remember? A. Oh,
- 20 I should judge over three hundred feet anyway.
- Q. Then, how did Dick & Banning get their logs in. A. Well, they had a boom outside.
- Q. What? A. They boomed their timber on the outside and led it through.
- Q. They boomed their timber on the outside and led it through?
- A. Yes.
- Q. Were the piles on which the trestle rested in the water? A. Yes, there were piles in the water.
- Q. What? A. Yes, there were piles in the water.
- 30 Q. Was there one particular space where the logs came through, or could they come through all the spaces? A. I cannot just exactly—I think—they took it through in the centre, in front.
- Q. Then, what was the condition of what you call the booming ground or mill pond between the trestle and Dick & Banning Mill—what was the condition of the water there? A. Well, it would be pretty hard just to explain. It was water—
- Q. What? A. It was water.
- through there, and you cannot explain just exactly that?
- Q. How wide was it? A. Oh, I cannot say, a couple of hundred feet
- 40 A. In front of the mill.
- Q. Then, where was their jack ladder? A. That was on the north side of the track.
- Q. On the north side of the track, and where was the mill itself situated, on what part of the land? A. Well on, I should judge about half ways between the two lakes.
- Q. About half ways between the two lakes? A. Or practically on the same site as the mill is now.

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Q. Then, do you remember when the mining Company was there—
where was their mill situated? A. In the same place.

Q. And was any change made in the head race when the Mining Com-
pany was there? A. I cannot say.

Q. How did the Mining Company get their material into the mill?

A. They got it in on a kind of cable hoist, that travelled from a tower
over.

Q. Where was the tower? A. Out in the Bay, south of—

Q. South of the railway? A. Yes, south of the railway.

Q. And the ore came up in barges? A. Yes, and then went— 10

Q. Then, how did they get it across to the mill? A. They had their
hoist, used a box, and filled it in and pulled it over.

Q. Did it go over the track, or under the track? A. Over the track.

Q. So there was a tower and a skip for taking it over to the mill?

A. Yes.

Q. Then, did you know anything about the operations there at all?

A. No.

Q. You know nothing about that? A. No.

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BY MR. TILLEY.

20

Q. Mr. Hansen, you say you have been at Keewatin since 1887?

A. Yes.

Q. Have you resided there all the time? A. Yes.

Q. And you have been working at mill—working at the construction
of Mill "A" or the raceway, or working in the mill from that time to this?

A. Yes, sir.

Q. Yes, you have had nothing to do with the Norman Dam? A. No.

Q. A little louder, please speak up? A. I have nothing to do with
working on it.

Q. There was a Mr. Hansen, was there not, who had something to do 30
with the stop logs there? A. Yes.

Q. Was he related to you? A. That was me.

Q. When were you doing that work? A. When I was doing it.

Q. When, that is the question? A. I was doing that from 1905, or
1906.

Q. 1905 or 1906? A. Yes.

Q. Until? A. Until up to this change in the Norman Dam.

Q. Now, up till the year, until the International Waterways changes
were made? A. Yes.

Q. And a Board of Control assumed jurisdiction? A. Yes. 40

Q. That is about two years ago? A. Something like that.

Q. Then, in whose employ were you in connection with that work?

A. Who my employer was, when?

Q. Who was your employer in connection with the work you did on
the Norman Dam? A. The Ontario Government.

Q. And while you were doing that, were you also working in Mill "A"?

- A. Yes.
- Q. You attended to the Norman Dam as a sort of a sideline? A. Yes.
- Q. And did you make the changes in the stop logs there—as you got instructions from the Ontario Government? A. Well, I made the changes according to the situation there was there in the water.
- Q. In the water? A. Yes.
- Q. You did not wait for instructions every time? A. No, not altogether.
- Q. Sometimes you got special instructions, the rest of the time you used your judgment? A. I always used my own judgment.
- 10 HIS LORDSHIP : Was this in the operation of the stop logs?
- MR. TILLEY : Q. That was in the operation of the stop logs, you mean?
- A. Yes.
- Q. Now, Mr. Hansen, you say you go back to 1887, will you tell me precisely who was running the Mill “A” at that time? A. In 1887?
- Q. No, you do not need to ask the question over again, if you just listen to me the first time—in 1887, yes? A. Dick & Banning.
- Q. They were running it at that time, the saw-mill? A. Yes, the saw-mill.
- 20 Q. The saw-mill, and how long did they continue to run it after you got there? A. About three years, I guess.
- Q. About three years, that is to 1890? A. Yes, either 1890 or 1891.
- Q. Then they stopped running it do you know? A. Yes.
- Q. Did they cut all the timber, do you know? A. I do not know anything about that.
- Q. Do you know where they got their timber from? A. I do not know, it came in on the Lake of the Woods.
- Q. It came in on the Lake of the Woods, but where it came from, you do not know? A. No.
- 30 Q. Then they closed it down, did they? A. Yes.
- Q. And it stayed closed down for how long? A. I do not know, I cannot remember that time.
- Q. Give us your best recollection, you are here for that purpose? A. I won't give a definite—
- Q. I am not asking you to give that, give as definite as you can? A. I guess about three or four years.
- Q. About three or four years, and no operations going on at that time—that is right, is it not? A. Not at the saw-mill.
- Q. Not at that mill? A. Not at that saw-mill.
- 40 Q. When you say not at that saw-mill, the water wheels were closed, and the thing standing idle?
- HIS LORDSHIP : Is that right, witness?
- A. Yes.
- HIS LORDSHIP : Answer promptly. You know you are just losing us that much time whenever you stand and wait.
- MR. TILLEY : Now that is three or four years that there was no water

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running through on the channel—I mean the raceway of the Dick & Banning Mill, that is so, is it not? A. I cannot say.

Q. That is your understanding, is it not? A. The stop logs may have been in, and the water won't run through.

Q. Well, the stop logs were in use in some way, it was eventually prevented from running through, is that right. You nod your head, but you do not answer? A. Yes.

Q. Then, who started it up again? A. Well, the Gold Mining Company.

Q. The Gold Mining Company, and how long did the Gold Mining Com- 10
pany operate it? A. I cannot say.

Q. Well, I say a few months, or a year or two? A. A couple of years, I guess.

Q. A couple of years, you guess? A. Yes. I cannot positively get any account on that.

Q. Just do the best you can, a couple of years?

HIS LORDSHIP : That is after the lapse of the three or four years?

MR. TILLEY : Q. That would be after the close down for three or four years, that is right? A. Yes.

Q. And then it closed down again? A. (witness nods). 20

HIS LORDSHIP : If you just nod your head, the reporter does not see it, so he gets no answer at all—now please answer the question.

MR. TILLEY : Q. Is that right? A. Yes.

Q. And it remained closed down until the flour mill was started?

A. Yes.

Q. And that, you say was 1905 or 1906? A. Yes.

Q. 1905 or 1906, so that there were two periods from 1887—well, before I ask you that, the second close-down, according to you would be from about 1903 to 1906—would that be about right? A. No.

Q. How long, 1905? A. 1894 or 1895. 30

Q. 1894 to 1896—1905 or 1906? A. Yes.

Q. And during that time, either by closing the wheels or putting in the stop logs, or keeping them there, the water was not running through that raceway during that time? A. It was not supposed to, no.

Q. Well then, who built the mill that was built there? A. The Keewatin Milling Company.

Q. The Keewatin Milling Company? A. Yes.

Q. That was by the company that Mr. John Mather——? A. Yes.

Q. Was head of? A. Yes.

Q. And how long—you are now, as I understand you, giving your at- 40
tention to both mills as fire extinguisher, and so on? A. Yes.

Q. How long have you been acting for both mills—since about 1906?

A. Since 1906, yes.

Q. Does that show when the Lake of the Woods took over the Keewatin mill? A. Yes, from the Mill, the Lake of the Woods took it over.

Q. Then you had been there, were you fire extinguisher back in 1906,

or had you some other duty then? A. Oh, I had the looking after the boilers and the mill-wright work, etc.

Q. Are you a mill-wright? A. Yes, I work at that, yes.

Q. So that you were general handy man? A. Handy man.

Q. That would be a good fair way to put it? A. Sure.

Q. You have never occupied any position where you controlled or managed the company? A. No.

Q. But you watched a good deal, the progress in these two mills, haven't you? A. Yes, sir.

10 Q. You have looked it over, if you have not done it—for instance back in 1906 when the Keewatin Flour Mills were taken over by the Lake of the Woods, there has been a tremendous increase in the flour made at the two mills? A. Yes.

Q. Thousands per day? A. Yes.

MR. McCARTHY : Thousands of what?

MR. TILLEY : Thousands of barrels—that is all under the management of Mr. Cherry, is it? A. Yes.

Q. Local Manager? A. Yes.

20 Q. He is the local Manager there—that is at Keewatin? A. At Keewatin.

Q. And then the two mills, I suppose, are really run as one for practical purposes in the work about the place? A. Yes, they run—

Q. I mean, you and Mr. Cherry are not the only two men who give your attention to both companies? A. No.

Q. They work indiscriminately, one place and the other, is that not right? A. Yes.

Q. And having the two mills, of course, the company can use one or the other as they please? A. Yes.

30 Q. When they need to close down, would you say the output is doubled since 1906? A. I do not, I cannot say that.

Q. Well, about that? A. I won't say, no.

Q. Mr. Hansen, now do you see we want to know about these things, as well as we can get them, and you see these different progressive stages, what would you say has been the increase? A. Well, I could not say, because I have no account of them.

Q. You kept no account? A. No.

Q. But it is a large increase? A. It may be an increase, I do not know.

40 Q. You do not know what that difference is—large? A. I do not know if it is a large increase or not.

Q. Don't you know whether it is large or not? A. I know the mill is large, but I do not know about the increase and that.

Q. What were they turning out in 1906? A. I do not know.

Q. Were they turning out fifteen hundred barrels a day at Mill "A"?

A. A good deal more than that, I guess.

Q. In 1906? A. Yes, I guess, I do not know.

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Q. Are they today? A. I do not know what capacity they are turning out.

Q. You do not know whether Mill "A" is turning out more than fifteen barrels?

HIS LORDSHIP : Fifteen?

MR. TILLEY : Fifteen hundred barrels a day? A. No, I do not know.

Q. Mr. Hansen, do you want that answer to be taken at its full value. You do not know whether Mill "A" is turning out more than fifteen hundred barrels a day—are you asking the Court to take that statement? A. Well, they may be turning out fifteen hundred and they may be turning out twenty-five hundred barrels. I won't know, because I have no correct account of them. 10

Q. You do not know whether it may be five thousand or not? A. Yes, as far as I am concerned, because I have not anything to do with the milling part.

Q. You would know, in working there, whether it was turning out fifteen hundred barrels or five thousand? A. No, I do not know what capacity they had or what feed they had on the mill, I would not know that.

Q. You do not know that? A. No.

Q. Let us come back to that again, just let us take it as it progressed— you say that you had to do with the construction of the raceway at Mill "A"—was the raceway at Mill "C" built at that time? A. Well, there was a raceway there. 20

Q. It was there? A. Yes.

Q. And the mill was being operated? A. Yes.

Q. Now, keeping to Mill "A" for the present, you say it was how wide, the raceway? A. Thirty feet.

Q. Thirty feet, you said, I think a couple of hundred feet long. No, you do not give the length—what was the length of it? A. About three hundred or four hundred feet. 30

Q. About three hundred or four hundred feet—then you say the depth was fifteen feet—do you keep a uniform depth of fifteen feet, or fifteen feet at the highest point? A. Oh, I understood it to be fifteen feet—the uniform feet.

Q. Is it uniform in depth then throughout the three hundred or four hundred feet? A. No.

Q. Where is the highest point? A. Well, down half way between it.

Q. About half way? A. Yes.

Q. How deep was the raceway at that point? A. Oh, about eighteen feet I guess. 40

Q. About eighteen feet? A. Yes.

Q. Then it tapered down going north and going south, is that what you mean? A. Yes.

Q. And it got down about fifteen feet—is that the lowest depth? Is that right, it got down to about fifteen feet? A. It would go a little lower than fifteen, about twelve.

Q. When you say about fifteen, you mean the average of fifteen feet, is that a fair way of putting it? A. Yes.

Q. Is it all solid rock from end to end? A. Yes.

Q. And it required blasting, did it? A. Yes.

Q. And how long did that take to build? A. One winter, just got through in the Spring.

Q. Got through in the Spring? A. Yes of 1888.

Q. You could not tell what that cost? A. No.

Q. And you say it is about thirty feet wide? A. Yes.

10 Q. It could not be forty feet wide? A. Oh, I do not think it.

Q. It could not be twenty feet wide? A. No.

Q. About thirty feet wide—now then, will you tell me the first time, after 1887 that any changes were made in that raceway by way of cleaning out or improving the bottom or improving the sides, or anything at all?

A. Well, they made some changes—

Q. When? A. In 1905, I think, or 1904.

Q. In 1905, that was the time, or about the time when they were getting both those organizations under one management? A. Before that time.

Q. Before that time, possibly a year before? A. Yes.

20 Q. About a year before—now then, are you prepared to say that that was the first time that any change had been made in that raceway? A. So far as my knowledge.

Q. So far as your knowledge? A. Yes.

Q. And did you take part in those changes that were then made?

A. Yes, I did take part in them.

Q. What period of the year were they made? A. In the Fall or the winter time there.

Q. In the winter time, about what time did that commence and when did they finish? A. They finished about the Spring of 1906.

30 Q. The Spring of 1906, and commenced about? A. In the Fall of 1905.

Q. What do you mean by the Fall, up in Keewatin, is that about November, or October or September? A. Well—

Q. September? A. Yes, something like.

Q. So that it ran from September of 1905 until you say, June, 1906—would that be about right? A. 1906, yes.

HIS LORDSHIP : About June, you say?

A. No, no, I think about May when I left there.

MR. TILLEY : Q. Up till May? A. Yes, I think.

40 Q. About eight months—is that right? A. No, about six months.

Q. About six months—you have got a few more months than six in that period? A. You may get me tangled up there.

Q. Now, Mr. Hansen, I want you to go very slowly, you will answer them accurately, because there is no use in being confused about it. I do not want you to be confused—now, do you want to change the months when the work started or when it ended—was it right as you have given it, what months? Now, take your time, I do not want you to be hurried, what month

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did you commence that work in 1905? A. Well, it is hard for me to say that, because I did not keep track of the months.

Q. I know, you are speaking from memory? A. And I cannot just put in the recollection on that now. I have not been thinking it over either.

Q. September, would that be right? A. It may be a little later.

Q. September or the beginning of October—would that be fair?

A. Well, I won't take my oath on that.

Q. To your best recollection, it would be before the beginning of—before the middle of October? A. In the middle of the year, or there—

Q. Don't say middle of the year, because I do not think that is fair to yourself. You just mistake yourself there—is it right to say before the middle of October is your best recollection? A. Well, up till November, or something like that, it would be later, I guess it would be in November. 10

Q. Now really, are you going to guess? A. I cannot say it, because cannot recall my memory to just exactly that time.

Q. You cannot carry your memory back? A. Not on that point.

Q. Well, I had better get away from that point, because you will have me in December or January, 1906, yet. You are not certain as to that—is not your best recollection—it may be wrong of course—is not your best recollection that it was before the middle of October? Is that not a fair statement to make? A. No, it is not a fair statement to make, because I cannot 20

Q. Before the 1st of November? A. Because I cannot.

Q. Would that be fair? A. I cannot convict myself to that.

Q. You cannot? A. I cannot put myself down to a date on that?

Q. I have asked you for your best recollection and you have given me the best you can? A. I will do that.

Q. All right, if you do that. How many men were employed? A. I have not a count of the men employed. There was off and on six or seven of us, and eight or ten men as the mill was going. They were using the men from the mills, so I cannot say. 30

Q. Using the men from the mills? A. Yes.

Q. Using them as needed? A. Yes.

Q. Sometimes as low as eight? A. Yes, maybe ten to fifteen.

Q. You see you are getting it increased to maybe twenty men, at times?

A. No, ten men to fifteen.

Q. Ten men to fifteen working for six to eight months—now, did you take the water out of the raceway? A. No.

Q. Worked in it with the water in? A. No, put in the stop logs at the head gate. 40

Q. How far were those stop logs from the mill? A. As I say, four hundred feet in the channel, up at the other end of the channel.

Q. At Portage Bay? A. Yes.

Q. How near to Portage Bay? A. Well, close up against the spill—

Q. And that would be how far away from the gates to the mill? A. Oh, about four hundred feet or so.

Q. About four hundred feet, it is a little difficult to get four hundred feet in a raceway that is only four hundred feet long altogether. How far are the gates from the end—when you say the raceway is four hundred feet long—do you mean from Portage Bay to the gates? A. Down to the mill pond.

Q. Then I was quite in error in commenting on your answer—how far are the wheels from the Darlington Bay end? A. They are right down on the shore line.

Q. Very well then, you had the four hundred feet unwatered? A. Yes.

10 Q. And your work was down there, did you change the stop logs there at that time? A. No, I do not think it.

Q. You did not make any alteration there? A. No.

Q. Will you say that you did not? A. I do not know if that was—yes there were made.

Q. At that time there were? A. Yes.

Q. Now, what did you do to them? A. They moved them up, that is right.

Q. They moved them up—when you say up? A. To the Bay, up to the Portage Bay.

20 Q. Where had they been before? A. Just about ten or fifteen feet further down, underneath the bridge there.

Q. Underneath the bridge, then who then unwatered it?

HIS LORDSHIP : I thought he said before that these stop logs were about fifteen feet in front of the mill?

MR. MCCARTHY : That is Mill "C", my Lord.

MR. TILLEY : This is Mill "A" we are talking about, and they moved the stop logs fifteen feet towards the Bay? A. Ten or fifteen feet, between, I won't say.

30 Q. And did they have to dewater it? A. Well, they coffer-dammed that in the front.

Q. They coffer-dammed? A. Yes.

Q. Well, is that the first thing they did? A. They did that at the same time as they did the other walls.

Q. Never mind the walls, we will come to that later? A. They done it about the same time.

Q. And then they put in wider stop logs there, didn't they? A. Yes, I think they put in one gate more.

Q. One gate more—how wide would that make it. How wide would that make it? A. About thirty-five feet, I guess.

40 Q. Do you mean to say that one gate was only five feet wide?

A. Well—

Q. How many gates are there? A. There were piers in between them.

Q. Piers in between, but how many gates are there? A. Three.

Q. At the present time? A. Yes.

Q. And prior to that there were two? A. Yes.

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Q. So that you increased them by one-third, you increased them one-half, didn't you, you changed them from two to three, is that not right? That is right is it not? A. Yes.

Q. And if you first made that raceway thirty feet wide, you must have made it a good deal wider when you put these new stop logs in? A. No.

Q. How much wider? A. We did not make it any wider.

Q. Then I will put it this way, the entrance to the raceway was narrowed? A. No.

Q. Well, why did you put in the extra gate? A. Well, they were moving that up there to get a roadway over. 10

Q. To get what? A. To get a roadway over it.

Q. Why widen it? A. The raceway was narrower back of it, it was just on the front of it.

Q. On the front of it it was a bit narrow? A. No, it was no narrower, it was wider.

Q. Mr. Hansen, I am going to ask you was not that entrance to that original raceway a little narrower than the raceway itself? A. No.

Q. Will you say it was not? A. I do not think it.

Q. Will you say it was not? A. No.

Q. When you say "no", do you mean that it was, or that you do not know? A. Well, I knowed they was supposed to be the same raceway. 20

Q. But where they put in the original stop logs, they had to put in slots to put them in? A. Yes.

Q. And they had stone ends for these stop logs to rest on? A. Yes.

Q. And at the point where the stop logs were with the obstruction in the middle, and the apparatus at the side, it was not as wide as the raceway was clean across where there was no obstruction at all? A. I said there was no obstruction, because it was cut into the rock.

Q. Not at the sides, but there was in the centre? A. At the centre, a pier. 30

Q. How big was the pier? A. Twelve inches iron pier.

Q. Twelve inches iron pier, and then you moved it ten feet? A. Yes.

Q. And then you had an entrance to the raceway that was wider than the raceway? A. It would be the same entrance, except that post.

Q. The same entrance except the post? A. Yes.

Q. Did they take the post out? A. Yes.

Q. And how did they arrange without the post? A. One new gate.

Q. Well, I will put it this way—now when you put in new gates, you put in a third gate, didn't you—that is right? A. Yes.

Q. And then did you have posts between the two gates? A. Posts 40 between them, there were two posts in them.

Q. Two posts in them, but when you had three gates, you had more space for the water to go through than when you had two gates before, hadn't you? A. At the front part, but there was no—

Q. I am not talking about any place else except the front, that is at the front, and the original construction the way it was originally, it had standing in the centre a steel post, that was how wide, two feet? A. No.

- Q. What? A. About twelve inches or fifteen inches.
- Q. Fifteen inches? A. Twelve inches.
- Q. And then at that stage, they got more space at the front, I am not talking about any place else, but at the front particularly, that is true—that is right? A. In the front, yes.
- Q. Well, sometimes it is a great thing to have proper space there, you know— Now, what did they do between there and the wheels at the mill?
- A. At the mill?
- Q. Yes, what did they do between the front gates and the mill?
- 10 A. Well, in the main channel they did not do anything.
- Q. A mere cleaning out? A. That is all.
- Q. That is all, but that is a good thing? A. No blasting, they took out nothing, only loose stuff.
- Q. Loose stuff that had been there, boulders, and like that? A. That had fallen in.
- Q. That had fallen in in the past when the raceway was built, of course there was a lot of blasting wasn't there? A. Yes.
- Q. And you were just cleaning out the loose stuff in 1905? A. Yes.
- Q. And how much did you take out? A. Oh, it won't amount to
- 20 more than forty or fifty loose stuff or in the whole bottom of it.
- Q. What do you mean, forty or fifty cubic yards, and you pledge your oath that was all there was forty or fifty cubic yards? A. Yes, there was not anything done, blasting.
- Q. I am not asking about blasting, the blasting was done in 1887?
- A. Yes.
- Q. Now, you were getting out the refuse, and do you say there was as little refuse as you have indicated—what are you going to put it at, what are you prepared to pledge your oath on as to quantity? A. Well, I cannot remember putting out anything that was to any amount.
- 30 Q. Any amount, did you help remove it? A. I did not help remove it.
- Q. You did not help to lift out any of this loose stuff? A. No.
- Q. How did they get it together, did the men handle it? A. I guess so, it had to be handled by men, if they moved any.
- Q. And how many men? A. I do not know.
- Q. And how long did they take to get it out? A. I cannot say, I do not know.
- Q. The whole bottom of that raceway was filled with loose rock from the original blasting, wasn't it? A. No, not altogether.
- Q. Not altogether, what do you mean by "not altogether"? A. There
- 40 would be some loose rock, and there was a solid rock in the bottom.
- Q. Some loose rock? A. Solid rock, there may have been some chunks of rock laying there along.
- Q. Some chunks of rock laying there, and that is what was being taken out? A. I was not taking out anything.
- Q. The men were taking it out, is that right? A. Yes.
- Q. The men were taking it out, and you cannot tell me how many men, nor how long they were? A. No.

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Q. Nor can you tell me how they handled it. Did they have to have any appliances to handle it, or did they take it out by hand? A. They had no appliances so far as hoists, or anything.

Q. Was it throughout the full length of the four hundred feet? A. No.

Q. Where was it mostly? A. If it was taken out mostly it was at the front gate.

Q. In the bottom at the front gate, did you deepen it there? A. No.

Q. But there was this loose rock you say, scattered along the bottom?

A. Yes.

Q. That is right? A. There was some loose rock, I guess took out. 10

Q. Throughout the whole four hundred feet? A. No.

Q. How much of the four hundred feet will you say there was no loose rock—will you say there was twenty feet of it they did not get loose rock out of it? A. They had not done anything up for one hundred and fifty feet, they did not do anything.

Q. Up one hundred and fifty feet, didn't they do anything? A. From the C.P.R. bridge down to the elevator there was not anything.

Q. From the C.P.R. bridge going towards Darlington Bay? A. Yes.

Q. There was nothing done for one hundred and fifty feet? A. No.

Q. And then something was done, that is where you found the loose 20 rock was it? A. No.

Q. There was some there? A. No.

Q. Well, what was there—what was there? A. Up at Darlington Bay?

Q. No, not Darlington Bay, you said from the C.P.R. bridge there was nothing done for one hundred and fifty feet towards the elevator? A. Yes.

Q. Now, I am asking you what was done when you got to the end of the one hundred and fifty feet? A. Well there was nothing practically done down there.

Q. Then what was impractically done down there? A. There was not anything done down there. 30

Q. Well, did they take out some loose rock? A. Yes, and they took out some boulders there.

Q. And what sized boulders? A. Half a yard boulder.

HIS LORDSHIP : How large?

MR. TILLEY : You mean half a cubic yard?

A. Some they could handle with the men, they rolled them up on the side.

Q. Would the men be able to lift them—not all of them? A. Not all them.

Q. Now, how far did you get, after you met the C.P.R. bridge—did they 40 run from there to the C.P.R. bridge? A. There is a low hole there, and there was water running out on the side of the raceway?

Q. What? A. It was deep down there, that was all natural, they had not done blasting down there.

Q. Do you say these boulders had not been blasted? A. No.

Q. These boulders had been there originally? A. Yes, it was in a low place.

- Q. It was in a low place, now where was that low place exactly?
 A. Well, it was about one hundred feet from the mill pond east.
 Q. One hundred feet east of the mill pond—what do you mean by the mill pond? A. Where the water goes into the penstock or sluice.
 Q. You are speaking of “A” mill? A. Yes.
 Q. Now then, what do you call the mill pond?
 HIS LORDSHIP : The fore bay?
 A. No, that is where the wheels is standing in.
 MR. TILLEY : For the wheels? A. Yes.
 10 Q. It is the other direction you are speaking of now? A. Yes, sir.
 Q. Now, I do not know that I have got this very clear, I wish you would try and help me to get it clear. There is a spot you say one hundred and fifty feet ~~west~~ of the C.P.R. bridge going towards Darlington Bay, where you met boulders, rocks—now is that right, that men could roll, but not lift, all of them—is that right, or is it wrong? A. That is not, we did not get it before we got down two hundred feet there.
 Q. From where? A. From the turn of the raceway.
 Q. From the turn of the raceway? A. Yes.
 Q. Now, just let us identify the turn of the raceway—(let me see Ex-
 20 hibit 28 will you). Put it so His Lordship can see it.
 HIS LORDSHIP : I can see it.
 MR. TILLEY : Here is mill “A” raceway?
 A. Yes.
 Q. And it first runs north from Portage Bay, and then it turns?
 A. Yes.
 Q. Now, is that the turn that you are referring to? A. Yes, there was nothing done before you got down here.
 Q. Where is “down here”—where do you mean? A. That is the C.P.R.
 30 Q. Here is the centre line of the C.P.R. bridge which is said to be here?
 A. Yes. Now the new work that was done was right here, the stop logs were put in in the front.
 Q. The stop logs were put in in the front, south of the C.P.R. track?
 A. Yes.
 Q. Towards the bay? A. Yes.
 Q. And carried out ten feet further? A. Yes.
 Q. And there was no work done from that point to where? A. There was no work done from that point to down here (indicating).
 Q. I am not talking—
 40 MR. MCCARTHY : Just a moment.
 MR. TILLEY : I am talking of the point where the witness—
 MR. MCCARTHY : I think I am entitled when he says from there to there—
 MR. TILLEY : He is not answering my question. The answer as on the notes now is not intelligible.
 MR. MCCARTHY : Let us put up what he said—there is a two hundred foot—

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HIS LORDSHIP : If Mr. Tilley does not bring him back, I will.

MR. TILLEY : I am not through with the witness.

MR. MCCARTHY : You have no right to take half his answer.

HIS LORDSHIP : If Mr. Tilley does not bring him back to the corner, I will.

MR. TILLEY : Q. We start at Portage Bay, and you have spoken of the change in the gate? A. Yes.

Q. Was anything else done in that point? A. Not that point, but between that was taken out the rock.

HIS LORDSHIP : That point means the opening at Portage Bay? 10

A. Yes.

MR. TILLEY : Q. And you were taking out rocks up to the C.P.R. Railway? A. To underneath the C.P.R. Railway.

Q. And for what distance were you taking out rocks there? A. To this point, it was clear up to the C.P.R.

Q. To the point where the curve is?

HIS LORDSHIP : Where the turn is in the raceway?

A. Yes.

MR. TILLEY : Q. So you first removed the gate out towards Portage Bay? A. Yes. 20

Q. And then you commenced cleaning out the raceway, I suppose you kept the stop logs in and then you had it dry, and you commenced cleaning out the raceway? A. Yes.

Q. And then you cleaned it out to where the turn is in the raceway—is that right? A. Yes.

Q. Now just do not get ahead of me, and you had boulders of the kind you have been referring to? A. No.

Q. What did you have there? A. Nothing, only just loose rock from the filling of the C.P.R., that dropped in.

Q. From the filling of the C.P.R. which had been dropping in there— 30 now then, when you got to that point. A. Yes.

Q. Where the raceway turns? A. Yes.

Q. What did you do from there on? A. Nothing.

Q. Nothing until where? A. Down to here (indicating).

MR. TILLEY : "Here", you are pointing?

A. To the elevator.

HIS LORDSHIP : Nothing between the curve or turn in the raceway and the elevator?

A. No.

HIS LORDSHIP : That is what you wanted, Mr. McCarthy? 40

MR. MCCARTHY : Yes, my Lord.

MR. TILLEY : Now then, Mr. Hansen, the old stop logs at Portage Bay, the ones that were there when you took it?

A. Yes.

Q. How far south of the C.P.R. tracks were they? A. Well, I do not just—about five feet or so.

Q. Five feet or so below the C.P.R.? A. Right-of-way.

Q. Is that right? A. Yes, on the south side of the right-of-way.

Q. Do you mean the south side of the C.P.R. track? A. Yes, as it crosses the raceway.

Q. Or do you mean south of the right-of-way of the C.P.R.? A. No, across the C.P.R., I do not know how far the right-of-way would go, but they just crossed over to the shore line.

Q. To the shore line? A. Yes.

Q. And then the C.P.R. had at that time a steel bridge? A. No, not there, there is a stone bridge.

10 Q. A stone bridge, and that was there in 1905 and 1906 when you were doing this work, the stone bridge? A. Yes.

Q. Was it then being built? A. It had been built.

Q. How long before, do you know? A. I do not know.

Q. It was there when you came? A. Yes, in 1906.

Q. In 1906—was it there in 1887 when you came? A. No, no.

Q. Then when was it put in, between 1887 and 1906? A. I do not know the year.

Q. How long after 1887? A. I do not know.

20 Q. But please, you answer very quickly when you say that you do not know, but I would like you to stop and consider for a moment—give me some intelligent answer on it—you came in 1887, and at that time there was a trestle bridge there—now, I want to know when was the trestle bridge removed and the other installed? A. There was no trestle bridge there.

Q. Was there a trestle bridge there in 1887? A. Not there.

Q. Where was it put? A. That was at "C" Mill.

Q. What was at "A" mill? A. Just a kind of a culvert bridge.

Q. A culvert bridge? A. Yes.

Q. And was any filling done at the C.P.R. at the "A" raceway after you came in 1887? A. Yes.

30 Q. What was done? A. Well, they put in a stone arch bridge there.

Q. They put in a stone arch bridge, instead of the culvert? A. Yes.

HIS LORDSHIP : When was that done?

A. I do not know the year.

HIS LORDSHIP : About, give me some idea about when it was?

A. 1891 or 1892 I guess.

HIS LORDSHIP : 1891 or 1892? A. Yes.

MR. TILLEY : You cannot be certain of those two years? A. No, no.

Q. 1891 or 1892 and did the C.P.R. widen the space under the railway tracks where it crossed the raceway, or did it narrow it at that time?

40 A. They widened it sometime afterwards.

Q. What? A. They widened it, they put in a double track or a switch.

Q. When did they widen it? A. At that time.

Q. 1891? A. Or 1892, something like that.

Q. Then do I understand that the C.P.R. about 1891 or 1892 took down the old culvert which I suppose was single track was it? A. Yes.

Q. And changed for that a substantial stone arch bridge? A. Yes.

Q. An arched bridge? A. Yes.

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Q. With double track? A. Yes.

Q. And that was in 1891, then I wish you would be a little more definite about it, if you can—that stone bridge was there in 1905 or 1906, and now I am asking you, how far south of the south side of the stone bridge was the original pair of stop logs? A. Practically right underneath the south side of the track.

Q. When you say “right underneath,” would you mean seven feet, or five feet from it? A. Five feet from it, I guess.

Q. Five feet from it to the south? A. Yes.

Q. Then, do I understand that before the work that the C.P.R. did in 1891 that you are referring to as letting boulders and such stuff get down into the raceway from there, went down into the raceway? A. Yes.

Q. And therefore that loose stuff would extend from the old gate, from the old gate, just to the south of the stone bridge up to where the raceway turned? A. Yes.

Q. Now, of course, you are not able to speak of these dates, except by memory? A. No.

Q. But that is your best recollection. Now then, do you say that the arch, the stone arch bridge had a wider opening under it than the old culvert?

A. They put it out, on the side of the rocks.

Q. And arched it up? A. Arched it up.

Q. How far is the arch from the side of the raceway? A. Oh, it is, I should judge, about some places two to three feet ledge.

Q. Two to three feet from the edge—now, where did the old culvert stand with reference to the edge? A. They went over at the same place.

Q. At the same place, nearer the edge? A. Yes, I think it was right close up to the edge.

Q. Right close up to the edge, was it supported on the sides of the raceway, or did it have any supports below it in the raceway? A. Not in the raceway.

Q. Well, I mean between the two walls of the raceway? A. But it had a little bit of a trestle, but still it was on the solid rock. It is solid rock there.

Q. At that point there is solid rock in the bottom of the raceway?

A. Yes, but that had been blasted down, the side of it would be higher.

Q. Then what support, if any, was there to the old culvert, from the bottom of the raceway? A. They had it supported on the rock side.

Q. Not from the bottom? A. No.

Q. You are sure that there were no supports in the bottom of the raceway? A. No.

Q. None? A. Not to my recollection.

Q. None to your recollection, then how—I want you to describe again how deep in the raceway was the refuse, rocks, boulders, whatever fell in—how deep in the bottom was that accumulation? A. Oh, I do not know, about six inches, or twelve.

Q. Twelve—a couple of feet? A. No.

Q. Would you say it was not two feet deep? A. No, no.

- Q. You would not say that? A. No.
- Q. It extended across the bottom of it? A. Yes.
- Q. About evenly? A. Yes, more up—
- Q. And it was about six inches to a foot? A. More up.
- Q. I beg your pardon? I do not want to interrupt you? A. No.
- Q. Which extended fairly even across the bottom, and it was about six inches and two feet deep? A. Between six inches—
- Q. And a foot, is that right—is that right, between six inches and two feet—six inches to two feet? A. It won't be two feet, not quite.
- 10 Q. Well it would be some places? A. Somewhere around, between there.
- Q. Between there? A. Yes.
- Q. And that had been there since the C.P.R. bridge had been changed to a stone bridge? A. Oh, that might have been accumulated at the time they put in gravel raising the track, some of it.
- Q. But the bulk of it from the time the C.P.R. made the change, is that right? A. Well, I cannot say, it would come later, dropping from the tracks when they unloaded the cars for raising the tracks.
- Q. When were they raising the track? A. They were always putting
- 20 ballast on it.
- Q. I thought you said it fell in at the time the C.P.R. was building the bridge? A. No, I did not say that.
- Q. The bulk of it would be then? A. Some of it.
- Q. And I would think a fair statement would be, the bulk of it, the most of it, because the rest would be small stuff? A. All would be small.
- Q. No boulders in it? A. Not any big boulders.
- Q. Wait now, were there no boulders from the old stop logs up to the turn in the raceway? A. No.
- Q. None at all? A. No, no.
- 30 Q. All this small stuff? A. Small stuff.
- Q. That would pack well? A. Yes.
- Q. And it was the accumulation of years, put it that way, is that right? A. Yes.
- Q. From the time they had opened it up, and the C.P.R. had been putting gravel there, and so on from 1887 when the raceway was built? A. Yes.
- Q. And this was the first time it had ever been cleaned out? A. Yes.
- Q. Well then, let us make the turn, Mr. Hansen, around the corner, and you say there was nothing in the mill race until you came to the elevator?
- 40 A. No.
- Q. Now, do you say that, nothing at all? A. No.
- Q. Not a single boulder? A. There was not anything done to my knowledge.
- Q. You did not see any there? A. I might have seen a little—no.
- Q. You were just going to let me have a boulder or two, I thought? A. No.
- Q. Won't you let me have even a few? A. Not to my knowledge.

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- Q. Insignificant ones, you won't, eh? A. No.
- Q. Well then, I am going to go on with you—and we will come to the elevator—now what was at the elevator in 1905 or 1906? A. Well, there was a kind of a wooden wall put in there.
- Q. A wooden wall? A. Yes.
- Q. Do you mean in the original construction? A. Yes, in the original construction.
- Q. And now you mean, on the side? A. On the side.
- Q. And on the bottom? A. No, that was originally flat, it had not been blasted. 10
- Q. Had it been originally? A. It is the way the ground had been, practically.
- Q. I do not quite follow what you mean there—do you mean you got at a point at the elevator where it was not rock bottom? A. It was rock bottom, but it was low.
- Q. So that in the original construction of the raceway there was no blasting done—is that what you mean? A. Only on the other side.
- Q. On which side? A. On the elevator side.
- Q. Do you mean on the south side of the raceway? A. Yes.
- Q. On the north side, there was blasting? A. No, there was no blasting on the north side. 20
- Q. There was blasting on the south side of the raceway? A. Yes.
- Q. And none on the north side? A. No.
- Q. And then on which side were wooden structures,—had been? A. On the north side.
- Q. None on the south? A. No.
- Q. And how was it held up? A. Which?
- Q. The north side? A. The north side was.
- Q. By piling, do you mean? A. No, there was a kind of a crib wall put in and lined up with planking. 30
- Q. Lined up with planking, then was it supported at the back by the earth? A. Filled in rock into the cribs that were there.
- Q. I know I am stupid about this, and it is all my fault, but I wish you would explain that a little more to me. On the south side you have rock cutting, on the north side, when the raceway was built, did they have an excavation at all? A. No, not on the north side.
- Q. Not even to take away earth? A. They might have taken a little earth away, cleaned off the earth.
- Q. Then in order to keep the water in the raceway, they had to build up a wall on that side? A. Yes. 40
- Q. And that was all crib work? A. Yes, and lined with planking in front.
- Q. And lined on the raceway side with planking? A. Yes.
- Q. And back of the planking was the cribwork? A. Yes.
- Q. And that was filled with rock, I suppose, to hold it in position?
- A. Yes.

Q. And how far did that extend? A. Well, that extended right down to the flume.

Q. Right down to the penstock? A. Right down to the penstock.

Q. Well now, so that we may get our bearings, what would be the reference to this point, where you say the crib work was, where that comes to the raceway, how far along? A. Well you see——(indicating).

Q. At the mill, do you mean? A. Yes.

Q. Just where the water was going to be used for the wheels? A. Sure.

Q. And this plan shows it pretty well? A. Yes.

10 MR. TILLEY : I am referring to Exhibit 28, my Lord.

Q. So that there was that crib-work extended on one side right down to the penstock?

HIS LORDSHIP : On the north side only?

A. Yes.

MR. TILLEY : And then on the south side you still had?

A. The original rock.

Q. The original rock? A. Yes.

Q. And then there was—now, you were going to tell us what was done at that point—what was done in 1905 and 1906? A. Well, there was not
20 anything done up there, to my knowledge.

Q. Nothing done? A. No.

Q. But then you have been telling us how there were boulders there, was that where you had to roll them out? A. That was on the side.

Q. Mr. Hansen, you have told us that there were boulders, some of them too large to lift, that had to be rolled out? A. Yes.

Q. Where were they? A. They were down in here, to that low point.

Q. On the low point? A. Yes.

Q. And what did they do with them?

30 MR. MCCARTHY : He says, "in here." Where is that?

MR. TILLEY : He pointed to between the elevator and the mill.

Q. Well, what did you do with them? A. Well, just rolled them off there, out there on the side to keep the water, to hold it in.

Q. The water? A. The water used to run through here, (indicating).

Q. The water used to run through the cribwork? A. Yes.

Q. And there was a leak there? A. Yes, a big leak.

Q. And where did the water run to when it was leaking? A. It ran down into Darlington Bay.

Q. Now, where was the leak, was it near the mill, or near—— A. No, between the mill and the elevator there.

40 Q. In between the mill and the elevator, and you have seen that water running there? A. Yes.

Q. Did it run as a stream or just trickled? A. No, there was a big stream.

Q. A big stream running out of the side? A. Yes.

Q. Then, what did you do? A. We tried to block that up.

Q. And did you fail? A. Yes, practically at that time.

Q. You failed? A. It seemed closed a little bit at the time.

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Q. When did you try to block it—are you meaning now in 1905 or 1906, or some earlier time? A. In 1906, that there was.

Q. 1906—when did you first see the leak? A. Oh, it was there when they first started the mill.

Q. In 1887? A. In 1888.

Q. In 1888 you saw it? A. Yes.

Q. You saw the leak, how much was leaking out of there? A. A lot of it, a big stream.

Q. Down to Darlington Bay, now you are going to stop that, tell us what you did to stop it? A. Well, they just cleaned that out, and put that stuff up against it, and throwed it up, it was flat rock. 10

Q. Did you take out any boulders? A. Not out of the raceway, we left them in the raceway.

Q. And put them up against? A. Rolled them up on the side.

Q. How many of them? A. Oh, I could not say.

Q. And then did you not do any cleaning along there at all? A. No.

Q. None at all, I thought that was what you started out to tell us about, the cleaning you did there? A. No.

Q. You did not say that? A. No.

Q. You did not do any cleaning there? A. Not to my knowledge. 20

Q. You saw no boulders taken out? A. They were all in the raceway there.

Q. And you tell me now, at no time in that work, 1905 and 1906, did you take any boulders out of the raceway, because I want your definite statement on that—I thought that was what you started out to tell me, certain boulders you took out? A. I am just saying that we rolled these boulders out from the centre of it, up on the side, that is all I said.

Q. You rolled the boulders from the centre to the side? A. Yes.

Q. Now, let us have it this way, they were standing in the centre of the raceway? A. They were all over. 30

Q. Was that part of the raceway, with regard to the boulders, different from the rest of the raceway? A. Well, as I say, there had not been any great blasting done down in there?

Q. Yes? A. In the original way, because the rock cut started from the elevator here, and came up, there was a low place.

Q. There was a low place, now, were there boulders in the centre that you moved out to the side? A. Yes.

Q. And there was a hole at the side? A. Yes.

Q. And did you fill up the whole space with boulders? A. Well, just rolled them over, what they picked up around there. 40

Q. What you picked up, was that boulders that had been in the centre of the raceway were taken to one side, and put in the hole, is that right?

A. On the side, yes

Q. Taken to the side, and put in a hole, so as to fill up a hole? A. No, you have got me wrong there.

Q. You have got me wrong—but have it your own way. I would like

to know what was done with the boulders? A. They were rolled on the side, I say.

Q. On the side of what? A. Of the raceway, up against the cribwork.

Q. But they were still inside the raceway? A. Sure.

Q. But, was there a hole blasted out there, where they went down into a hole? A. No, they did not make any hole, but there was a hole right there, where the water ran out.

Q. Then, did you in any way dig down in order to get a good bottom there? A. No, just rolled them over.

10 Q. And did you stop the leak? A. No.

Q. The leak continued? A. Sure.

Q. And it is still there? A. No.

Q. When was it stopped? A. In 1912, I think.

Q. In 1912? A. No.

Q. We will come to the 1912 later, at any rate, the efforts to stop the leak was not successful? A. No.

Q. Then, did you do anything else? A. No.

Q. Then this work, that it is beyond me to quite comprehend at that point, you cannot explain what you did there any more than this, that there
20 was a leak, and there were boulders in the centre of the raceway—you moved them over to the side against the crib work and sheeting in the hope of stopping the leak, but it did not stop it, and that was all that was done at that point—is that right? A. Yes.

Q. That is everything that was done until you came to the penstock, is that right? A. Yes

Q. Until you came to the penstock, did you change the sheeting on the piling? A. No.

HIS LORDSHIP : On the crib work?

MR. TILLEY : On the crib work?

30 A. No.

Q. And the crib work remained the same? A. Yes.

Q. Well now, will you tell us what you did when you came to the penstock? A. Well, I put in a set of stop logs in the front.

Q. A set of stop logs in front? A. Of the mill pond.

Q. Yes, but why were these, new, or had there been any there before?

A. No, there had not been any there before.

Q. Do you know why they were put in? A. Just to shut off the water if you wanted to get into the wheels.

Q. How were they erected? A. Well, the concrete piers and gates to
40 drop the stop logs in.

Q. Concrete piers, how many of them? A. Two, for the mill, and one for the power house.

Q. Two for the mill, and one for the power house?

HIS LORDSHIP : Two concrete piers for the mill?

A. No, two gates.

MR. TILLEY : Three gates?

A. Yes.

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- Q. And there had been no gates there before? A. No.
- Q. Had the mill and the power house both been receiving water from this raceway before, was the power house new? A. New.
- Q. In 1905? A. Yes, or 1906.
- Q. Yes, the power house was new in 1905 or 1906, and then in order to control the water so that you could use it for the mill or the power house as you wanted to, you had to put in stop logs? A. Yes.
- Q. Prior to that the water all went to the mill? A. Yes.
- Q. Now then, what was—just describe it—what was the power house—what do you mean by the power house? A. I mean the electrical power house. 10
- Q. The electrical power house, you had not had any before? A. No.
- Q. And that was a new installation? A. Yes.
- Q. Put in at that time? A. Yes.
- Q. And where was the building for that with reference to the mill? A. Well, they were put down on the side of the other flume.
- Q. Put on the side—? A. On the north side.
- Q. On the north side of what? A. Of the mill pond.
- Q. That is the building you are referring to now, or are you referring to the wheels? A. Yes, the wheels and the building on the top of them. 20
- Q. Is it shown here on this Exhibit 28? A. Exhibit 28, I suppose not.
- Q. That is the mill—it says “stone mill.” Mill stone or store—it is not shown there? A. No.
- Q. So that the old wheels, the wheels that were there before 1905, for the mill, did they stay as they were, or did you put in new wheels at that time? A. Yes, I think they put in two new wheels.
- Q. Two new wheels, that is in addition to those there before? A. No, yes, with that new electrical power.
- Q. You put in two new wheels for the electrical power? A. Yes.
- Q. And what did you do about the wheels for the mill? 30
- A. I do not know, we did not do anything.
- Q. You did not do anything? A. No.
- Q. They remained the same—did you move them as to their location? A. No.
- Q. Or replace old by new, or were they the same actual wheels as were there before? A. I do not know if it was done at that time. Sometime there were two new wheels put in, and replaced the old ones.
- Q. At some time there were two new wheels put in replacing the old ones? A. But I cannot say if that was in that year.
- Q. We know you may not be able to do that. 40
- HIS LORDSHIP : Now, you said, witness, there were two new wheels put in for the power house? A. Yes.
- Q. And you think there were two new wheels, you think, at some time, which were put in to replace the old wheels in the mill? A. Yes, but I do not know the date.
- MR. TILLEY : Was your Lordship through?
- HIS LORDSHIP : Yes.

MR. TILLEY : Put it this way, was it at or about that time, or are you in doubt between, say 1905 and 1912, or at some later date, or was it about that time you changed the wheels for the mill ? A. Yes, sometime about there.

Q. About that time, and put in larger wheels ? A. Well, I do not know if they were larger, I do not know that.

Q. Mr. Hansen, you saw the old wheels ? A. Yes, I saw them.

Q. And you saw the new ones ? A. Yes.

Q. Were the new ones larger than the old ? A. I cannot say.

10 Q. Did they appear to be larger ? A. They might have been five or six inches larger. I did not measure them.

Q. When you were taking out the old, you would have the new to put in ? A. Yes.

Q. And you were installing ? A. No, not them wheels.

Q. I beg pardon ? A. I was not installing them wheels.

Q. I mean the company, and you were there, and they appeared to you to be a little larger, but you do not know how much ? A. I won't say that they appeared that, because I cannot say that, but they might possibly be.

Q. And did you put in the same number ? A. The same number.

20 Q. And that you say may not have been at the same time as you were doing this other work in 1906 ?

A. No, I do not think it was.

Q. You do not think it was ? A. No.

Q. How soon after or how long before ? A. I do not know.

Q. Was it before or after 1905 or 1906 ? A. I can not think—I do not know.

Q. You did not know ? A. No.

Q. Would you say they lowered or changed their location when you put in the new ones ? A. I know they raised them higher.

30 Q. They raised them higher ? A. Yes, three feet, I think they were.

Q. Put them three feet higher ? A. Yes, on account of the tail water.

Q. On account of the tail water, that is the tail water would get so high at times, that it would prevent your working ? A. Yes.

Q. Did that happen frequently ? A. Yes.

Q. How many times ? A. Oh, several times.

Q. Several times ? A. The stops used to turn out——

Q. Now, you are telling me something that I do not understand at all—what does that mean, help me on that ? A. Well, what the wheels ran on.

Q. What the wheels run on ? A. The wheels rested on that——

40 Q. In the water ? A. Yes.

Q. And at any rate, the tail water got up so high ?

A. It stood over the wheel, you see.

Q. It stood over the wheel with the result that the water would not go through the wheel ? A. The water would go through the wheel, but you could not get it further.

There was too much, you could not do anything with them.

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Q. You had to lift them up to get on to the step of bearing that the wheel ran on, they were old kind wheels ?

Q. They were old time wheels, the ones you are now referring to ?

A. Yes.

Q. And you raised them about three feet at that time, and you cannot fix the time ? A. No.

Q. Now then, so much for the mill wheels—what about the power house wheels, what size were they as compared with the mill wheels ? A. Oh, a good deal smaller.

Q. And when you say "them", you say there are two ?

10

A. There is two.

Q. Do they run in pairs ? A. Yes.

Q. There would be two pairs ? A. Yes.

Q. And they were installed, and how soon—were they used right away ?

A. 1906.

Q. 1906, and what was done with the power that you got from these two additional wheels ? A. It was to run an electric dynamo.

Q. To do what, light the mills ? A. Yes.

Q. Light the houses of the people of Keewatin ? A. No, not of Keewatin, just the company's own.

20

Q. The company's own employees ? A. Just the company's mills, and that.

Q. The company's mills, and did not you get your houses lit up ?

A. No.

Q. Did not any of the people of the company get—?

A. Half a dozen—

Q. Half a dozen, just the preferred list, is that all you did with that, with the power—did you run the elevator ? A. Yes.

Q. Ran the elevator with them—anything else ? A. No.

Q. Did you supply electricity for the Mill "C" ?

30

A. No, they had electrical supply of their own.

Q. I know, but since you got the company as all under one management, did not you supply "C" from "A," because it had good power ? A. They can do that.

Q. And they do ? A. They can do that.

Q. You say they can, but they did it, in fact ?

A. Yes, they could run either plant.

Q. I know, but they usually ran the "A" plant ? A. Not altogether, only when they have got to do it.

Q. Only when they have got to do it ? A. Only when they are short 40 of power, for "C."

Q. What do you mean, short of power, when "C" could not get enough power ? A. "C"—it has high water, for instance at the present time when the water is running there now, there is no head, and they cannot run it.

Q. They cannot run what ? A. Into light for the mills, they have no power on it.

Q. No power for the other mill? A. No, "C" has not any electrical power house.

Q. I do not follow you at all—now we started out by my asking you whether you did not use this power house to serve the "C" mill—now, just let us have an answer to that? A. It was built to serve the "A" mill.

Q. I am not asking why it was built, does it not in fact serve "C" mill when the water is low? A. Any time they want to use it.

Q. And what does "C" mill get from it, power? A. Light.

Q. No power? A. I do not know.

10 Q. You do not know whether it gets power or not?

A. I am not an electrician.

Q. Now, before 1906 how was the elevator run? A. It was run from the mill by a cable.

Q. That is a direct power? A. Yes.

Q. It did not run by electricity? A. No.

Q. So that taking, running the elevator by electricity took the elevator off the mill? A. Yes.

Q. Now then, the elevator stands as shown on this plan, and so you know what power is used there? How much? A. No, I do not.

20 Q. Is it working all the time? A. In the day time, yes.

Q. Does it not work at night? A. No.

Q. So that it is continuously working in the day? A. Yes.

Q. And what is being done—what did they do in that building? A.

Taking in the wheat.

Q. Taking in the wheat? A. Yes, and sending it to the mill.

Q. And there are carriers from the elevator to the mill? A. Yes.

Q. And then they lift it up? A. Yes.

Q. And send it across to the mill? A. Yes.

Q. And that is all done off the new power plant? A. Yes.

30 Q. Anything else done off the new power plant, what about the new barrel factory? A. Well, yes.

Q. Yes—where is the barrel factory? A. It is on the south side of the C.P.R.

Q. On the south side of the C.P.R., and they send the electricity over there, and what use do they make of it at the barrel factory? A. For cutting staves.

Q. For cutting staves—has the barrel factory been there ever since 1887? A. Yes, or 1888.

40 Q. And like the mill, it is increasing a good deal in the work it has to do, hasn't it? A. No.

Q. Do you say that they are not making more barrels there in late years than they did when they came there?

A. No, they are making less.

Q. How is that? A. I do not know.

Q. Have they, at any time made more since you came there, than they did in 1887? A. Oh, yes.

Q. When did they make the—take the maximum?

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- A. I cannot tell you the year.
- Q. About? A. Oh, about—about—
- Q. About what year? About what year? A. It would be impossible for me, I cannot answer that.
- Q. Well, was it before 1912—before or after nineteen—
- A. I cannot answer that.
- Q. What do you say, cannot you answer? A. I cannot answer.
- Q. You cannot say whether it was before or after 1912 or if 1912 is the closest to the time, take any other year—was it after 1915? A. I have not got any record of the barrel business. 10
- Q. I will accept that. Now, in 1905, at any rate, they were manufacturing a lot of barrels? A. Likely, yes.
- Q. At that time, and they were manufacturing a good deal more than than in 1887 when you came? A. Yes.
- Q. And then later on people commenced to want to use bags, and they dropped off on barrels, I suppose, but you cannot fix the date? A. No.
- Q. Now then, anything else that is fed off the power plant? A. Not what I know of.
- Q. And then you say that the mill goes on—now, you have not told me—you have not told me anything about taking the corner off the mill race where it turns the corner, so as to let it come around on the curve—you have not told me anything about that? A. I do not know anything about it. 20
- Q. Do you say it did not take place? A. I do not know.
- Q. What? A. I do not know anything about that.
- Q. Now, Mr. Hansen, you have been there all these years—and you say that you do not know anything about them taking up the rock at the corner so as to let the water come around in the raceway with a better sweep?
- A. I did not see them doing it, but I heard talk about it.
- Q. You heard talk about it? A. Yes.
- Q. And who did the talking, the men around the place? A. I cannot remember seeing how they done it, however. 30
- Q. You did not see how they did it, but do you remember, at some stage there was talk about it? A. Yes.
- Q. Can you fix the time that there was talk about it? A. Yes.
- Q. 1905 or 1906, later than that, or earlier?
- A. It was not done anything then, there is not anything been done up to 1912, anyway, that I know of.
- Q. Don't you remember a time that the Lake of the Woods found that there was a drop in the water between the corner of the raceway north of the C.P.R. track, and the wheel house, or the penstock, because the wheels were taking the water faster than it would come around the corner? A. No. 40
- Q. You never knew of that? A. I know they were running down from what the head was.
- Q. It was running down? A. It was run outside, it was low, there was not so much head down there as there was up here (indicating).
- Q. There was not so much head down at the wheels as there was at the corner? A. At the Bay.

- Q. That is at Portage Bay? A. Yes.
- Q. And the wheels were using so much water that it made a drop in the water? A. No, the Lake was there, and stayed there.
- Q. The lake had not increased by reason of your throwing that big boulder out against the curb rock, has it? A. It would not be, it always was there.
- Q. The Lake is running away? A. The water was wasted.
- Q. The water was wasted, but it was wasted in 1905, wasted in 1905? A. Yes.
- 10 Q. Now you did say though, that you stopped that waste up sometime—will you please tell me when that was? A. That was in 1912.
- Q. That was in 1912, so that in 1912 you had more water at the mill than you had in 1905, because you stopped the leak—is that right? A. Yes.
- Q. You are nodding your head—that is right? A. Yes.
- Q. So that would help keep up the head at the wheels, wouldn't it? A. Yes.
- Q. Now, was it before or after you stopped that leak that kept the head up better that you found that the head was getting down instead of keeping up, and was lower than it was at the Bay? A. I do not know.
- 20 Q. Oh, now? A. I do not know about that.
- Q. You noticed yourself that dropping of the water? A. That would not be my business.
- Q. It would not be your business, but you are an observant sort of a man, did you notice yourself that it was lower? A. No.
- Q. I am not asking whether it was your duty—I am not asking whether you appreciated all that it meant, I am just asking the simple question as a matter of just seeing it—did you notice that there was that condition that just in front of the wheels you had not the head that there was at the Bay—did you notice it? A. Well, I noticed that, you could see that by the measurement.
- 30 Q. You could see that by the measurement? Of course, and when did you first notice that? A. I have been noticing it ever since it has been put there.
- Q. Ever since what was put there? A. The mill race.
- Q. Did it exist to the same extent back in 1887 when you first came? A. Yes.
- Q. Always the same, always the same relation between the head at the Bay or the portion in the raceway and the head at the wheels? A. Yes.
- Q. Always, it never dropped down more at the wheels in relation to the Bay? A. I cannot say that, because according to what is taken from the
- 40 wheel, it might have dropped a little more in the wheel.
- Q. Now, did you notice when the time came, I thought you told me that there was something that they took off that curve for, or the elbow? A. I did not say.
- Q. Or that you heard, that was taken off, because there was a drop in the water? A. Not a drop of the water.
- Q. That is less head at the wheels, to keep better head at the wheels?

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A. They were saying by taking that corner off they would get a smoother run.

Q. And I suppose you were not thinking of the comfort of the water in getting it to run smooth, it was to get more water, to get more water to the wheels? A. I presume.

Q. Now, I want to know when that was? A. I do not know.

Q. Was it before or after you stopped the leak in 1912? A. I think it was after.

Q. After you stopped the leak, so apparently stopping the leak was not sufficient to keep up with the greater use of water at the mill—that is right, 10 is it not? A. Yes.

Q. Now, I would like to know, when, after 1905 or 1906 was any work done from one end to the other of the raceway—I mean at any point either at the Bay or in the raceway, or in the wheels? A. Yes, there has been.

Q. When? A. In 1905 or 1906.

Q. You have told us all about that, haven't you? A. Yes.

Q. Now, when was the next? A. 1912.

Q. 1912 was the next? A. Yes.

Q. Now, in 1912, were you engaged in the work in 1912? Did you help? A. Partly, some of it. 20

Q. Some of it—and when did the work commence in 1912? A. Well, they put in the new wheels.

Q. They put in the new wheels where, in the mill? A. Yes.

Q. What else did they do? A. That is all I know.

Q. That is all you know? A. Yes.

Q. Did they put in the stop logs at the Bay, and clean out the raceway? A. Nothing on the raceway.

Q. Nothing on the raceway, at any point on the raceway? A. They put in the concrete wall.

Q. Where? A. On the north side. 30

Q. On the north side, where the crib work was? A. Yes.

Q. And that was for the purpose of stopping this leak was it? A. Yes.

Q. And just to identify the different things, was anything else done—that is the next you have told us about, in 1912? A. I do not know.

Q. You do not know? A. I was not directly connected with that work.

Q. You were not directly connected with that work? A. No.

Q. What part of the work were you with? A. I was not down there at all, I was at the mill.

Q. At the mill where the wheels were put in? A. No.

Q. Where? A. Around the mill, and around the plant altogether. 40

Q. Did you take any part in making the changes that were made in 1912? A. No.

Q. Not at all? A. No.

Q. Of course, you saw it going on? A. I saw it going on, yes.

Q. You saw it going on, and you saw the concrete wall put up on the north side of the mill race? A. Yes.

- Q. And what did they do with the bottom of the mill race, did they take out the boulders? A. No, I did not see anything done in there at all.
- Q. Well, Mr. Hansen, in order to do that work, they had to take away the crib work, didn't they? A. No.
- Q. What did they do? A. They put it inside the cribwork.
- Q. You mean? A. On the north side.
- Q. On the north side of the crib? A. On the south side of the crib, it would be in against the raceway.
- Q. In against the raceway? A. Yes, inside.
- 10 Q. Inside the sheeting? A. Yes, inside the sheeting.
- Q. Did they take the sheeting off? A. No, it is there yet.
- Q. And which side of the sheeting is the concrete?
- A. On the inside, in at the flume.
- Q. Against the board? A. Against the water.
- Q. How thick is it? A. About eighteen inches, I guess.
- Q. About eighteen inches thick, then do you say they narrowed up the raceway, or how did they allow for eighteen inches? A. They have lots of room there.
- Q. How wide is it there—is that the pond?
- 20 A. The front of it, yes.
- Q. That is a good deal wider there than the raceway? A. Yes, sir.
- Q. Now, where does that start, then, will you tell me that? A. Somewhere back in here (indicating).
- Q. About at the elevators? A. Yes, about there.
- Q. Then this plan that shows the millrace running there, more or less uniform, that is not quite accurate? A. No.
- Q. There is quite a bend there? A. Yes, it runs back there ten feet or so.
- Q. And then comes down to that first angle.
- 30 MR. TILLEY : Q. It runs north of the mill race about ten feet? A. Yes, at the very end here, the closest point, right at the pond.
- Q. And then it runs backwards? A. Yes.
- Q. Or bending, to come in smaller as it goes towards the mill, so that at that point, where the concrete was put on, it would not have any effect, because it was very much greater than the raceway, that would not have any effect of stopping the water flow? A. It stops the river running out at the side.
- Q. But it don't narrow up the raceway? A. Just a little.
- Q. It narrowed the pond, but not the raceway. A. Yes.
- HIS LORDSHIP : It only narrowed the pond eighteen inches? A. Yes.
- 40 MR. TILLEY : Q. Did you fix the bottom of the mill race at that time?
- A. Just a little bit.
- Q. That brings us down to 1912—
- HIS LORDSHIP : Just a moment—you say that stopped the leak through the crib there? A. Yes.
- Q. Did I understand you to say before, the leak through the crib was where the water had leaked out? A. Down at the base of the crib.

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Q. And you put the big boulders into that? A. Yes, we rolled them down in there.

Q. But I understand from the way you described it, that these boulders were still in the bed of the raceway, but over to the side? A. Yes.

Q. Well now, as they were put over against this cribwork, it means that they were not in the actual thirty feet channel of the raceway at all? A. No.

Q. They were over in the other ten feet where the pond was widened out?

A. Yes.

Q. They did not affect the flow of the water in the raceway at all?

A. No.

Q. Where you put them? A. No.

10

Court adjourned at 12.45 until two o'clock p.m.

Court resumed at two o'clock p.m.

NELS J. HANSEN : Cross-Examination continued by MR. TILLEY :

Q. Mr. Hansen, you told us about the changes in 1912—when were the next changes, I mean to Mill "A"?

A. I do not know, I have not been connected with any changes since.

Q. What do you mean by being connected?

A. I never worked on any.

Q. You remember seeing other changes being made? A. No.

20

Q. Do you mean that seriously? A. Yes, I mean that.

Q. You have not seen any other changes made since 1912? A. Where do you mean the changes to be?

Q. Where have you in mind any changes were made?

A. I do not know any places.

Q. You do not know any places? A. No.

Q. You remember? A. Of course, 1904—1924, I think it was, some.

Q. What was done then? A. There was nothing done with "A" mill.

Q. Is this the "C" mill—no, I am coming to "C" mill—I am keeping 30 that separate from "A" mill. You told us, I am not speaking of the mill—I am talking of the raceway? A. Yes.

Q. You told us, for instance, there was some change made to let the water have more of a swing after the leak was stopped? A. Well, I have nothing to do with that, I know nothing about it.

Q. You do not know anything about it? A. No.

Q. Was there much time spent on changes at that time?

A. I do not know.

Q. You cannot say anything about that at all? A. No.

Q. Now then, let us go to Mill "C"—in 1906 that was a new mill? 40

A. Yes.

Q. You must not nod? A. Yes.

Q. And there had not been any flour mill there before? A. No.

Q. On that site—the last use made of any power on that site was for the Gold Milling Company? A. Yes.

Q. And they never did any great amount of work? A. I do not think so.

Q. The flour mill that was established in 1906, was a larger and quite different enterprise? A. Yes.

Q. And it had new wheels put in, of course, as part of the new construction? A. Yes.

Q. Were the old wheels there then, or had they been taken out?

A. They had been taken out when I came there.

Q. They had been taken out in 1887, had they, when you came there?

10 A. Oh, no, when I came to the "C" mill.

Q. When you came to the "C" mill? A. In 1906.

Q. Before it was completed? A. Before it was running.

She was not complete, the building was up.

Q. It was on that new location, I gather from what you say? A. No.

Q. Did it stand precisely where the old sawmill stood?

A. Yes, the reduction works.

Q. And did you see the old wheels? A. No.

Q. As a matter of fact, had they been removed some years before?

20 A. No, I think the McDonald people removed them when they started to build the mill.

Q. So far as you know they were there at the time that the new mill was started? A. Yes.

Q. But the reduction works used no water power at all, do you know?

A. Why, yes, they had to use the water power.

Q. For what? A. To run their mill.

Q. What sort of machinery had they? A. You know the stamp mills, and that.

Q. Yes, but they would not use any great amount of power for that?

A. I cannot say how much.

30 Q. How much, at any rate, do you know the size of the wheels that were put in for the new mill? A. No.

Q. Do you know the number? A. Yes.

Q. How many? A. Three.

Q. How many were there before in the old reduction mill? A. I do not know.

Q. So three were put in, you do not know the date or size? A. No, I do not know the size.

Q. Nor the make? A. No.

40 Q. And then at the time that mill was erected, I suppose they cleaned out that raceway before starting the work? A. I do not know what they did with the raceway.

Q. The C.P.R. put a trestle bridge across the entrance to the raceway, didn't they? A. Not a trestle bridge then.

Q. A trestle bridge originally? A. Yes.

Q. Then that had been replaced by what? A. By an iron bridge.

Q. And do you know whether the raceway to mill "C" had ever been cleaned out after all that work was done? A. No, I do not know.

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- Q. You do not know, and you do not know whether it was cleaned out in 1905 or 1906, I mean after the mill was put up, you do not know whether they cleaned it then ?
- A. No, I do not know.
- Q. The raceway, I mean ? A. Yes.
- Q. Down to the end of the raceway ? A. Yes.
- Q. Now, what was the length of that raceway ? A. I do not know, it extended through the property there, right down to Darlington Bay.
- Q. A much shorter one ? A. Yes.
- Q. Than mill "A" ? A. Yes. 10
- Q. You cannot quite give the length—was it all through rock ? A. All through rock.
- Q. And had a high point in the centre of it ? A. Yes.
- Q. Just the same as Mill "A" ? A. Yes.
- Q. The highest peak was the centre ? A. Yes.
- Q. The highest point being many feet higher than the level of the Lake ? A. Oh, yes, some feet, not many.
- Q. Now then, after that installation was made, when was any change made further, either in the raceway or in the installation of water wheels ?
- A. Not before 1924. 20
- Q. What was done then ? A. Well, they put new wheels in.
- Q. How many—
- MR. MCCARTHY : This is all subject to my objection, my Lord.
- HIS LORDSHIP : In respect to what, Mr. McCarthy ?
- MR. MCCARTHY : Work done in 1924.
- MR. TILLEY : How many ? A. They put two new wheels in.
- Q. Two additional wheels ? A. No, took out the old ones.
- Q. They still had three at the end ? A. Yes, kept one old one in.
- Q. And kept one old one in ? A. Yes.
- HIS LORDSHIP : Put in three new wheels ? A. No, sir, two. 30
- MR. TILLEY : Two by way of replacement ? A. Yes, by way of replacement.
- Q. Two larger wheels ? A. No.
- Q. Really ? A. No, a different make wheels.
- Q. Did they change their location ? A. No, they stand on the same—
- Q. Did they lower them ? A. They lowered the floor, I think.
- Q. Of what ? A. Of the flume.
- Q. How much did they lower it ? A. I do not know.
- Q. When you say three wheels, of course, you mean three pair ?
- A. Two new pair. 40
- Q. And one old pair ? A. Yes, that was left there.
- Q. When you speak of a wheel, you mean a pair of wheels ? A. Yes.
- Q. Then you say that they lowered the floor ? A. Yes.
- Q. But you cannot say how much ? A. No.
- Q. And that is the floor ? A. Of the flume, where the wheel stands on.
- Q. And would they lower the wheels as well, or do you know about that at all ? A. I do not know.

- Q. You do not know about that ? A. No.
- Q. Anything else done at that time ? A. No, not to my knowledge.
- Q. That was the only thing that was done ? A. Yes, working on that,
I was not around very much on that.
- Q. Well, what change was being made that made it necessary to put in
new wheels—were they enlarging the plant ? A. Oh, I do not know.
- Q. Do you say they were not, or you do not know ?
- A. I suppose there was more sufficient wheels.
- Q. More efficient wheels, I suppose, is what you mean ? A. Yes.
- 10 Q. Were they putting in new rolls ? A. No, not to my knowledge.
- Q. Do you say they did not ? A. Yes, I do not know of any being
put in there.
- Q. You do not know of anything being put in there ? A. No.
- Q. And you do not know of the raceway there being cleaned out at any
time ? A. No, I do not know anything about it.
- Q. You spoke of the new power house this morning, and you gave a list
of other portions of the plant that used electric current—what about the
machine shop ? A. Well, the machine shop.
- 20 Q. Did it get power from the power house ? A. Yes, they got their
power from there.
- Q. Where did they get power before ? A. Well, they had a small
little water wheel that runs it as well.
- Q. A small little water wheel ? A. Yes.
- HIS LORDSHIP : This is in respect of Mill "A."
- MR. TILLEY : Mill "A," my Lord.
- Q. And that used to drive the power ? A. That drives the machine
shop.
- Q. Where was that wheel ? A. Down in the wheel pit.
- Q. Is it still there ? A. Yes.
- 30 Q. Tell me what wheels are now in the wheel pit ?
- MR. MCCARTHY : This is Mill "A" ? A. All "A."
- MR. TILLEY : Q. Yes ? A. There is one new wheel, double runners,
for the power house, and one small little wheel.
- Q. I want all the wheels that are there ? A. There is five—there
are four.
- Q. Four ? A. Altogether.
- Q. Electric power and new mill—I thought you said first there was a
small one for the machine shop ? A. Yes.
- 40 Q. Secondly there were two for the power house ? A. Yes.
- Q. That would make three ? A. Yes.
- Q. Then are there two ? A. Only one for the mill.
- Q. Only one for the mill ? A. Double runners.
- Q. I do not know how many runners are on it—it will be two, the same
as the "C"—there will be two pair, two pair for the mill ? A. Yes.
- Q. And a pair for the power house ? A. Yes.
- Q. And one pair ? A. No, not a pair, just a single. and so is the power
house single wheels—no, they are double wheels, excuse me, two double.

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Q. So there are four doubles and one single, is that what you mean ?

A. Yes.

Q. And then is the single one used for the machine shop now ? A. Occasionally.

Q. Occasionally ? A. Yes.

Q. And it also has the electric current ? A. They can switch it either way.

Q. Either way ? A. Yes.

Q. A good deal of power used in the machine shop ? A. No.

Q. What do they do there ? A. They have just got a lathe, and a 10 planer and a drill.

Q. Now then, that is so much for outside the building—now, will you tell us what you know about the installation of new machinery ? A. I do not know anything about that.

Q. Take Mill "A" ? A. I do not know anything about that.

Q. You are inside the building ? A. Yes, but I do not have anything to do with putting in the machinery.

Q. No, but you see it put in—as time has past they have been adding to their machinery ? A. Sometimes, yes.

Q. In both mills that is so ? A. No, I do not think they have added 20 anything to "C" mill.

Q. Not added anything to "C" mill from the time it was built ? A. No, I do not think it.

Q. What was done in "A" mill ? A. Well, they have added a few rolls, I guess.

Q. How many ? A. I could not say.

Q. When ? A. I could not say, I could not say the date.

Q. Before or after 1906 when they made the changes you spoke of this morning ? A. It was before 1905, I think.

Q. How long before 1905, was it, at that time ? A. Some where 30 around there.

Q. Is it not right to say that at the time they made these changes to have the power house and cleaning out the raceway and enlarging the entrance and the exit, is it not right to say that they were then installing new machinery in Mill "A" ? A. Not altogether, I think they done it more for improvement of location in every way.

Q. That may be so, but did they add new machinery at that time, or do you not know ? A. I do not know.

Q. You do not know ? A. No.

Q. Then from 1905 say for the next ten years after 1905, were they still 40 adding new machinery ? A. I cannot say what they are doing, there is something always changing, putting in a new machine and throwing out another, they may have been doing that.

Q. And adding machines. A. I do not know if they were adding anything, because I have not—

Q. You are quite frank when you say you do not know ?

A. No, I do not know anything they would do to increase their capacity.

Q. Have they been doing anything since 1916 to increase their capacity ?

A. I do not know what they have been doing.

Q. Mr. Hansen, they have been getting more flour out of the mill ?

A. Yes.

Q. Practically continuously each year getting more output ? A. I suppose they could have got that all before, if they had——

Q. I am not asking what they could have done, but since you have been there, Mill "A" has been gradually increasing its output ? A. Sure, they have tried to get more.

10 Q. And you cannot say when, or to what extent they increased the machinery ? A. No, I cannot say that, because I have no knowledge about milling at all.

MR. TILLEY : That is all, thank you.

RE-EXAMINED by MR. McCARTHY :

Q. Now, Mr. Hansen, you told my friend something about the crib-work and sheeting in the millrace for Mill "A" ? A. Yes.

Q. And I think you pointed out a place somewhere near the elevator ?

A. Yes, below it.

Q. Below the elevator ? A. Yes.

20 Q. What was the length of that crib-work and sheeting there ? A. About two hundred feet, I guess.

HIS LORDSHIP : That is up and down ?

MR. McCARTHY : Q. Up and down which side ? A. The north side of the stream.

Q. Now, when was that crib-work put there ? A. In 1912, I think.

Q. 1912, you said it was taken out in 1912—when was the crib-work first put there ? A. Oh, the crib-work.

30 in 1888. Q. That is what I asked you ? A. The cribwork, that was put there

Q. In 1888 ? A. Yes.

Q. You were engaged in putting that cribwork there ?

A. No, I was not engaged on it.

Q. You were not engaged on it ? A. No.

Q. Then was that before or after the mill was put in operation that they put the cribwork there ? A. It is after they started the mill that they put that up.

Q. After they started ? A. They let the water in, and it broke out.

Q. They let the water in, and it broke out ? A. It ran over.

Q. Spilled over ? A. Yes.

40 Bay. Q. And ran over where—where did it run to ? A. Into Darlington

Q. Running north ? A. Yes.

Q. So to stop that running over, they put the cribwork there ? A. Yes.

Q. Now, I think you told my learned friend that on the south side of the raceway, opposite the elevator, it was solid rock ? A. Yes.

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Q. Well, what was the north side—what was the formation of the land there? A. Well, there was rock, but it was lower, and a little earth in it, etc.

Q. Lower, and a little earth in it? A. Yes, that is on account of that the crib was set there.

Q. So when they let the water in, when they started the mill, the water ran away, and to prevent that, they put that cribwork there? A. Yes.

Q. Then you say in 1905 when they were erecting a new power house they unwatered the raceway? A. Yes.

Q. Took the water out? A. Yes.

Q. And at that time you were telling my friend what work was done in the fore-bay or raceway opposite the elevator? A. Yes, sir. 10

Q. What was done there? A. Just cleaning out a little, and stopping up the leakage.

Q. Stopping up the leakage? A. Yes.

Q. Had that portion of the raceway or fore-bay ever been blasted out?

A. Never to my knowledge.

Q. It was, as we understood you to say, lower land than the rest?

A. Yes.

Q. Then, when they let the water in again, you say the leakage still continued? A. Oh, yes, the leakage still continued. 20

Q. The leakage still continued, and in 1912 they put a cement wall up against the planking? A. Yes.

Q. And did that hold the water from spilling? A. Yes.

Q. Now so much for that end, that is the tail race end, the tail race, not the tail race, but the fore-bay end of the mill race.

Now, just go back to the entrance again, you told my learned friend that originally the stop logs were just about five feet south of the C.P.R. bridge?

A. Yes.

Q. And in 1905, when you were building the power house, 1905 and 1906 and the raceway was unwatered, emptied, you moved the stop logs up about ten feet south? 30

A. Well, I made a wrong year to that.

Q. What? A. I made it wrong in the years.

Q. What year was it? A. 1912, yes, 1912.

Q. What? A. 1912.

Q. 1912 you moved the stop logs, I thought you said 1905 and 1906?

A. Yes, that is the year I was coming to the power house, they put in stop logs there, I was confused.

Q. Then, do you want to retract what you said, take back what you said? A. Yes, about the stop logs, at the entrance in 1905. 40

Q. And the stop logs that you had reference to were the stop logs you put opposite the mill? A. Yes, that was a mistake.

Q. So there was no change in the stop logs in 1905 or 1906? A. No.

Q. But there was a change in 1912, which we will come to later? A. Yes.

Q. Now then, in 1905, and 1906, when you unwatered the mill race, you

told my friend that you cleaned out all the stuff? A. We cleaned out some stuff there.

Q. But you made no alteration in the stop logs? A. No.

Q. But when we come to 1912, that was the same year that you built the cement wall opposite the elevator? A. Yes.

Q. You changed your stop logs by putting them ten feet further south?

A. Yes.

Q. And I think you said something about putting a bridge over it?

A. Yes.

10 Q. What sort of a bridge was that? A. A driving bridge.

Q. Was that to connect with the colonial bridge?

A. Yes, and the company's road between the mills.

Q. So to provide for that, you moved your stop logs ten feet south?

A. Yes.

Q. And instead of having two gates, as you had before, you now had three? A. Had three, yes.

Q. Why was it necessary to have three, do you know?

A. I do not know, I suppose the man thought it—

Q. Do not suppose, if you do not know? A. I do not know.

20 Q. You do not know why he required three instead of two? A. No.

Q. Then when the C.P.R. bridge was built, it rested on what, the piers immediately outside the raceway—what did the foundations of the bridge rest on there? A. They rested on the solid rock.

Q. And your stop logs, when they were near the bridge, how were they held? A. Just dropped in through a groove of the rock.

Q. They were dropped in, through the groove of the rock, and that groove of course, remained there after they were taken out? A. Yes, and the pillar that was in the middle, it was taken out.

30 Q. And instead of having it there, they were moved ten feet further south, and instead of one pillar, you now have two? A. Yes.

Q. And instead of two gates you now have three? A. Yes.

Q. Then were the three gates wider than the two? A. Oh, yes, they were a little wider.

Q. Why were they wider? A. Well, on account of the fore-bay there, and the bay swung around.

Q. The bay swung around, and the rock was a little wider in the front there.

Q. Was the bay swung around? A. Yes.

Q. And the rock was a little wider—you mean further apart? A. Yes.

40 Q. So you had to have three gates instead of two? A. Yes.

Q. Then my friend also asked you about the corner here, I will call it, where the mill race takes a sharp turn? A. Yes.

Q. What was the condition of the water as it came around that sharp turn there? A. Of course, it kind of piled right round, kind of a back turn.

Q. It piled right around, a kind of a back turn? A. Yes.

Q. So that the head in the portion of the mill race between Portage Bay and the corner was higher than the head? A. At the lower part, yes.

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Q. Then, I think you told my learned friend—[Mr. McCarthy : This is also subject to my objection, my Lord]—

Q. That the cutting of that corner, we have just been speaking of was in 1924 ? A. No, I do not know anything about it.

HIS LORDSHIP : You said you did not know when it was done.

MR. MCCARTHY : He said just now, after lunch, that it was done in 1924.

MR. TILLEY : I did not ask him.

MR. MCCARTHY : You did not ask him, but he volunteered it.

HIS LORDSHIP : He said there was no change made after this 1912 until 1924 when the new wheels were put in.

MR. MCCARTHY : I thought he said that they cut that off.

HIS LORDSHIP : No, when the new wheels were put in.

MR. MCCARTHY : Q. There was no change then until 1924 when you say the new wheels were put in ? A. No.

Q. So that the change in the mill race from its original construction, what change there was, was first in 1905 and 1906 ? A. Yes.

Q. When the race was unwatered and cleaned out in the vicinity of the C.P.R. bridge and changes made by rolling boulders up against the crib-work at the lower end ? A. Yes.

Q. And in 1912 when the cement wall was put in in front of the crib-work ? A. Yes.

Q. When the stop logs were moved south ten feet, and these were the only changes, you say, up until 1924, made in connection with this ? A. Yes.

HIS LORDSHIP : Mr. McCarthy, before lunch this witness said that he heard them saying that they thought of taking that corner off, that they would get a smoother run of the water, and while he did not know, he thought it was after they had stopped the leak. That was as near as he would come to it.

MR. MCCARTHY : I know that it was after lunch, I must have misunderstood him, he said that that must have been 1924.

HIS LORDSHIP : That was about the wheels.

MR. MCCARTHY : That must have been about the wheels.

Then as far as Mill "C" was concerned, you say that after 1906 it was a new mill ? A. Yes.

Q. And as far as you know the old wheels of the milling company of the mining company were removed and new wheels were put in ? A. Yes, as far as I know.

Q. And the mill was reconstructed ? A. Yes.

Q. Then, did you know of any change being made in the head race of that mill ? A. No, except the moving the stop logs to the front.

Q. Except what you have told us of moving the stop logs to the front ?

A. Nothing else.

Q. Then, I think you spoke of raising—in 1905, was it, 1905 and 1906—they had raised the wheels in Mill "A" three feet higher ? A. Yes.

Q. Now, you also spoke of the rubbish and gravel, etc., from the C.P.R.—how many tracks of the C.P.R. crossed there in 1905 ? A. There were three crossings there.

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- Q. Are they all main lines? A. Two main lines and a switch.
 Q. Into what? A. Into "A" mill.
 Q. There is a switch crosses there into "A" Mill? A. Yes.
 Q. And two tracks besides? A. Yes.
 Q. And did they, in doing that, did they extend the fill—did they widen the fill at all, or was it just the ballusting you spoke of? A. They ballusted it.
 Q. You spoke of the C.P.R. raising their tracks or putting in ballast?
 A. Not raising the tracks, ballusting under the tracks.
 Q. Do you know of any other use that the wheels of the milling or
 10 mining company were put to besides use for the milling and mining company?
 A. No.
 Q. Nor Dick & Banning's wheels? A. No.
 MR. TILLEY : Might I ask a question or two, on the charge of date from 1905.
 HIS LORDSHIP : Yes.

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RE-CROSS EXAMINED by MR. TILLEY :

- Q. Mr. Hansen, did any person remind you, you had made a mistake
 in the year? A. No.
 20 Q. It was 1905 the cleaning out was done? A. I was thinking of the
 stop logs made in the front of the mill, in the flume.
 Q. Now, I want to be just sure about that, the stop logs in the front of
 the mill, that is in front of the wheels in Mill "A" were not put in at the same
 time that you carried the stop logs up ten feet at the Bay? A. No, it would
 be previous to that.
 Q. There is no mistake about the year when you put the stop logs at
 the wheels, because I suppose that was done, and necessarily done when you
 added the power house? A. Added to the power house.
 Q. And therefore you wanted to be able to feed the water in to one set
 30 of wheels, and not the other possibly? A. Yes.
 Q. So that there could not be any doubt about that? A. No.
 Q. But at that time the old stop logs at the Bay end? A. Yes.
 Q. Were not touched? A. No.
 Q. Then the cleaning out, they got the six inches to a foot of material
 that had collected at the bottom? A. Yes.
 Q. That went out in 1905 or 1906? A. Yes, we did that.
 Q. And that was to the north of the stop logs at the Bay, on the north
 side? A. On the north side, up underneath the bridge of the C.P.R.
 Q. And up to the corner? A. Yes.
 40 Q. And then you say that the stop logs were not carried out for near
 seven years more until 1912? A. Yes.
 Q. And prior to 1912, do I understand that there was no road, you say
 that you made a bridge there? A. Yes.
 Q. Prior to 1912 had you no bridge and no roadway?
 A. We crossed over on the other side.
 Q. You crossed over on the other side of the tracks?
 A. On the north side, but we had no drive road.

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- Q. No road for vehicles, do you mean? A. No.
- Q. Prior to 1912, is that right, prior to 1912, do you say that you could not get along the road with vehicles, prior to 1912? A. There might, yes.
- Q. Just think of it? A. They had a road, I guess, but there was a pier.
- Q. Never mind the pier. I want its location first, and I will give you full opportunity to describe it—where was it located? A. On the same place, on the south side of the C.P.R.
- Q. At the south side of the C.P.R. A. Yes.
- Q. So its location remained at the same place? A. Yes.
- Q. From 1905 on? A. Yes. 10
- Q. And it was a bridge? A. Yes.
- Q. And you did not have to move anything to have a bridge there?
A. No.
- Q. So that the stop logs were not moved out ten feet in order to have a bridge, but at the time you moved out the stop logs you built a new bridge where the old one had been? A. Yes, put iron girders over it.
- Q. You made a better bridge? A. Yes.
- Q. When you were doing the work, you decided to have a better bridge, but you did not need to move the stop logs south in order to get a bridge there?
A. No. 20
- Q. There must have been some other object for moving the stop logs south? A. I do not know.
- Q. There must have been some other object than the bridge? A. There may be.
- Q. However, it was done, without any reason at all, or it was done for some other reason than the building of the bridge? A. Yes.
- Q. Because the bridge was there, and could have been renewed? A. Yes.
- Q. You could have had a steel bridge just the same as you have got?
A. Sure.
- Q. Now then, when the logs were removed, when the stop logs were moved south, they were moved to a place where the distance from one side to the other was greater? A. Yes. 30
- Q. Than where they had been before—
- MR. McCARTHY: Does your Lordship think my friend is entitled to this?
- HIS LORDSHIP: This has to do with the change of date he made on his re-examination.
- MR. McCARTHY: The width has nothing to do with the change of date.
- HIS LORDSHIP: Mr. Tilley is just amplifying it. The difficulty of having the witness make a change of date. 40
- MR. McCARTHY: He has gone further than that. I did not object up to that point.
- MR. TILLEY: Is that right, the way I have put it? A. Yes.
- Q. So, if your date of 1912 is right for the moving of the stop logs there is no necessary connection between that date and the building of the new bridge, is there? A. No.
- Q. You say that in fact, both were done at the same time, is that right?

- A. Well, yes.
- Q. There was no—you did not put a new bridge there in 1905? A. No.
- Q. You are sure about that? A. No.
- Q. The steel bridge was not there in 1905? A. No.
- Q. The old bridge was there, and it was renewed, the steel bridge put there in ~~1905~~, that is right, is it? A. Yes.
- MR. TILLEY: That is all, thank you.
- MR. MCCARTHY: That is all.
- HIS LORDSHIP: That finishes the witnesses who are called with respect
10 to both cases?
- MR. MCCARTHY: Yes, my Lord.

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- THOMAS JOSEPH CHERRY, Recalled. (Already sworn).
- MR. MCCARTHY: Mr. Cherry, when did you first come to——
- HIS LORDSHIP: He gives evidence with regard to?
- MR. MCCARTHY: Mill "A", my Lord.
- HIS LORDSHIP: That is the Lake of the Woods?
- MR. MCCARTHY: Yes, my Lord.
- Q. When did you first come to Keewatin? A. May, 1888.
- Q. In what capacity did you come? A. I came up to take charge of
20 the elevator or to buy grain for the Lake of the Woods Milling Company in
the West.
- MR. TILLEY: I cannot hear the witness.
- WITNESS: I came up to take charge of the elevator or buy grain for the
Lake of the Woods Milling Company in the West.
- MR. MCCARTHY: Will you repeat? A. Or to buy grain, either one
or the other.
- Q. I did not hear you, I thought you said, handle or buy grain for the
Lake of the Woods, and when you got to Keewatin, was the elevator con-
structed at that time? A. One of them.
- 30 Q. Was the other in course of construction? A. No.
- Q. One of them was constructed at that time, and what about the mill?
- A. The construction was complete of the mill.
- Q. It was complete of the mill? A. Yes.
- Q. And when did it begin to operate? A. In July. It first com-
menced in July of 1888.
- Q. You will stop there, just for a moment, you came there in May, I
think you said? A. Yes.
- Q. And it commenced to operate in July? A. Yes.
- Q. Was the raceway unwatered when you first got there?
- 40 A. No, the water was in the raceway when I got there.
- Q. Then, was it ever unwatered between May and July?
- A. Not that I know of.
- Q. Then it commenced operation in July, and how long did those
operations continue? A. One or two days.
- Q. What was the trouble? A. There was not sufficient speed to
operate the mill.

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Q. There was not sufficient speed? A. With the power they had to operate the mill.

Q. There was not sufficient power to operate the mill? A. Yes, you can put it that way.

Q. What was the cause of the loss of power? A. A certain amount of water was escaping through a low place on the north side of the raceway.

Q. Looking at this plan, can you identify about the spot where the loss took place? A. About there, I should think (indicating).

Q. About there does not mean anything on the notes. Here is your elevator, get the location—here is the mill, and there is the raceway. Now? 10

A. That would be about the deep point.

Q. Where, opposite the elevator? A. Right there (indicating).

MR. TILLEY: Q. A little east of the elevator.

MR. MCCARTHY: Q. Take that "iron post"—would that be the stopping point? A. A little further down.

Q. Take those red lines? Just a second, you describe it yourself—I have never been there? A. The rock sloped up from the raceway, and only at certain elevations of the lake would the water be leaking, going over the rock, but at this point, the rock, as I remember it, shoved down this was, was on the side from the west. 20

Q. When you say "this," it does not mean anything on the notes?

A. Nothing on the notes.

Q. I want you to say something, so when we read these answers we will understand what you mean—would you just describe that again, what the condition was on the north side? A. The condition on the north side, there was a low point, with the rock tipping from the east and tipping from the west.

Q. Yes? A. To a certain point in the raceway.

Q. Forming a gully? A. Forming a small gully, and that is where the water was escaping.

Q. And where did it run to? A. To Darlington Bay, it ran north. 30

Q. It ran north from there? A. Yes.

Q. And that point, you have fixed approximately in the vicinity of the elevator, opposite the elevator, somewhere there? A. Yes, sir.

Q. And this you closed down? A. Yes, the mill was closed down.

Q. Then, did you unwater the mill race? A. Yes, the mill race was unwatered.

Q. And what did you do? A. We filled it with crib piers, or put crib piers in there, filled with rock, and faced them up with planks.

Q. And faced them up with planks? A. Yes.

MR. TILLEY: Q. That is on the north side? A. On the north side of 40 the raceway.

MR. MCCARTHY: Q. What was the formation on the south side of the raceway? A. A rocky ledge.

Q. Now, when the raceway was unwatered, have you got any idea as to its depth and width? A. No, I would say it was about thirty feet wide. I know that thirty feet is the control point under the south wall of the C.P.R. bridge.

Q. You know that thirty feet is the control point, we will come to that later? A. Yes.

Q. But you say about thirty feet? A. Yes.

Q. Then, were the sides even or jagged? A. I do not just get that question.

Q. Were the sides of your raceway——? A. I understand we cut out the rock.

Q. Were they even or jagged? A. The sides, we cut from the rock, the rock was jagged, the rock behind the elevator is fairly straight.

10 Q. Behind the elevator is fairly straight? A. Is fairly straight.

Q. When you say "behind," you mean? A. Back of the elevator.

Q. As I understand, was any blasting done, there wasn't any indication? A. I could not say, the blasting was all completed before I got there.

Q. Then what about the floor of the raceway, was that even or level? A. Well, I would say it was fairly even.

Q. Then, having put in your crib work and planks, and did you let your water in again? A. Yes.

Q. And how long did you continue to operate under your new conditions? A. How long did it continue to operate under the new conditions?

20 Q. Yes? A. The new conditions——

Q. Take the crib work? A. We continued to operate under these conditions until 1912.

Q. You continued to operate under these conditions until 1912.

A. Until 1912.

Q. Then, in 1912, or perhaps I had better deal with 1905 or 1906 first—that is that crib work continued there until 1912. A. Until 1912.

Q. Was it an efficient work so far as preventing leaking was concerned?

A. No.

30 Q. The leaking still continued, then, but you operated, notwithstanding the leaking until 1912—then we are told that something was done in the year 1905 or 1906—what was that, Mr. Cherry? A. Well, there was a hydro power house constructed.

Q. A hydro power house constructed? A. Yes, north of the mill, penstock or power house.

Q. North of the mill, penstock, or power house.

A. That would be here (indicating).

Q. That would be on the north side? A. On the north side.

Q. It is not marked there? A. No.

40 Q. North of the mill, pen stock or power house, the hydro electric power house was put in. Now, was the raceway unwatered at that time? A. It was unwatered while they were putting in the gates.

Q. You have not told us anything about the gates yet. Did you put in new gates? A. Yes, there were new gates put in leading to the power house from the old flume.

Q. I do not know anything about this. Now, I have got to have you tell me were there any gates there before? A. No.

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Q. When you put in the new power house, you also put in control gates ?

A. Into the pen stock.

Q. So, as my friend pointed out to the last witness, you could turn the water either into the mill, or into the sluice ? A. To run the electric power house.

Q. Then you say the mill race was unwatered at that time ? A. At that time, yes.

Q. Anything done in the head race or fore-bay as far as construction work was concerned in the mill race ? A. Not in the head race proper.

Q. What do you mean by the head race proper ?

A. The head race proper would be from the wheel pit back to the intake.

Q. You say nothing was done there ? A. Nothing was done except to clean out.

Q. What was there to clean out ? A. The bark that would drift in from the Lake, and silt and rock rolling in from the sides, when it was constructed. The rock was piled up along the side, and during the winter months and the Spring some of the rock would roll in, when it was constructed the loose rock was piled up on the side and during the winter and spring this rock would fall in, did you say ? A. Yes.

Q. And then there would be the silt and drift from the lake ? A. 20 Which we cleaned out.

Q. But no other work of construction was done, as I understand you ?

A. No other work of construction done at that time.

Q. Then where were the stop logs at the head, at that time ? A. At the head race.

Q. Yes ? A. At the head of the raceway.

Q. Yes, where were they ? A. They were south of the C.P.R. bridge.

Q. How far ? A. Well, I never measured it, and I really could not state it correctly, but I would say ten to twelve feet south of the bridge.

Q. Now, that is all the work, I understand you have told me everything 30 that was done in 1905 or 1906 outside ? A. That is all.

Q. That is all ? A. That is all that I know of.

Q. Now then, how long did you continue to operate under those conditions before you shut down again ? A. Until 1912.

Q. Until 1912, now will you tell me what was done in 1912 ? A. The mill was closed down, and the head race unwatered.

Q. Yes ? A. And the original power house was demolished and a power house erected of reinforced concrete, brick superstructure, a retaining wall of concrete. A concrete retaining wall was built along the north raceway replacing the old crib work.

Q. Yes ? A. And new head gates were installed at the entrance.

Q. And new head gates were installed at the entrance, when you say the the old power house was demolished, is that the power house you have reference to that was built in 1905 or 1906 ? A. The original power house, built in 1887 or 1888.

Q. The original power house built in 1887 or 1888 was demolished, and a new power house of cement and brick superstructure was erected ? A. A.

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new cement wall to replace the planking and crib work, and the head gates were removed further south.

HIS LORDSHIP : The old power house was the original water house ?

A. Where the original turbines were installed.

MR. MCCARTHY : That is why I distinguished it from the electric power house built in 1905 and 1906.

Q. And were the same gates, or same construction used in the head gates—how were the head gates constructed before they were moved in 1912 ?

A. If I remember correctly, they were wooden crotches on the ends.

10 Q. Yes ? A. And a wooden pier in the centre which admitted of the two stop logs.

Q. Wooden crotches on the sides ? A. Yes.

Q. And wooden pier on the centre which permitted the stop logs to slide up and down ? A. Yes.

Q. And how many ? A. There were two openings.

Q. And what width ? A. I would say about thirty-six feet, eighteen feet each.

Q. And what were the new ones, what was the construction of the new ones ? A. There are three gates.

20 Q. Yes ? A. A concrete pier and abutments and two steel and concrete piers to admit the stop logs.

Q. Yes, and how many gates ? A. Three.

Q. What size ? A. I should judge fourteen feet or fourteen feet five inches, I would not be quite sure, but I think that is pretty nearly correct.

Q. That would be a difference of between thirty-six and about forty-three in the total width ? A. Yes, I think that is correct.

30 Q. Why was that necessary ? A. In the first place it was necessary to get work with head gates that would hold back the water when the race was unwatered. The old construction was very shaky, and the management did not like the idea of putting men to work in the wheel pit with two head gates that were not safe, that was one of the ideas.

Q. Yes, that idea would only account for the renewal ? A. Yes.

Q. But why the change in position and the additional width ? A. They were put back to get a road between the two mills, moved up stream, or out in the Bay, south, about ten feet—I do not know if that is correct or not, but if my memory serves me right, that is about the correct measurement.

Q. To get a road between the two mills ? A. Yes. To provide for a road for the Lake of the Woods Milling Company only.

40 Q. To provide road for the use of the Lake of the Woods Milling Company, only, and to complete this, why was the additional width necessary ?

A. I think the Bay widened out here a little, and if you moved the logs back you would naturally have a wider intake to get behind the rock.

Q. The bay widened out a little bit, and you would need naturally a wider intake to get behind the rock ? A. Yes.

Q. Now, while we are on the question of the road, how did you get between the mills, from mill to mill, before that ? A. We went around through the barrel factory yard.

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Q. You went around? A. Through the barrel factory yard, or through the streets of Keewatin, across the traffic bridge to Mill "C."

Q. Before that you would have to go through your barrel factory yard, across the traffic bridge of Keewatin? A. Through the streets of Keewatin, and through Keewatin to the north of the track on the bridge.

Q. And when you did this, you had a right-of-way from Mill "C" to Mill "A"? A. We leased the right-of-way from the C.P.R.

Q. But that was your own private right-of-way? A. That was our own private right-of-way, arranged with the C.P.R.

Q. And that is the first time that you built a bridge across the raceway? 10

A. No, prior to that, I think there was a platform across there, for piling the stop logs on when they were taken out.

Q. There was a platform, but there was a bridge? A. Yes, that platform was built on stringers.

Q. Could you drive across it? A. I do not think you could drive across it with the logs piled up, I do not think there was room to drive across it.

Q. Then you spoke just now of the controlling, or the width of the controlling point in the race—what have you reference to in that? A. I had reference to the measurement between rock wall and rock wall directly under the south of the C.P.R., of the south rail of the C.P.R. bridge. 20

Q. Is that where the stop logs used to be? A. No, I think I said previous to this they were twelve feet, at least, I think I did—

Q. And where was this point, between rock cut and rock cut? A. It was immediately, directly under the C.P.R. bridge, under the south line of the track.

Q. And why do you speak of that as the control point? A. It is the narrowest cross-section in the raceway to my knowledge.

Q. What? A. To my knowledge it is the narrowest cross-section in the raceway.

Q. And what is the width at that point? A. Thirty feet. 30

Q. Now then, with the exception of the work which you have told us, was any other work done outside the mill between 1888 and 1916 at Mill "A"?

A. There was new head gates put in down close to the mill in 1912 when they reconstructed the new power house, or reconstructed the new power house, there were head gates put in at the intake of the wheel pit, or penstock.

Q. There had been head gates there before, had there? A. Yes, I believe there were, although I am not quite positive about that.

Q. Now when you put up your hydro electric power house, were there any head gates there then? A. None, whatever.

Q. Were any put there at the time? A. Yes. 40

Q. Then you say that they were renewed in 1912? A. No, they were not renewed in 1912, they were not changed.

Q. What was new? A. The new gates were put in at the entrance to the mill wheels.

Q. That is the direct power? A. Yes.

Q. As distinct from the hydro—now is that all the work that was done

outside of the mill, or in the mill race between 1888 and 1916? A. That is all, to the best of my knowledge.

MR. TILLEY : Do you mean, Mr. McCarthy, I do not know whether I get it quite right, does he say that he was not sure whether there were any gates in front of the wheels before that?

A. No, I am not quite sure. I think there were, but I would not make that positive statement.

MR. McCARTHY : Q. I understood you to say just now that there was a gate in front of the entrance leading into the Hydro-electric? A. That is quite right.

Q. But you are not sure whether there were gates or not in front of the entrance leading—? A. Into the mill wheels.

Q. Whether there were, or whether there were not, you did put some there in 1912? A. That is correct.

Q. Then in regard to what was done inside, Mr. Cherry, can you tell me what was done inside. Now, can you tell me what was done inside Mill "A" as to power machinery? A. Well, with power machinery, you refer to the turbines, do you?

Q. If they are part of the power machinery I do? A. They are part of the power machinery.

Q. Back in 1887, what was the installation? A. There were two sixty inch turbines installed in 1887.

Q. Yes, there were two sixty inch turbines installed in 1887? A. And in the Fall of 1888 there was one twenty-two inch turbine installed.

Q. What was that for? A. That was for running the small dynamo for running the mill.

Q. That was for running the small dynamo for running the mill?

A. Yes, that is what it was called at that time.

HIS LORDSHIP : When was that?

A. In the Fall of 1888.

HIS LORDSHIP : One small what?

A. It was one small twenty-two inch, I think it was a New American design, I am not sure.

MR. McCARTHY : Q. When was the next installation—in 1893, what did you do? A. During March and April the head race was unwatered, and one of the sixty inch wheels was removed.

Q. Yes?

HIS LORDSHIP : What?

A. One of the two sixty inch wheels was removed.

HIS LORDSHIP : That was installed in 1887?

A. Yes.

Q. Yes? A. And two sixty-six inch wheels were installed.

HIS LORDSHIP : That is taking the place of the one—that means you had one sixty inch less and two sixty-six inch wheels?

A. That is correct, to my recollection.

MR. McCARTHY : Q. You said just now that the raceway was unwatered? A. Yes.

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Q. Was anything done in the raceway at all? A. Not at that time, I do not think, nothing was done there, it was in the Spring of the year, and still cold, and I think the ice formed, and whatever water would gather in the bottom of the raceway.

Q. Was there anything done to the rock? A. Nothing whatever.

Q. Then, what was the next change? A. The next change was in 1912.

Q. What about 1905, when you put the power house in? A. That was a new installation.

Q. It was a change. A. It was not a change only, that should be installation.

Q. It was a change in your power machinery? A. That is correct.

MR. TILLEY : Q. So that the next was 1893? A. That was the next change in the power, in 1893.

MR. McCARTHY : Q. The next change or addition? A. The next change was done in 1893.

Q. When was the next? A. 1906, or 1905, the power house was built.

Q. Yes? A. And two wheels were installed during the winter of 1905-1906.

Q. And what was the installation? A. Well, there were two thirty-three inch wheels installed, two double runners.

Q. Two double runners? A. Yes, I think that is the term, I am not quite sure.

Q. Anything else? A. One thirty-three inch wheel to operate the fire pump.

Q. To operate the fire pump? A. To operate the fire pump.

Q. One thirty-three—was that a double or single? A. One double.

HIS LORDSHIP : That means three double thirty-three inch wheels?

A. Three double thirty-three inch wheels.

HIS LORDSHIP : Pardon me, the first two double runners you spoke of were for what purpose?

A. For running generators for electric power.

Q. And the other was for—the other thirty-three was for what? A. To operate the fire pump, the thousand gallon pump for getting our water.

MR. McCARTHY : Q. You have already told us that you had one twenty-two inch wheel in for operating the generator? A. Yes.

Q. That was in the wheel pit? A. That was in the wheel pit in Mill "A" under the mill proper.

Q. What happened to that? A. That was changed, it is still installed in the wheel pit, but it was changed to run the machine shop when the power was off the electric power house.

Q. That still remains there? A. That still remains there but not used only occasionally—it is still retained there, and only used to run the machine shop when the electric power is off.

Q. It is connected with a dynamo? A. No, it is connected directly with the machine shop to run the lathe and machines.

Q. It is connected directly with the machine shop to run the machine shop when the power is off? A. Yes.

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Q. And the two in 1905 were for the hydro-electric power, and the pump? A. Yes.

Q. And at that time you say a gate was installed governing the entrance to the hydro-electric power or shaft, whatever it is? A. For the hydro-electric.

Q. Then when was the next change or addition? A. 1912.

Q. Yes, what was it? A. Well, the one sixty inch, and the two sixty-six inch wheels were removed.

Q. Yes? A. And a horizontal wheel, a German type installed, I think they are sixty inch runners.

10 Q. Now, in 1893 you had one sixty inch turbine less and you have two sixty-six inch? A. Installed.

Q. Now, in 1912, they were removed? A. They were removed.

Q. And what was put in? A. One pair of horizontal sixty inch runners, German type.

Q. One pair of horizontal sixty inch runners, German type were installed in their place? A. I think that is correct.

Q. And that was the same year that the cement wall was put around the sheeting around the crib? A. Yes, that is correct.

20 HIS LORDSHIP : Does that mean that the two, or the pair of horizontal sixty inch runners would have as great a capacity or less capacity or greater capacity than the three they replaced?

A. They would have a greater capacity, because they are a more efficient type of a wheel, that is why they, the sixty inch wheels were installed—the others were not of an efficient type.

MR. MCCARTHY : Q. Now, can you remember, or can you tell me the total discharge rate of these sixty inch? A. No, I never made a discharge measurement, the only measurements I have had are of public record in the Dominion Water Power.

Q. You did not make them? A. No, I did not make them.

30 Q. I am speaking of course, of the discharge rating of the wheels? A. I do not know what the manufacturer's discharge rating would be.

Q. The discharge rating was what? A. I do not know, I cannot answer that question.

Q. Have you any, can you form any opinion at all as to what the leakage amounted to in 1888 before the cribwork was put there, and afterwards?

A. Not in 1888.

40 Q. After the crib work was put there, could you form any estimate of the leakage? A. Some years, when it was put there—after it was put there, I would say there was from one hundred to one hundred and fifty cubic feet per second to go through it, that depended on the level of the Lake, with a low elevation there would not be so much going through. With a high elevation there would be more water spilling there.

HIS LORDSHIP : How high did you put your estimate—when you are answering me, you must speak so that everybody hears, I cannot hold any private conversation with you?

A. From one hundred to one hundred and fifty cubic feet per second, I am not giving from actual measurements, it is what I would say from personal observation.

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CROSS-EXAMINED :

BY MR. TILLEY.

Q. You are able to estimate, are you? A. No, sir, I am not, I am giving it as personal observation.

Q. I mean, if you make a personal observation of the running water you can estimate the cubic feet per second? A. No, I am not attempting to estimate it.

Q. But you have estimated it? A. I am giving it as an opinion.

Q. If you do not estimate, I would not bother? A. I am giving it as an opinion, not as an estimate. 10

Q. Are you competent to form one? A. I do not know, I am not competent to say that. I am not a hydraulic engineer.

Q. I know, some people who have not a title, are not as capable as those who have the title? A. I know.

HIS LORDSHIP : There are some men would have greater capacity.

MR. TILLEY : I think one of the best expert witnesses told me not to ask whether he had any diploma, but he started out by running a milk wagon. Now, what are you able to estimate by looking at the running water from a leak, the cubic feet per second that is running away, or are you giving a figure that will come into some of Mr. Acres' computation later on? 20

A. No, I am not giving a figure that will come into Mr. Acres' computation.

Q. When did you first make the estimate of one hundred to one hundred and fifty cubic feet? A. Well, it was—I do not know where you are leading me—

Q. Do not worry about where I am leading you, just be frank and see where you are landing at the end? A. I do not want to start out wrong.

Q. Where did you first make the estimate? A. Oh, I figured it in my own mind, some years ago.

Q. How long ago? A. Oh, I do not know how long ago. I have been 30 working around there a good many years.

Q. I know you have? A. Before this wall was constructed?

Q. Yes, before the cement wall? A. Yes.

Q. And I quite accept that, Mr. Cherry, and I daresay you erected it—only I would like to know, was that when you saw it running, or when you saw a lawsuit coming? A. Oh, long before we saw a lawsuit coming.

Q. You have seen a lawsuit coming for a good many years? A. Yes, but the estimate was made prior to that.

Q. Prior to that? A. I heard the conversation of the General Manager and the Master Mechanic discussing the question. 40

Q. I do not want the Master Mechanic view, or the view of the General Manager? A. They discussed it.

Q. Who was the General Manager, Mr. Masters? A. No, Mr. Hastings.

Q. Was this the information some person else gave you? A. No, I formed it from my own estimation.

Q. Then I assume you have estimated the cubic feet of the running water around the raceway? A. No, I never attempted it, not in my own mind.

Q. You never attempted it? A. No.

Q. Is the cubic feet per second of the leak the only thing you have estimated, the leak in this raceway? A. I said I did not estimate it, I said I formed the opinion it would be that, that is not an estimate.

10 Q. Is it the only quantity of water that you formed an opinion about, just this leak? A. Well, I formed an opinion about a great many running streams, but I would not attempt to estimate the quantity of water going through from the raceway.

Q. Or the raceway, is that what you mean? A. I said running streams.

Q. That is not a running stream? A. No, it is not a running stream.

Q. At any rate, that is the only estimate you have made, or the opinion you have formed? A. Yes, the opinion.

Q. When you heard me use the word "estimate", you thought I meant you figured it out, or computed it? A. Yes, to figure it out.

20 Q. I am not meaning that, I only mean exercising a judgment in regard to it, but at any rate you formed that opinion at the time it was running, you have not formed it in the last year, preparatory for this litigation? A. No.

Q. You formed it at the time, one hundred to one hundred and fifty cubic feet per second, and the water has not been running over for the last fifteen years? A. That is correct.

Q. Since 1912—? A. Since November, 1912.

HIS LORDSHIP : That was when the leak was stopped?

A. Yes, in November, 1912.

MR. TILLEY : Q. What head of water would it take to make it run at one hundred and fifty cubic feet per second? A. I cannot tell you that, sir.

30 Q. What head of water would it take to make it run at one hundred?

A. I cannot tell you that. I cannot tell you at one hundred and fifty, I could tell you at one hundred, but I am not competent to estimate that much.

Q. You are not competent, and a good deal of the time it would be less than one hundred, in your opinion? A. Yes, depending on the elevation of the Lake, it depended on the elevation of the Lake, what water was going through.

Q. Give us some idea of the elevation, of the range and cubic feet per second? A. I cannot do it.

40 Q. You cannot establish any relationship between the two—do not shake your head, because the reporter is not looking? A. No, I cannot tell.

Q. I do not seem to be able to make much progress on that attack?

A. No, not on that.

Q. We will have to switch to something else. I cannot quite understand you, the machinery would not run because of the leak, and the raceway had to be dewatered then, two days, and then you seemed to restore it, and it ran

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all right, without anything being done to stop the leak? A. We started it after the leakage was stopped.

Q. But you are shut down in July, and it did not stop—had not stopped it until sometime in October, the Fall of 1888? A. Yes.

Q. You said you shut down because there was such a leakage that you could not drive the machinery? A. If I remember correctly what I said, I said that we shut down because there was not speed enough to drive the mill, at least that was what the head miller told me.

Q. And that was because of the leakage? A. Yes.

Q. Then you unwatered it to correct things, and you did not fix the leak, and you started up again, and it went all right? A. We stopped a portion of the water going through, but did not altogether shut the leak off. 10

Q. You stopped a great deal? A. Yes.

Q. When was the one hundred and fifty feet per second before you made that correction, or after? A. It would be after we made that correction, some years, about 19—

Q. You are not prepared to say it ever went one hundred and fifty feet per second, are you? A. No, I am not prepared to say that it ever went that.

Q. You are not prepared to say that it ever went at one hundred and fifty feet per second, are you? A. No. 20

Q. Now, Mr. Cherry, you have been at Keewatin, you say, since 1888?

A. Yes, sir.

Q. And you are now the Manager, the Local Manager? A. The Local or resident Manager.

Q. How long have you occupied that position? A. Since 1901 or 1902, I am not sure which, or I went to the office, I went into this about 1901, and got the appointment shortly afterwards, I do not know just what year.

Q. And what position did Mr. Matheson hold? A. Mr. Matheson, well, what year are you referring to—are you referring to any particular year, or any particular period? 30

Q. 1916. A. Mr. Matheson was General Manager at that time, to make it correct, he was Western General Manager at that time.

Q. And his headquarters were at Winnipeg? A. At Winnipeg.

Q. And you were local Manager while he was there? A. Yes, local Manager, while he was there, at Keewatin.

Q. How long was he General Manager at Winnipeg? A. I think from about 1913 to 1923, I think that is the correct date.

Q. And prior to being local Manager, what position did you occupy?

A. I was foreman of the grain elevator.

Q. Of the grain elevator? A. Yes. 40

Q. For how long? A. From 1888 until I was transferred to the office about 1901 or 1902.

Q. And when you say you are General Manager, you mean General Manager both of the Keewatin Company—at least I mean both mills?

A. Well, local Manager.

Q. Local Manager? A. Yes, local Manager, not general Manager.

Q. Local Manager, pardon me, of both plants? A. Both mills, both plants.

Q. And you have been local Manager of both mills since? A. Since Mill "C" commenced to operate in 1907, I think the Spring of 1907.

Q. Do I gather from that, that Mill "C" since it commenced to operate has always been under the control of the Lake of the Woods Company?

A. Yes.

Q. I thought for a time it operated independently, but you say not?

A. Well, I do not know, it may have, I know at one time—

10 Q. It would be a very short time, if it did? A. I know at one time they had a separate Board of Directors.

Q. And then you have been running both mills then, for the last twenty years—now you say that the controlling point is under the south rail, as I understand it, of one of the C.P.R. tracks, is it? A. The south, I should have said the south wall of the C.P.R. bridge—not rail.

Q. I thought you said rail? A. I may have said rail, I intended to say south wall.

Q. It is just as apt to be my mistake as yours, the south wall? A. Yes.

Q. And the narrow point—that is because the width is thirty feet?

20 A. Thirty feet.

Q. It is of a greater width than that, from the south wall of the C.P.R. bridge right to the wheels? A. Well, I do not know, I have not got—

Q. You said that was the narrowest point? A. That was the narrowest point, what the width is, I do not know.

Q. I am not asking you how much wider, but that is the narrowest point? A. That is the narrowest point.

Q. It is not—are you speaking of present day conditions or are you speaking of 1906 conditions, for instance? A. I am speaking of 1906 conditions.

30 Q. Because there was a corner taken off that was there not, at some time? A. Not in 1906.

Q. When was it taken off? A. In 1924.

Q. In 1924, well then, was it on the curve where it turned from going north to go sort of west—I will show you what I mean, Mr. Cherry, was it just here, (indicating on plan)? A. There was some taken off there, and some taken off of that curve.

MR. MCCARTHY : I cannot hear Mr. Cherry.

MR. TILLEY : I am pointing Mr. Cherry to the corner where the race-way runs north, and then turns north-west.

40 Q. And you say there was some taken off that point? A. Some taken off there.

Q. And where else was any taken off—that is the centre of the C.P.R. bridge, as I understand it? A. It was taken off here (indicating) I think it is inside of the gates.

MR. TILLEY : Then Mr. Cherry points, he says there was some taken off inside the old entrance, or the new?

A. Inside the new entrance gates.

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Q. The inside of the new entrance—the new entrance gates were installed in 1912, this work was done in 1924, I know that? A. Yes.

Q. But was the other portion taken off, off the side, as I gather, off the raceway, was it taken off between the new gates, the location of the new gates or the old entrance gates, or was it taken off to the north of the old entrance gates? A. I think it was taken off to the north of the old entrance gates, but I am not clear on that subject.

Q. Would it be between that and the south wall of the C.P.R. bridge, or was it at this narrowest point that you spoke of? A. Oh, it was outside of the narrow point, south of the narrow point. 10

Q. These two pieces were taken off in 1924? A. In 1924.

Q. Now, have any other pieces been taken off the sides of the raceway at any time? A. Absolutely not.

Q. Just the two spots? A. Just the two spots to my knowledge.

HIS LORDSHIP: And these were both in 1924?

A. Both in 1924.

MR. TILLEY: Q. So the narrow point under the south wall of the C.P.R. bridge still remains as it was? A. Still remains as it was.

Q. Why did you not take a little chunk off there? A. I do not know, I did not do the work. 20

Q. Did the man pull the wrong tooth? A. No, he did not pull the wrong tooth.

Q. What happened? A. I do not know what happened, but I want to explain, I did not have anything to do with this. I want to explain my position is to look after the running of the mill, and the business end of it.

Q. We know? A. The mechanical work is arranged between the General Superintendent and the General Manager.

Q. The General Superintendent being whom? A. Well, at the present time, Mr. Cornish, originally it was Mr. George H. Kelly.

Q. Kelly? A. Yes. 30

Q. Until when? A. Until January, 1912.

Q. From what time, to the early days? A. 1889.

Q. 1889? A. No, pardon me for a moment, you did not get me there.

Q. Stop me in time? A. Not from 1889. He was Superintendent of Mills from 1889 till 1907 or 1908, then he was appointed General Superintendent.

Q. But would it be right to say down to 1912, Mr. Kelly occupied the position of Superintendent, I am not talking about his title? A. Yes, that is right.

Q. That would make him the proper person to speak from that angle? 40

A. Yes.

Q. And after that date, Mr. Cornish, down to the present time?

A. Yes.

Q. The General Manager is Mr. W. W. Hutchison, Montreal? A. Yes.

Q. And how long has Mr. Hutchison been General Manager? A. Well, for a number of years, I do not know, but I think away back—

Q. Away back of all material times? A. No, not of all material times.

Q. Well, how far back? A. He was back to 1910 or 12 or 13.

Q. Back to 1910, or '12, even longer than this action has been pending, at any rate—then you say that you do not know why something was taken off south of the narrow point? A. I know in a general way.

Q. Tell us then, you are the local Manager? A. It was taken off with the idea of getting a more even flow of water to the penstock?

Q. To the penstock? A. Yes, a more even flow of water to the penstock.

Q. Then, if it was to get a more even flow of water to the penstock, I would have thought you would have taken it off at the point where it was narrowest? A. Not necessarily.

Q. Does not the narrow point control the water? A. Yes, the narrow point certainly controls the water.

Q. Then why not take it off at the narrow point if you want an even flow, I should think that would make it even? A. When the water struck the corner, it eddied around there, and there was a small drop at that point.

Q. At that point? A. Yes.

Q. Now, let us just get this, because it may be of some importance—let us take time to get it right? A. Yes.

Q. It was because of the turning of the corner that made the water eddy and held back the flow—is that what you mean, tended to hold it back?

A. Tended to hold it back.

Q. And you found that there was a drop from that point to the entrance of the gate.

Q. And you were trying to avoid that, and you also found the same condition to apply just below, just to the south of the C.P.R. bridge, did you, and they took something off there for the same reason? A. No, I do not think the same condition applied there.

Q. Then why did you take it off below the narrow point at the south end of the raceway? A. To get rid of this eddying that is here and to allow the water to flow down smoothly without eddying.

Q. Then why did you take it off at the particular point that you did, it was not the narrowest point that created the eddy? A. That was the point that the water flowed against, and turned around.

Q. Turned around? A. Eddied around.

Q. South of the C.P.R. bridge? A. No, north.

Q. I am sticking to the south? A. North.

Q. But I know that you took some more off south of the C.P.R. bridge?

A. Yes.

Q. I am wanting to know why, up to that point—I understand the eddy on the corner? A. I do not know why it was taken off there, I never heard the matter discussed. I have heard that corner discussed for years.

Q. How many years back have you heard that discussed? A. Four or five, probably longer than that.

Q. You say you could, longer than that, Mr. Cherry, and I am going to stick to it until I get it as accurate as I can? A. I know, but it is very hard to get this.

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Q. You say four or five, or probably longer, back to 1916? A. Yes, it was discussed prior to 1916.

Q. Back to 1910? A. Especially in low water. I believe in low water period, I believe in 1911 was the first reference that I heard.

Q. That was the first time that it was noticed? A. I do not know whether that was the first time it was noticed, but that is the first time I heard a reference to it, in 1911.

Q. Now, Mr. Cherry, 1911, as nearly as you can say fixes the time when you found there was a condition at that corner that was holding back the flow of water and giving you less head at the gates than you had at the corner—is that right? A. Yes, I would say about that time, about that. 10

Q. And it would be a fair inference that you would be using more water at the gate more rapidly wasn't it, than you had been before, or you would have noticed it before—is not that a fair inference? A. It may be an inference but I am not prepared to say whether it is right or not.

Q. I am asking whether it is the fair inference?

MR. MCCARTHY : I cannot hear what you say, Mr. Cherry.

MR. TILLEY : Q. You said so? A. I say it may be a fair inference, but I cannot say whether it was right or not—that is the answer.

Q. That is in 1911? A. About 1911. 20

Q. And I suppose there are two things that would hold back the water—first the narrowest point, and secondly any other point which caused the eddying, physical features would cause the water to back up a certain amount, and thereby delay its flow—that is so? A. That is so.

Q. Now then, I am going to suggest to you that in 1912 you commenced fixing up the raceway in 1912? A. Yes.

Q. In order to get a better flow, did you? A. Well, naturally, if we prevented the leakage to the north wall we would get a better flow. If there was a quantity of water wasting.

Q. A leakage would not affect the flow, except you would have all that flow out? A. All that flow out. 30

Q. Now, did you do anything else in 1912? A. Well, we demolished the old Power House.

Q. No, I am not asking that—in order to improve the flow of water at the raceway? A. The raceway was cleaned out at that time.

Q. In 1912? A. Yes, cleaned out.

Q. And why did you clean it out, from one end to the other? A. It was cleaned out at whatever point there was any debris or rocks had gotten in.

Q. There would be a good deal at the C.P.R. bridge, wouldn't there?

A. There would be some at the C.P.R. bridge. 40

Q. That would be the worst spot of all? A. No, I do not think the worst spot of all.

Q. Now, there were three tracks across in 1912? A. Yes.

Q. And had been three tracks there for how many years, twelve or fifteen years? A. Probably twelve or thirteen.

Q. Probably twelve or fifteen years, a siding and two main tracks?

A. A siding and two main tracks.

Q. And the witnesses told us that stuff would get in from the C.P.R. gravel trains and so on—that is so, I suppose, without much doubt? A. Not at that particular point, I do not think.

Q. Now the witnesses have told us that, do you say that is not so?

A. To the best of my recollection there is an abutment along here that runs along to keep in any fill.

Q. Would you say then when the witnesses had told us that there was stuff got in in that way, do you think that is incorrect? A. No, I would not say that, but to the best of my memory there was not much got in at that
10 particular point from the C.P.R. bridge.

Q. Listen, is the C.P.R. bridge floored so that stuff does not go through between the joists? A. There is no joists over that bridge across the raceway.

Q. Is it a steel one? A. No, it is a stone arch.

Q. And what about the flooring? A. I think it is a concrete flooring and filled with gravel.

Q. Filled with what? A. Gravel, cinders, whatever they put in.

Q. And you say that there is no chance for the gravel to get down into the raceway? A. No, when they were filling it up at the corner, a little, when
20 they were filling up.

Q. And when they were filling up at the corner, anything that ran in would run in at the very worst point in your raceway—that is so? A. If there was no abutment or banking kept it back, but I think there was a wall, or retaining wall built up to keep it from running in, I am not quite sure, but I think there was.

Q. Now, do you remember the cleaning out in 1905, and again in 1912 at that bridge? A. I remember seeing the work done.

Q. You remember seeing the work done? A. I do not remember seeing it done at the bridge, I do in 1924.

Q. I am not asking about 1924 for the moment, I am asking about 1905
30 and 1912? A. Yes.

Q. Do you remember seeing the cleaning out at the bridge, the last witness told us that there was a depth across the bottom of the raceway six inches to a foot high, practically level of fine material, that he thought had come down from the C.P.R., between 1887 and 1905? A. Well, I think that would be about correct.

Q. That would be correct? A. But I thought you were trying to get me to say it was from the C.P.R. filling, I could not get that through my mind.

Q. From the C.P.R.? A. There was silt, certainly drifting in there.

Q. Silt drifting in, and some material coming down from the ballast?
40 A. Some, I suppose.

Q. Now, do you remember that that was so in 1905, that there was about a foot of it there? A. I do not remember anything about that. That is, I had nothing to do with the work in either 1905 or 1912 any more than to pass along and see it.

Q. Now then, you are passing along and seeing it—I am asking you whether you do not remember that there was that cleaning out done at that

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point? A. I remember there was cleaning out done on the raceway, but at what particular point, I cannot say, and I am not able to say.

Q. Do you say that you do not remember at the C.P.R. bridge?

A. No, I would not say that I do not remember any at the C.P.R. bridge, I know in a general way that there was some done there.

Q. And it had not been cleaned out, as I understand it, from 1887 until 1905—now, that is right? A. So far as I know, that is correct.

Q. So far as you know, the first cleaning out was in 1905—so that it was the gradual accumulation, and then you get about a foot extra depth in 1905, if the last witness is correct, it might be a foot extra depth at the narrowest point in your channel, didn't you? A. No, sir, not that I know of, I do not believe we did. 10

Q. You do not believe you did? A. No.

Q. You do not think so—he is not correct? A. No, I do not think he is not correct, but from my personal knowledge I do not think we got a foot there.

Q. Or eight inches? A. I would not say eight inches, I did not measure it, and I am not prepared to say what we took out at that particular point.

Q. He says from six inches to a foot—would you say? A. I cannot say that. 20

Q. You cannot say that? A. No.

Q. Then, did the same thing happen again in 1912? A. Yes, when the raceway was unwatered in 1912, it was cleaned out.

Q. And was the accumulation as bad in 1912 as it was in 1905?

A. Well, I cannot really say. I cannot say what the depth of the accumulation was there, I know there was some accumulation cleaned out at that time.

Q. At the C.P.R. bridge and about that place? A. The C.P.R. bridge, and on down the raceway.

Q. Towards the exit? A. Towards the exit. 30

Q. Towards the south, a good deal of silt came in there? A. Yes.

Q. How far up would that extend to the corner where the raceway turned to the west? A. Yes, to about the corner, probably a little further south of the corner.

Q. And did the carrying of the stop logs out ten feet help that? A. No, I cannot say that it helped any.

Q. You cannot say that it helped any? A. No.

Q. You think that the extending out ten feet further south and having a wider stop log projection did not stop the silt coming in? A. I do not believe it did. 40

Q. You did not believe it did? It would carry it just the same, and it did carry it, did it, just the same? A. I won't answer that question, because I really do not know.

Q. You really do not know? A. No.

Q. Have you cleaned it out since 1912? A. In 1924, I think there was some work done on it.

Q. What was done then? A. When the corner was knocked off, as I told you before, at the south, and at the turn, I think there was some cleaning done then.

Q. You think there was some cleaning done then? A. At that time, yes, they—

Q. Yes, what did you find? A. I did not have anything to do with the cleaning at that time.

Q. Did you see it going on? A. I saw it going on.

Q. And did you find the taking off the corner improved the flow of the water? A. Yes, it improved the flow.

Q. It gave you more water for your gates? A. Yes, it reduced the drop from the Lake to the entrance to the penstock.

Q. As I understand it, reducing the drop from the entrance of the Lake to the penstock, that means that the water came up to your wheels more freely, and you were able to use it better, at a better head? A. To better advantage, more economically than prior to that work being done.

Q. And you used more water? A. I do not think so.

Q. Do you mean to say that you did not use more water if you improved the flow of it up to your penstock—do you say that you were not using more water? A. The public records will show that.

Q. I am not asking about the public records? A. I cannot say.

Q. Surely you can answer that, that if you improved the conditions for the flow of the water at your raceway, so that you eliminated the difference between the head at the entrance of the raceway, and the head at the gates, bringing that head at the gates higher—do you mean to say that you did not use more water? A. No, I think we would use less water because we have more head.

Q. You had more head? A. We have more head, and we would use less water going through the wheels discharging from the wheels.

Q. So it is a mere matter of getting the head there, when you once get the head at that point, you would use less water? A. Under certain conditions, it would depend altogether on the elevation of the Lake.

Q. Now, I am talking about the condition of the elevation of the Lake, when you have a substantial difference in the head at the wheels and the head at the entrance, and you say that under these conditions, you would not be using more water? A. Absolutely not, to the best of my knowledge we are not using more, and have not used more since that work was done.

Q. Since that work was done? A. No.

Q. And what was the benefit of the work? A. The benefit of the work was to get the water to flow down more freely and have a better head, have a higher head at the intake to the wheels.

Q. A higher head? A. Yes.

Q. Formerly when you used the water at the wheels, it would not come in fast enough to get up a head, that is so? A. It would be—to the wheels would be down to a little more than, there might be two inches higher at the head

Q. But the difference between the head at one place and the head at

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the other was caused by you using the water faster than you were getting it—is that not right? A. I presume that would be right, it is a question.

Q. And then, if you increased the flow of the water so that the water flows more freely, you say you do not use any more, although the head is there for you to use—is that right? A. No, we were not using any more water, the water is at the wheel, and the gates is not open to the same percentage it would be if you had the lower head.

MR. TILLEY : Well, all right.

HIS LORDSHIP : I do not know if you want to object or not, but I have been curious for some time to know how you were getting a better head of 10
water at the C.P.R. bridge, than you were getting down at the power plant?

A. When—

Q. Speak out so that they can hear you? A. It was the difference between the elevation at the Lake, and the elevation at the entrance to the penstock, I think there was a gauge at the entrance to the penstock, and a gauge placed by the Dominion Water Power Branch, who read the elevation of the Lake. The difference was the draw between the Lake down to the level water at the entrance to the wheel pit.

Q. It was not a question of speed, it was a question of difference in level?

A. Difference in water levels. 20

Q. Then is it your idea that the difference in the speed does not affect the power that you get? A. Well, I suppose under certain conditions it might, but under the conditions as we have them there, I do not think it was, that is a layman's own personal opinion from observation and experience.

MR. TILLEY : Anyway, from about 1911 you were using water more readily than you had been before, and to such an extent that you noticed your head at the gates was not being kept up, because the water did not come in fast enough, that is so, is it not? A. I do not just quite understand that question—you want me to—

Q. First, in 1911, you noticed that condition? A. That is correct. 30

Q. That the water was not getting—not keeping its head at the wheels?

A. That is quite correct.

Q. And that is a different condition to what you had had before?

A. Yes.

Q. And that was because you were using water at that time more rapidly than you had been before, or else some obstruction had got into your race-way, and you were not getting your water as freely, one or the other?

A. That was during low water it was.

Q. Whatever time it was? A. The elevation of the Lake was very low at that time. 40

Q. Yes? A. That is when this was first noticed.

Q. When it was first? A. With the low water.

Q. What years were the low head water? A. 1911 was one of them.

Q. And did you notice it every year until 1924 when you made the change? A. 1924?

Q. Did you notice it every year from 1911 to 1924? A. The same condition would be there, I may not have noticed it.

Q. And you did not notice it before 1911? A. No.

Q. And you did not notice it before 1911—now you gave two or three reasons for moving the head gate, the first one was because you wanted to renew your gates, but I suppose it would have been a great deal cheaper to have renewed them at the same spot, than to have removed them up ten feet, wouldn't it? A. It might have been a little cheaper.

Q. And less work to do, a narrower spot, and less work? A. Well, I do not know whether it would be less work to do or not, but probably it would be the same excavation.

10 Q. Why excavation? A. They would have to excavate to get room to set down the concrete piers, both in the centre and at the side, the pillars at the side for the stop logs.

Q. Yes? A. They would have to go further into the rock to make them solid.

Q. Then you moved it up ten feet—how much wider were the two sides apart at that point? A. The two sides?

Q. Yes, how much further apart were they there, than at the old location? A. Do I get you right, that is each side of the head gates?

HIS LORDSHIP : There was a certain amount of flare in the openings?

20 A. He is thinking of the floor now?

MR. TILLEY : Q. How much wider? A. I cannot tell you.

Q. Five feet to ten feet, the raceway came down to where the old—

A. Pardon me, I may be a little thick—what do you refer to, to the rock work still for the head gates?

Q. What afterwards became the situs of your stop logs? A. It flares out to a certain extent, something like that (indicating).

Q. How much? A. I cannot say.

30 Q. How much wider at that point? A. I cannot give you the exact width, at that point, what I do know is, the new head gates that are put in, were about six feet wider than the old head gates were.

Q. Do you mean the space for the water to go through when they are open is six feet more than the old gates when open? Do you mean there is a total of six feet more space for the water? A. Six feet more space, that is what I said, at the head gates.

Q. That is, after taking account of all obstructions, you have six feet more of clear space? A. The obstructions were south of the head gates, or north.

Q. I am talking about the new gates themselves, I suppose you have to put the stone piers to hold them? A. Yes, two stone piers.

40 Q. Now, I want to know whether it is six feet more space for the water to travel through? A. To travel through the head gates, yes.

Q. Than under the old conditions? A. Than under the old conditions.

Q. Now, was there any reason for that, having six feet more? A. There was the reason in construction by putting in an extra gate there, we got a more solid headwork.

Q. Was there any reason for having six feet more area through which the water could run? A. No particular reason, no more than I mentioned in

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any flow which we did get, a better flow of water, the reason was to get a more substantial head aperture for head gates, for the gates themselves.

Q. We have all that? A. That is right.

Q. You say you wanted a more substantial structure—did you have any reason for getting the six feet more width? A. Not that I know of.

Q. This seems to be the end of the race—why were you trying to improve conditions by blasting in 1924—why was that done to the north of the old location, of the old gates where you took off the side, in 1924—was that north of the old gates? A. The blasting or the removal of that corner in 1912 was down south of the new head gates. 10

Q. South of the new head gates? A. North of the new head gates.

MR. MCCARTHY : You said in 1912?

A. 1912.

MR. TILLEY : Q. Yes? A. There was nothing taken off there in 1912.

MR. MCCARTHY : Mr. Tilley said 1924, and you said 1912?

A. Pardon me, I am wrong.

HIS LORDSHIP : In 1924, was it?

A. North of the old gate line, and down at the corner.

MR. TILLEY : And how far from the old gate line?

A. I did not measure it. 20

Q. Did you take it off right down to where the old gates were? A. I never measured it.

Q. Did you take it down to the point where the old gates stood? A. I think down to the point, but I never measured.

Q. Now, did you take it off both sides, or one side? A. Just one side that I know of.

Q. Which side? A. The east side.

Q. The east side? A. I would not be quite sure about that. I do not want to make a statement that is not right.

Q. Of course, no one expects you to? A. I do not want you to lead me on to something that is not right, but when you say the south side—I do not want to say something that I am not sure. 30

Q. The south-east side? A. The east side.

Q. And you took off some of the rock at the point where the old gates stood? A. About where the old gates stood.

Q. That is at the spot that was the former entrance to the raceway?

A. Yes, certainly.

Q. Well then, are you suggesting that there was no reason for making six feet wider entrance for water in 1912 than you had before, because you came back in 1924, and actually widened the spot where the old gates stood? 40

A. No, I am not suggesting—just repeat that question, will you please, I did not get that.

Q. In 1912 you increased the area through which the water could run by six feet in width, didn't you, and in 1924 you came back and actually took off some of the rocky sides of the spot where the old gates stood, and I am asking you, you nod—that is so—you follow that? A. Yes.

Q. Now then, I am asking you whether it is not obvious in 1912 you were

getting things in shape so that you would have a better flow of water at the raceway? A. Well, I am not prepared to answer that question in that way, because I did not have anything to do with the construction.

Q. Who can tell us why it was done? A. We have the witness here who will tell you why it was done.

Q. Why it was done, or how it was done? A. I presume he will, I do not know whether he can or not.

Q. Is he presumed to tell why it was done, or how it was done? A. The work was done under his superintendence, and I presume he will know more
10 about it than I do.

Q. Who is that? A. Mr. Alexander, he is in the Courtroom.

Q. Mr. Alexander, he will know about that—now, have you got any map here, or plan I should say, have you got any plan of your mill sites so that I can follow this road that you are referring to? A. No, sir, there is no plan that I know of.

Q. No plan that you know of? A. No.

Q. Now, will you tell me what is the fact, because I do not know that I quite understand the way you left it? A. Yes.

Q. Did you have a bridge to the south of the C.P.R. bridge, across your
20 raceway, or did you not, over which you could take vehicles? A. Not before 1912, if my memory serves me right.

Q. Will you say that you had not, definitely, prior to 1912? A. No, I would not say definitely, but I remember we had a platform, board, that we used to store the stop logs on when they were taken out of the gates.

Q. Yes? A. And if these were moved to one side, I assume a team of horses could travel over the old bridge.

Q. Then in 1912, you built a bridge? A. Yes, we built a bridge.

Q. You built a bridge? A. Yes.

Q. Was it in the exact location of the old bridge? A. I beg pardon?

30 Q. Was it in the exact location of the old bridge? A. No, it would be further south.

Q. How much further south? A. Well, it would be up to the opening for the stop logs ; the road was south of the opening for the stop logs.

Q. The road is south of the opening for the stop logs, is it. Now the former witness told us the bridge was in the same location, as I understood it.

A. No, I think the bridge is on the north side, I would not be sure.

Q. North side of what? A. On the north side of the gates.

Q. Between the gates and the C.P.R. bridge, in the same location as the old platform was? A. In the same location.

40 Q. Then you did not need the extension south in order to make room for the bridge? A. Yes, I think we had to get room to work.

Q. Why? A. To get sufficient room to work, for taking out the stop logs, and keep them away so vehicles could pass.

Q. There was ten feet? A. So vehicles could pass when men were working.

Q. You did not have traffic to bother? A. There was considerable traffic there.

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Q. Now you had the full ten feet from the south side of the C.P.R. bridge, until you came to your stop logs hadn't you? A. I do not know, I cannot answer that question. I never measured it, I said about ten feet.

Q. I am wanting to know whether you really and seriously suggest that the putting in of a bridge there was the cause, to any degree of your moving your gates south, or whether the fact is that you moved your gates south for other good and sufficient reasons? A. That was one of the factors discussed in discussing the moving of the gates south was to get sufficient for a road between both mills, sufficient space.

Q. But the serious reasons for moving the gates south were other reasons, were they not? A. I cannot say what they were for. 10

Q. You were Local Manager? A. I was Local Manager, but as I said, these things were discussed between the Superintendent and the General Manager at Winnipeg.

Q. I should think that if the reason was for an approach, it would be for the local Manager? A. I do not have the say about that.

Q. But if it was water running up the raceway, it was for others to say?

A. I had not much to do with them.

Q. Now at the risk of going back to a subject, I am only going back because I do not think I have got it. You can tell us about it—how wide a piece was taken off in 1924, at the site of the old gates? A. In 1924? 20

Q. Yes? A. I cannot answer that question.

Q. A foot, or two feet? A. I would say probably there would be three or four feet.

Q. Probably five or six? A. I would not say five or six, by looking down at it from the bank, I would say four or five feet.

Four or five feet, but Mr. Alexander will tell you about that.

Q. I may have more confidence in Mr. Cherry than Mr. Alexander—I have not met him yet? A. I do not know.

Q. Oh yes, I think it is just a matter of getting your recollection to the point, that is all—now you say four or five feet—was that continued further south than where the old gates stood, or did it stop where the old gates had been? A. I really cannot answer that question, I have not got the location fixed in my mind. 30

Q. And then it tapered off as it went north, towards the C.P.R. bridge, because it had to come back to the old line by the time it got to the C.P.R. bridge? A. I think that is right.

Q. You think that is right? A. I would not answer to that question.

Q. And how much, in getting from north to south, what length of piece was taken off? A. North to south? 40

Q. Twenty or thirty feet? A. I do not think there were twenty or thirty, I could not answer that question, I did not make a mental observation of what the width or length was.

Q. You were prescribed, were you from enlarging that raceway where it crosses the C.P.R.? A. No, not that I am aware of.

Q. You could have enlarged it there? A. No, it could not have been

enlarged there, there is no room underneath not room enough between the C.P.R. and the—

Q. Then, put it this way, away back, as far as 1900, because I think you went back that far, at any rate, you went back as far as 1900, that stone bridge was there with the three tracks of the C.P.R.? A. I do not remember that date. I do not think the third track was there in 1900.

Q. Two tracks? A. There were two tracks.

Q. Two tracks? A. That is correct.

Q. And the stone bridge? A. Yes.

10 Q. And room for a third track? A. Yes, that is right.

Q. And what would be the length north and south there under that bridge, and your raceway for the two tracks? A. I cannot answer that question, I made no observation as to that at all.

Q. You could not change the width between the sides there? A. Not very well.

Q. Then, I suppose that it would be fair to say that it would be of great benefit at that narrow point, to remove and widen out immediately to the south of the bridge, would it not be of great benefit of giving you head, of getting the water through under the bridge, and so on, of great benefit to immediately
20 widen below the bridge? A. That is a question for an hydraulic engineer. I do not know what effect that would have on the water.

Q. But it would strike you as being a fair engineering work, if you were circumscribed by the C.P.R. bridge, which was the narrowest point, to arrange below the bridge so you would have a wider area, to have the water come out of the narrow point at the bridge, would not that be so? A. No, I am not prepared to assume that, because I cannot say, I am not prepared to admit it.

Q. All right, Mr. Cherry—now then, as to the wheels that you had, the turbines, now I wish you would give me all the turbines in your “A” mill from the beginning, and I would like you to add to the information you have
30 already given, the maker’s name and full information so that we can identify the turbines?

HIS LORDSHIP : That is start back?

A. 1888.

MR. TILLEY : Yes, sir?

A. In 1887, about—do you want me to start at 1888 or 1887?

Q. I want you to start in 1886? A. I do not know if there was anything there in 1886.

Q. All right, start in 1887? A. There were the sixty inch vertical.

Q. Yes? A. Two sixty inch new American turbines, manufactured
40 in Dayton, Ohio.

HIS LORDSHIP : This was in 1888?

A. When I came there in 1888.

HIS LORDSHIP : What?

A. Two sixty inch turbines, new American design, manufactured in Dayton, Ohio.

MR. TILLEY : These are the earliest?

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A. Those were in 1888, or 1887, they were installed,—in 1888 there was one twenty-two inch—

Q. Now, just before we pass from that—now, would you just see if that turbine that you are referring to was the one that was referred to here in this book on Turbine Water Wheel Tests and Power Tables by Horton?

MR. McCARTHY : What edition?

MR. TILLEY : I can give you the date of it, it is 1906, it is headed, "New American"—would that be it?

A. Well, you would have to ask Mr. Alexander that question.

Q. Will he tell us? A. He knows more about it.

Q. If we do not get it satisfactorily, you will come back. A. Sure, I do not know anything about the rating, the manufacturer's rating I think was given in the catalogue, and where that catalogue is, I do not know, but we purchased it.

Q. Mr. Alexander will have that information? A. Yes.

MR. McCARTHY : The rating might be quite different in 1906-1887 than now.

A. Mr. Alexander was not there in 1887.

MR. TILLEY : He was not there?

A. Not at that time.

Q. Was he there when it was taken out? A. He was there when one of those wheels was removed in 1912.

Q. And it was similar to the one? A. Similar to the one that was removed prior to that.

Q. So that he would see that? A. I think so.

Q. Now do you know whether it was a new American standard or special, or improved, or any other qualification? A. I think probably it was the new American standard, I would not be—

Q. Yes, the new American standard? A. I would not be sure.

Q. And you cannot give the manufacturer's rated capacity for that? 30

A. No.

Q. You have given that size? A. 60'', two 60''.

Q. When you speak of two 60'', do you mean two double? A. No, two separate vertical wheels.

Q. Now then, the next change you gave us, you gave the manufacturer's name of that— HIS LORDSHIP : No, he said it was manufactured in Dayton, Ohio.

MR. TILLEY : Q. Do you know what the manufacturer's name is?

A. No, I do not know the manufacturer's name.

Q. Is it the Dayton Globe Iron Works Company? 40

A. Yes, I think that is it, the Dayton Globe.

Q. Now, that is about all, about that one, now the next one—1888—1888—you said one twenty-two inch? A. The twenty-two inch.

Q. What was that? A. The same type of wheel and same manufacturers.

Q. A different size? A. A different size, a 22''.

Q. Standard? A. Standard new American.

—continued

Q. And the next? A. That would be 1905, the next installation. Or did you wish to continue Mill "A" Power House.

Q. Yes, you passed over one, you said one 60" was less? A. That was in 1893.

Q. Now, Mr. Cherry, how do you fix 1893? A. How did I fix 1893?

Q. Yes, that is the question—how do you fix that date? A. I fixed 1893 from the fact that I was working at the elevator at that time, which was shut down, and the raceway was unwatered, and I assisted to instal those wheels.

10 Q. Now, the elevator has been shut down several times, has it not?
A. When the race would be unwatered, it was shut down usually.

Q. And how do you say—that this happened in 1893? A. Well, it was fixed in my memory at that time, from the work I was doing, assisting to get the wheels.

Q. How do you say it was 1893, not 1896, or 1897 or 1898, because it is a good many years ago? A. Yes, it is a good many years ago. I remember that date absolutely.

Q. How do you remember it? What caused you to remember that date? Are you fixing it just from memory?

20 A. I am fixing it just from memory.

Q. Have you got any bills for the wheels, any bills?

A. No account for the wheels?

Q. Any account for the wheels that were sold to you? A. There would likely be entries in the ledger at our Winnipeg office for the price of the wheels.

Q. Have you got that? A. I think they are here. I think Mr. Robinson has them, I am not sure.

MR. TILLEY: Could I see them, Mr. Robinson?

MR. ROBINSON: I have not got them.

30 What is it you are asking for?

MR. TILLEY: The ledger showing the account for the wheels in 1893?

MR. ROBINSON: I have a copy of the ledger here, certified, I think certified by the Accountant in Winnipeg, showing the expenditure for wheels in 1893.

MR. ROBINSON: I know nothing about it.

WITNESS: May I go down?

MR. TILLEY: Yes, yes.

Have you got it? A. Just a moment (witness referring to statement)—That is the amount there.

40 Q. Now, how is it that you did not give us this before, Mr. Cherry?
A. I did not think I was asked to produce it.

Q. Yes, you were asked to produce the entries with regard to machinery purchased—is that not right?

Show us what he gave us. We have got a very small list—one item in 1898, a few articles purchased in 1900, and one purchased in 1910.

MR. ROBINSON: You are reading something out?

MR. TILLEY: Ledger entries as to Mill "A."

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MR. ROBINSON : That is as to the installed capacity of the mill, quite a different thing from what you are now asking.

MR. TILLEY : At any rate, we will go on with this until Mr. Carson finds that.

Q. Now, August 31, you got mill property improvement again—what does that consist of? A. That consists of the water wheels.

Q. Where is it shown? A. That is the entry from the ledger.

MR. MCCARTHY : I cannot hear you, Mr. Tilley?

MR. TILLEY : There must be something in your books that will fix what you got for the \$8,373.82 which is charged up to mill improvements—now you are remarking, that item is charged up to mill improvements? A. Yes.

Q. There is nothing to show what it is for?

HIS LORDSHIP : What the mill improvements were?

MR. TILLEY : Q. Have you anything that shows that?

A. No, there is nothing that shows that.

MR. TILLEY : Q. You are aware, that in the books and reports with regard to the Lake of the Woods, in the books as shown by the Lake of the Woods water commission, the statement there is that this installation was made in 1896, aren't you? A. Yes, but that is an error.

Q. It was not made in 1896, and you have known that, and that report is the official published report, after the collecting of all the information that the expert for the International Waterways Engineers could get, so as to have an accurate report regarding the water conditions? A. Yes.

Q. In the Lake of the Woods? A. Yes.

Q. That is right, and there it is stated that this installation by you, or this change in your installation, was made in 1896—now, did you ever bring to their attention that that was wrong? A. No, I never noticed that it was wrong until lately.

Q. Mr. Cherry, you knew it was there for a long time, but you did not notice it was wrong, is that what you mean? A. I knew it was, probably I did not pay any particular attention to the date when I read it.

Q. You did not pay any particular attention to the dates? A. No.

Q. The date is referred to several different times, is it not, the date is referred to, not once, but several times, as June, 1896, when this change was made—that is so, is it not? A. When the—June 1896—when what change was made?

Q. When the change in this installation that you now refer to as made in 1893? A. It was made in March and April, 1893.

Q. I know, you would say so, and I am not wanting to appear to be too critical on that, Mr. Cherry?

A. I am prepared to swear to that statement, it was made in March and April, 1893, notwithstanding what is in the report of the Commission.

Q. At any rate, you never drew it to the attention of the Commission that that was an error? A. No.

Q. And you have known that the date was 1896 for some time, but you paid no particular attention to it—is that what you mean? A. I did not

pay any particular attention to the different dates. I read over the installation was 1896, I did not notice at that time, what it was.

Q. Now, you have not—or do these following pages at all show the make up of that, sometimes an amount is put in in lump, and then itemized afterwards? A. This is itemized just from the ledger.

Q. From the ledger? A. Yes.

Q. Now, what is this, on the last page? A. That is Mill "A."

Q. Mill "A"? Yes? A. That is—

MR. McCARTHY: I cannot hear you?

10 MR. TILLEY: The first item—\$98750—total, is that the total? A. That is the total in 1912.

Q. Of installation? A. The installation for the water wheels, the head gates and the power house, and the concrete retaining wall.

Q. In 1912? A. In 1912.

Q. And the next is the brick annex? A. That was built in 1913—1912.

Q. What is that? A. That is brick annex, it has nothing to do with the 1912, just the building.

Q. Very well, do not get into that, now stave sheds—has that any-
20 thing to do with power? A. No, that is for stave sheds.

Q. And the Keewatin Hospital, that has nothing to do with it either?
A. No.

Q. And mill "A" train shed—has that anything to do with it? A. No, that was to extend the shed over the tracks to keep under cover, loading flour.

Q. Just the one item? A. Just the one item has to do with power.

Q. And that is the total expenditure for 1912?

A. On that particular work.

Q. Now then, in 1895, there is an item here, August 31st, Carpenter shop, of \$1,266? A. That was the building for the carpenters.

30 Q. A new building? A. Yes.

Q. Then, will you tell me whether any of these other items have relation to the Power proposition at all, Mr. Cherry—what is this item, barrel factory building again? A. That was rebuilding the barrel factory, it was torn down, that is 1889, that was rebuilding the barrel factory, putting in new, up-to-date machinery, and building a new house.

Q. Nothing to do with the power? A. Nothing to do with the power at that time.

Q. I will come back to that? A. Nothing to do with the power at that time.

40 Q. When you say "nothing to with the power at that time," you did subsequently use power for the barrel factory? A. Yes.

Q. When did you commence to use it in the barrel factory?

A. In 1906 or 1907.

Q. In 1906 and 1907, and you got the power from this hydro plant, this hydro plant which was established in 1906? A. Yes.

Q. I will come back to that in a little, later on—I will continue with these items.

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MR. McCARTHY : Does your Lordship think that statement should go in now, otherwise the notes will be unintelligible.

HIS LORDSHIP : One portion of it, there is a great deal of it we are not interested in at all.

MR. TILLEY : I am quite prepared to put it all in, or any part of it, my friend had better look at it, and see if he wants it in.

MR. McCARTHY : Some of the questions and answers would be utterly unintelligible.

MR. TILLEY : It is rather a pity to put in three or four sheets of figures that have not anything to do with it. 10

MR. McCARTHY : My friend has asked, what does this mean, and that mean—I have never seen it.

HIS LORDSHIP : It might go in, and part of it may be eliminated, it might just confuse the Court.

MR. TILLEY : I am sure anything on this is sufficiently explained on the notes.

MR. McCARTHY : It had better go in.

HIS LORDSHIP : That will be Exhibit 96—is that a ledger statement ?

MR. TILLEY : It is a certified copy of extracts from your ledger, Mr. Cherry ? A. That is correct. 20

Q. And it is sent from Winnipeg ? A. Sent from Winnipeg office, signed by the Assistant Treasurer.

Q. And it just says, "Certified copies of entries in old private ledger" ?

A. That is right.

Q. That sounds very secretive ? A. Yes.

MR. TILLEY : "In old private ledger."

Q. Now, let us have the next, if you can—have you given us all about the 1893 ? A. No.

Q. There was one 60" removed, and then there were two 66' installed. Now what makes were those ? A. The same makes, the same type and 30 same manufacturer, I think.

Q. Standard new American ? A. Standard new American.

Q. And then in 1905 you installed two 33" double runners, generators—what was the name of the manufacturer ?

A. I think William Kennedy and Son of Owen Sound that manufactured those.

Q. Any particular name ? A. I do not remember the design.

Q. Beg pardon ? A. I do not remember the design or the name.

Q. That is all you can give us, just the manufacturer's name ?

A. William Kennedy & Son, Owen Sound. 40

Q. And then there was another one for the fire pump ? A. The same kind and the same manufacturer.

Q. Then, in 1912—

MR. McCARTHY : Q. I think he said the other was only a single runner ?

MR. TILLEY : No, a double.

HIS LORDSHIP : He said the one for the hydro-electric pump was double.

MR. McCARTHY : I think he said single.

HIS LORDSHIP : He corrected it any way to say it was double ? A. I think that is right, your Lordship.

MR. TILLEY : Mr. McCarthy says he thinks you are wrong.

MR. MCCARTHY : If you are making the calculation, I think you are wrong ? A. To the best of my knowledge, it was a double runner, it is still there.

MR. TILLEY : Q. It is still there, so there ought not to be any difficulty.

Q. Now, in 1912, will you just give me a description of this German type wheel ? A. It is pretty hard to give a description of that from memory.

10 I think it is a twin and double runner, there are four runners on it, I think manufactured in Heidenhaus, Germany, by J. M. Voith & Co.

Q. Manufactured in Heidenhaus, Germany, by J. M. Voith & Co. ?

A. Yes.

Q. And you think it was a four runner ? A. Yes.

Q. What size ? A. 60", I think.

Q. Is that the last change ? A. That is the last change.

Q. Down to 1916 ? A. Down to 1916—that 22" inch wheel we spoke about is still there.

Q. Now, let us have the changes after 1916 ?

20 A. What do you mean ?

Q. Changes or additions after 1916 ? A. There have been no changes or additions to the power of Mill "A" since 1916.

Q. Since 1916 ? A. Since 1912, to go back a little further.

Q. No changes or turbines—no additions or changes ?

A. In the turbines or power houses at Mill "A" since 1912. Or 1905, for the electric power house, the hydro power house.

Q. So you have given us all the turbines you had there ? A. All the turbines.

Q. Do you know the rated capacity of the ones that are there now ?

30 A. No, I cannot give them from memory.

Q. The Voith ? A. I cannot give them off hand.

Q. Mr. Alexander would be able to give them ? A. He could possibly, I haven't it.

Q. Could you let us have it ? A. The manufacturer's rating capacity ?

Q. Yes ? A. I cannot give them to you.

Q. Can you get them ? A. Yes, I think I can get the manufacturer's rated capacity, yes.

Q. Can you get it here now ? A. I have not the information here, but I think I have the information showing it at the hotel.

40 Q. Will you bring it in the morning ? A. Yes.

MR. ROBINSON : What do you want ?

WITNESS : The rated H.P.

MR. TILLEY : You will bring it, you have a record of it ? A. With regard to the rating.

HIS LORDSHIP : The manufacturer's rating on these turbines.

MR. TILLEY : And that 33"—can you give the rating of the 33" ? A. I think we have the manufacturer's rating for this, I would not be sure.

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MR. TILLEY : Now, Mr. Cherry—

HIS LORDSHIP : You are finished with the turbines—we are not going to get very much further in the matter of ten minutes.

MR. TILLEY : Might I ask a question or two ?

HIS LORDSHIP : I thought if he was going to get the information you would finish up the turbines in the morning.

MR. TILLEY : I was just going to ask you, Mr. Cherry.

You have been good enough to give us your books showing the output of the mill ? A. Yes.

Q. Now, I wanted to ask you, are the figures that we find there, are they 10
the daily manufacture, or the daily output ? A. What we call the daily
output, it is practically the same thing.

Q. I think the early years were expressed in pounds, and the later
years in barrels—at any rate, if there is any distinction between the manufacture
and the output—how does it arise ? A. Between the manufacture ?

Q. Is it the amount of flour you made ? A. The actual amount of
flour that is turned out daily.

Q. You mean, not shipped away ? A. No, the actual output of the
mill each day, some days ten hours, some days twenty-two.

Q. Some days longer than others ? A. Yes. 20

Q. And possibly some days are more than twenty-four hours, are they,
if you are completing a run, or something of that kind ? A. No, we do not
run Sunday, if it possible to avoid it.

Our mode of late years of running is continuous twenty-four hours from
Monday morning until Sunday morning at seven o'clock. If we have not
sufficient business to take the full time on Saturday, we some days close down
on Saturday, and we would not start up until Monday morning.

Q. Now, I think the records we have there may be slipped in with what
year, 1923 ? A. 1923, we have.

Q. They are not complete, and you have been good enough to wire ? 30
A. Yes.

Q. When will you get those ? A. Mr. Robinson, I think, has them.

MR. ROBINSON : We have typewritten copies, but the books are not here.

WITNESS : I can certify they are correct.

MR. ROBINSON : Have you got them, Mr. Cherry—I think they have
what you want.

MR. MCCARTHY : Your Lordship will observe, we are giving the infor-
mation after 1916, subject to objection.

HIS LORDSHIP : Quite so, everything subsequent to that.

MR. MCCARTHY : We have produced everything up to 1916. 40

HIS LORDSHIP : And what you are doing now is subject to your objection,
which covers everything since that time.

MR. TILLEY : I won't bother to ask Mr. Cherry about these—you know
that these are correct ? A. I know that they are correct, that these type-
written figures are correct.

MR. TILLEY : Then that will probably—then, Mr. Cherry, there is a gap

from about 1905 to 1911? A. Yes, I think you will find that the records are there in weeks and months.

Q. In this book? A. In that book, I am not sure, but I think they are there.

MR. TILLEY: You will help us about that.

HIS LORDSHIP: Very well now, I have been asked something as to the prospects here with a view to next week, and from present indications, from such experience as I have had with Counsel that are before me, I should think there is very great probability of our being engaged in this case next week.

10 MR. TILLEY: You mean for some part of it.

HIS LORDSHIP: For some part of it, perhaps a good deal of it.

MR. McCARTHY: There will be all of it. I have four more witnesses. To-morrow is Friday, next week is a short week.

HIS LORDSHIP: Are Counsel prepared to work on Monday?

MR. TILLEY: I think we had better.

Court adjourned at five o'clock p.m. until 10.30: to-morrow morning.
May 20th, 1927, Court resumed 10.30 a.m.

MR. McCARTHY: Would your Lordship allow me, before my learned friend finishes his cross-examination, because he would probably want to
20 cross-examine again, to put in certain photographs which I was fortunate enough to get this morning, showing the photograph of the bridge, with the opening, and the C.P.R. stone bridge.

HIS LORDSHIP: Taken when?

MR. McCARTHY: In 1920, the date is on the back of them. October 26th, 1920, just showing the situation as it was then.

HIS LORDSHIP: That is before any changes were made in 1924.

MR. McCARTHY: The changes made in 1924 would not be visible in this picture. It only shows, my Lord, that there is Mill "C," and your Lordship will see what is supposed to be the unit, and there is the roadway that is
30 spoken of, it comes along and gives the bridge we built to connect the two yards.

HIS LORDSHIP: Are there others?

EXHIBIT No. 97. Photographs dated 26th October, 1920, showing Mill "A" and Mill "C," C.P.R. stone bridge, and bridge constructed in 1912, also the roadway coming under the C.P.R. bridge.

MR. McCARTHY: This must be the situation before we got the right-of-way from the C.P.R.

HIS LORDSHIP: The witness may be able to give us the approximate time.

MR. McCARTHY: Q. That was the old condition?

40 A. That was the condition prior—that would be taken sometime about 1910 or 1911, I think I remember the date that was taken.

EXHIBIT No. 98. Photograph showing Lake of the Woods Mills "A" with "C" mill in distance, taken about 1910 or 1911.

HIS LORDSHIP: Are you quite sure that would be taken before 1916?

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A. Yes, my Lord, it was taken prior to 1916.

HIS LORDSHIP : Where are the years, 1912, 1916, and 1924 ?

MR. McCARTHY : This is a photograph of Mill "A" showing that cement retaining wall that was put on the face of the crib-work.

HIS LORDSHIP : That shows the course of it.

MR. McCARTHY : And that shows where the spill used to be over into Darlington Bay, and shows the end of the raceway, or the tail race, coming out from the Power House.

HIS LORDSHIP : This is from the lower side ? A. That is from the lower side, looking up. 10

MR. McCARTHY : There is the Power House, and there is the end of the raceway, it was spilling over that place, I am sorry that got torn.

HIS LORDSHIP : That would be Exhibit 99—that would be taken about the same time as this other one.

MR. McCARTHY : If you will put a strip of paper across that to hold it together, Mr. McCabe.

EXHIBIT No. 99. Photograph showing Mill "A" with cement retaining wall and end of raceway coming out of the Power House.

THOMAS J. CHERRY, Recalled : Cross-examination continued by

MR. TILLEY :

Q. Mr. Cherry, you were good enough to let us have yesterday, not the original record of production, but a summary as to production, which is more convenient ? A. Yes. 20

Q. And it brings the production figures, I think, down to some time fairly late in 1916 ? A. 1926.

Q. Yes, I think 1926 is there, that would be Exhibit 100, Statement of Production.

MR. McCARTHY : That, of course, would be subject to our objection, my Lord.

HIS LORDSHIP : This is subject to your objection as to the time subsequent to 1916. 30

MR. McCARTHY : Yes, my Lord.

MR. TILLEY : And then as part of that same Exhibit, I understand from Mr. Robinson, we must add these figures that are in this book, which will be Exhibit, say 100-A—we might just remember it that way—100-A being a book that is entitled "Keewatin Water Elevation," and you have some figures regarding production here, output by years ? A. That is in barrels.

Q. That is in barrels ? A. Yes.

HIS LORDSHIP : Would you tell me for what period this Exhibit 100 covered ? 40

MR. TILLEY : Right from the beginning to some date late in 1926, I can just give you the date—it is September, 1926, that is sufficient for any purposes we are concerned with here.

EXHIBIT No. 100. Summary of Production, Mill "A," from the beginning down to September, 1926.

EXHIBIT No. 100-A, Record "Keewatin Water Elevation," with figures regarding production, output by years in barrels.

MR. TILLEY : Q. Now, Mr. Cherry, I understand from Mr. Robinson that where figures of output are in Exhibit 100-A, you must add them to figures in Exhibit 100.

MR. ROBINSON : Oh, no, you misunderstood me; I did not so understand it. I thought that covered a gap which existed in Exhibit 100 ? A. That is quite true, that it covers the gap between this and 1927, May 11th, 1927.

10 MR. TILLEY : Q. That is to say, there are some figures not contained in Exhibit 100 that are in Exhibit 100-A ?

A. That are in Exhibit 100-A.

Q. The large book is complete in itself ? A. Yes.

HIS LORDSHIP : Now, in Exhibit 100-A, in addition to the filing of this copy, there are some other tables, of months ?

MR. TILLEY : No, my Lord, the entries in 100-A are figures of water elevation, Keewatin Water Elevation—

20 Q. Is that right, Mr. Cherry ? A. That is correct, and the discharge at the head gates, these are not our figures, we get these from the International Water Commission.

MR. TILLEY : Just in a moment, I will get you right in regard to that.

Q. When you say it is not your figures ? A. It is our book and our figures regarding output.

Q. And measurements of the elevation at the Lake, at fore bay and river and head—

Q. And what does gate there mean, the 13 ?

A. The mill was not running at that time. If it is running, the gate would show in higher figures, 45, 40, 60.

Q. What does that mean, it is open that much ?

30 A. That is the gate openings.

Q. Of course, when you refer to that opening, you are referring to the opening, the control ?

A. The controlling of the water that enters the gates, that enters the wheels.

Q. Which you control according to the load you have on, and the head of water, to adjust it to get proper results ? A. That is quite right.

That has nothing to do with the stop logs out in front.

Q. The stop logs are to de-water it ? A. To de-water the channel.

MR. TILLEY : Now, I think we understand that.

40 HIS LORDSHIP : Do I understand, the figures in this book, 100-A, records the water, regarding water levels have to do with the regulation inside of the water that you are taking through your mill and so on ?

MR. TILLEY : It gives the lake level, it gives the forebay level of the water, it gives the river level, and gives the head of water—all these figures are taken by your company and recorded in the book—I do not mean by you—and including something to show what gate opening you had ?

HIS LORDSHIP : That is, how much you found it necessary to use.

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MR. TILLEY : Q. And then, will you tell me what the column headed "discharge" is? A. Well, that is the discharge measurements passing through the wheel, Mill "A" and Mill "C"—that is not our measurement, we received that from the Dominion Water Power branch, representing the International Commission.

Q. That is a Government official? A. Yes, a Government official.

Q. And is that just the same thing that we have here, the Department of the Interior? A. I think it is their representative.

Q. The Dominion Water Power branch? A. Yes.

Q. Published by the Dominion, that is what you are referring to, is it, 10
this department progress report of Manitoba, hydrometric surveys? A. That is right.

Q. And that is not a Department of the Interior at Ottawa? A. That is right.

Q. And then you take these reports? A. No, we get these reports from the gentlemen on the ground who makes the measurements each morning. We have only been getting these since August, 1925. We have only been getting these measurements since that date. I understand the other power companies are getting them as well as ourselves.

Q. That is a Government official gives the companies information as he 20
is measuring them from time to time? A. As to the discharge.

MR. TILLEY : I think I will leave that for the moment.

MR. MCCARTHY : Then, my Lord, as to the Exhibit 100-A. I do not know that the Hydrometric figures are proved. They are simply figures given by the Government official, whether they are right or not, we do not know, either as to water levels or discharge—the water levels are our figures, everything in the discharge are their figures.

HIS LORDSHIP : *Quantum valeat*. I suppose this is day to day, your people get it from day to day and you were asked to assume they are correct—there is no absolute proof of their accuracy. 30

MR. TILLEY : I do not know what my friend is saying.

HIS LORDSHIP : Mr. McCarthy is stating that it may be no record—I presume that they are not assenting to the proposition being made that the figures which are given here, and which were simply furnished to the company by the Government representative on the ground are accurate figures, establishing the accuracy of the level as found and so on, but that they are the figures that they were working on at the time—I suppose that is the nearest we can get to it.

MR. TILLEY : Mr. Cherry, the figures were accepted by you because they were done officially, and seemed all right, I suppose, and then your company 40
accepted them and entered them in your records? A. Yes, we accepted the figures, but we have no proof that they are correct.

Q. You have no proof that they are correct, these records, Mr. Cherry, of the Manitoba Hydro-electric surveys are accepted by everybody, are they not? A. Well, I do not know that, we have accepted them, and entered them in our books as the reference to use of water we were using at certain dates.

Q. And you have no reason to think they are incorrect, and you think they are right? A. They are the records presented from the information that we get, in our book, and in transcribing there is liable to be a mistake.

Q. In transcribing? A. From the notes we get in.

Q. You say the person in your employ might improperly transcribe?

A. Not improperly transcribe, but making an error in transcribing from the note. There is a human element you have to take into consideration.

Q. That is your clerk, in putting them down? A. Yes.

10 Q. Subject to that, you think they are right, and you have no reason to think he made a mistake? A. No, I think he did it to the best of his ability.

Q. He is a Lake of the Woods man, and they are all good men, so I am told? A. I hope so.

Q. And in addition to that, these Manitoba Hydro-metric survey figures are official figures kept by the Department of the Interior at Ottawa and published by the Dominion Government—that is so, is it not? A. That is so, I believe.

20 Q. And these that I produce to you are figures for other years, are they not, books containing the figures for other years? A. I do not know, I have never read them over.

Q. But you know them well enough, don't you, Mr. Cherry—I am just wanting you to identify them, they are different sections, and they are all brought into the report, that is so, is it not? A. I think so, yes.

Q. Those are the reports, kept up in that way.

MR. TILLEY : I want to put these in, if your Lordship will permit.

MR. MCCARTHY : Does that admit them, my Lord.

30 HIS LORDSHIP : I do not know how much Mr. Cherry knows about them? A. I do not know, they are taken to be all right. I know they are published by the Government. I have seen one or two of them before, and I know they are printed by the Department of the Interior.

HIS LORDSHIP : You are not making any statement as to the accuracy of their contents, but they are undoubtedly printed under the authority of the Department, they being Departmental returns.

MR. MCCARTHY : Is all that going in?

MR. TILLEY : The parts that are material?

MR. MCCARTHY : I think I am entitled to know, before they go in, what parts my learned friend is seeking to make evidence. I have not the faintest information. Are they all going in together?

I think it would be better to put them in one by one.

40 HIS LORDSHIP : What parts are they dealing with?

MR. TILLEY : These are the river, and that is the part dealing with the Lake of the Woods.

HIS LORDSHIP : If Mr. Carson would run through them, and give Mr. McCarthy a memo of the pages referred to as exhibits, they can be mentioned as Exhibits on pages so and so of particular numbers, in order to simplify what parts you are using.

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MR. TILLEY : They will be Exhibits 101 and the page is on the face of the Exhibit, so then I will get the pages so that it will be identified, and the Exhibit be restricted.

MR. MCCARTHY : Should it not be on the notes as well as coming to me, I should like to know.

HIS LORDSHIP : Then it can be read into the Record.

How many years did they cover, Mr. Tilley ? Are they consecutive, Mr. Carson ?

MR. TILLEY : I think they are, my Lord, there is not a volume for each year, but the reports contain the figures from 1912 down to and including 1924. 10

HIS LORDSHIP : That is from 1912 to 1924 inclusive, and how many volumes are there.

MR. MCCARTHY : There are ten books.

MR. MCCARTHY : I would like to say this, before your Lordship permits them, because if I understand what my learned friend is putting in, he is seeking to prove a man, an official, had made a certain measurement by putting in a report published by a Department of the Interior, without giving me an opportunity of cross-examining the man who made the measurements—then I must strenuously object to their going in. 20

My friend asked me to admit these, if they are the same thing, before the trial, and I refused to do it. Now, my friend seeks to put in the measurements, made by some individual, published by some Department in Ottawa, and seeks to make them evidence without giving me the opportunity of even cross-examining the man who made them, which I think is improper.

HIS LORDSHIP : As it appears to me at the present time the only ground upon which they are admissible, the ground upon which I would be prepared to admit them subject to the actual entries that are relevant to this case being identified was that they are publications made by the Department, sponsored apparently by the Minister of the Interior, and as such are admissible in evidence in any Court. As to the accuracy of the figures, that perhaps may be another question, or as to the amount of weight that should be attached to them, but for what they undertake to state, I think they are admissible as evidence under the Statute. 30

MR. MCCARTHY : I plead my ignorance, but I do not know what Statute makes them evidence.

HIS LORDSHIP : The Evidence Act as to publications of the Department with regard to Department returns in the operations of the Department's officials.

MR. MCCARTHY : Is this any better than the evidence taken before Mr. Kirkpatrick ? 40

MR. TILLEY : I do not so understand it.

HIS LORDSHIP : Mr. Kirkpatrick's report has already gone in.

MR. MCCARTHY : This is the evidence taken and embodied in these reports.

HIS LORDSHIP : What is in these reports is what the Department official has done himself.

MR. McCARTHY : I have not seen it so I do not know.

MR. TILLEY : Oh, yes.

HIS LORDSHIP : I have not had an opportunity of examining them myself. I do not intend to see them at the present moment.

MR. TILLEY : I was just going to ask the witness something about them.

HIS LORDSHIP : I was going to suggest in case that there is any question as to the propriety of their being admitted, it might stand for argument until we have an opportunity of looking in to them further.

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MR. TILLEY : Q. Mr. Cherry, you referred in your examination-in-
10 chief, in answer to Mr. McCarthy, to the fact that the only figures obtainable
as to discharge prior to, I think you said prior to certain records of your own,
but at any rate, for the earlier years, were the figures in the official report by
the Government officials who computed the discharge, kept a record of it.

A. I do not think I put it quite that way. I stated the only measure-
ments were taken by the Department of the Interior, the officials of the
Dominion Water Power branch—I think that is the way I put it.

Q. Now then, so far as you know, the figures obtained by the Depart-
ment are the only figures available ?

A. As far as I know them they are the only figures available.

20 Q. And they are the figures you are referring to were the figures in these
reports ? A. I presume they are, they were taken by the officials of the
Department, but I am not prepared to state that they are the figures.

Q. You are prepared to say the Department official took the records
improperly ? A. I am not insinuating that at all.

Q. But you are not guaranteeing them ? A. I am not guaranteeing
they are correct.

Q. But that is the official record ? A. As far as I know.

Q. Of what this official did ? A. As far as I know it is the official
record of what he did.

30 MR. McCARTHY : Q. You said something was the official record.

HIS LORDSHIP : What is contained in these returns of the Department of
the Interior as to the water levels.

MR. McCARTHY : I do not understand the question; it was something
else was being the record.

MR. TILLEY : It is the official record of the work done by the Govern-
ment official.

MR. McCARTHY : Has the witness ever seen these ?

40 HIS LORDSHIP : He said a few moments ago, he had seen others, and he
recognized these as being similar. He does not attempt to swear absolutely
to them. He is speaking as far as he knows.

MR. TILLEY : Q. These are very well known up in your country, these
hydrometric survey figures, are they not ? A. They were used.

Q. They were used on the hearings of the International Commission
up to that time, 1916, and they are the figures on which the International
Commission founded its report ? A. I think so.

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Q. And you attended the hearings of that Commission, I think you gave evidence? A. On one occasion, it was with reference to the elevation of the Lake.

Q. Not in reference to the discharge, but in reference to other things—now then, just let me ask you, there was a letter written by Mr. Matheson to the Commission in 1916, February 3rd, 1916—do you remember that letter, it is in part of Exhibit 4—he says, “We give below valuation of Lake of the Woods Milling Company’s property in Keewatin”—then the value is given, I need not bother about that—

MR. McCARTHY : What are you reading from now. 10

MR. TILLEY : Exhibit No. 4 (page 410).

Then it gives the number of men employed, and so on—I need not bother about that either.

“At present we are using some 3,400 to 3,700 H.P.”—was that correct?

A. I did not give Mr. Matheson those figures.

Q. Was that correct, is the question I am asking you?

A. I presume it was.

MR. McCARTHY : Do you know, or do you not? A. No, I do not.

MR. TILLEY : You were then the Local Manager? A. But that statement was being prepared in our Winnipeg Office. 20

Q. But being prepared in your Winnipeg Office does not make it doubtful as to its accuracy, that is as you understood it? A. I am not doubtful about its accuracy, I am telling you it was prepared there, and I had nothing to do with the preparation of it.

MR. TILLEY : Q. Do you know or not know as to whether that statement is proper? A. As to 1916?

Q. Yes? A. No, I do not.

Q. You do not know whether you were using in 1916 3,400 H.P. or 3,700 H.P.? A. No, I do not.

Q. You do not? A. No. 3

Q. And you did not know at the time? A. No, I did not know at the time.

Q. Why don’t you know what H.P. you are using at your plant? Don’t you know what H.P. you are using?

A. I presume I could figure it up with the rating of the wheels, but probably we are not using the full installed H.P.

Q. Then what is the full installed H.P.? A. Well, I think about that time, about the maximum under a twenty foot head would be 5,700 H.P.

Q. 5,700 H.P. at a twenty-foot head—then the statement that, “We expect to further increase the mills from time to time to use up our full installed H.P. of 5,700—was that a right figure at that time? A. I think so. 40

HIS LORDSHIP : The full installed H.P. you know, anyhow.

A. In 1916.

MR. TILLEY : In 1916—what is it to-day? A. What is it to-day—that has reference to both mills?

Q. I want the comparable figure, and we will keep to the mill we are now with here. I want the comparable figure to 5,700 H.P.

WITNESS : I will refer that to my Counsel. I understood when I came in to the witness box I was to answer questions with reference to Mill "A"—you are asking me to answer a question with reference to Mill "C."

MR. TILLEY : Q. I am asking you to give me, for the purpose of cross-examining you on your evidence with regard to Mill "A," I want the comparable figure as with this 5,700, and then we will find out what it means later—what is the comparable figure with 5,700 H.P. in 1916 ? A. I would say to-day it was probably 6,700 H.P. for the two mills.

Q. That is 5,700 is for both mills ? A. Yes.

10 MR. McCARTHY : Of course, if my learned friend is going to cross-examine as to Mill "C"—

HIS LORDSHIP : He is not going any further.

MR. TILLEY : My Lord. if we had Mill "A" only in question in this action, I would be entitled to cross-examine the witness on any figures I find in order to check him up.

MR. McCARTHY : I would say you are not.

MR. TILLEY : I am cross-examining.

MR. McCARTHY : I daresay you are, but that does not include irrelevant evidence.

20 HIS LORDSHIP : I have ruled sometime ago, I admitted this, because the figures given before was one of price to install horse-power for both mills. Now Mr. Tilley has gotten the installed H.P. for both mills; now, he can deduce from that, or can go on to deal with this particular Mill "A" we are working on.

MR. TILLEY : Q. Now, Mr. Cherry, when did the increase occur ?

A. In 1925.

Q. In 1925, now, will you carry this back to an earlier date and tell me if in 1905 what was the comparable figure to 5,700 H.P. ? A. In 1905 ?

Q. Yes ? A. I cannot tell you.

30 Q. 1906 ? A. I cannot tell you in 1906.

Q. In 1907 ? A. No, I cannot tell you in 1907.

Q. In 1908 ? A. I cannot give you it in H.P.

Q. Can you give it to us in any form ? A. No, not with any degree of accuracy.

Q. Well, as best you can, as best you can ? A. In 1908 ?

Q. Well, the earliest you can, 1905, 1906, 1907 or 1908—I suppose it would be 1907 or 1908 ? A. I think 1912 would be the earliest I could give to you.

40 Q. Give it to us for 1912 ? A. I think Mill "A" in 1912 would be about 3,500.

Q. I want the figures that would be comparable with 5,700 ?

MR. McCARTHY : I am objecting, my Lord.

HIS LORDSHIP : I would allow the comparable figure. I won't allow it to go any further.

WITNESS : I should say it would be about 3,500, approximately.

HIS LORDSHIP : For the two mills ? A. No, for the one mill.

HIS LORDSHIP : He is asking for the two mills ?

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A. Approximately 3,500, and 2,200 under a twenty-foot head.

MR. TILLEY : Q. That would be 5,700 ? A. That would be the same at 1916.

HIS LORDSHIP : In 1912 it is approximately the same as in 1916 ?

A. That is correct.

MR. TILLEY : Q. Then you are referring to the point then after the changes in 1912 were made ? A. When I say 6,500 or about 6,500, I am referring to 1925, after the changes were made in 1925.

Q. I quite appreciate that, but when you gave me the figure in 1916 as being the same as 1912, you mean the same as 1912 after the changes in 1912 were made ? A. After the changes were made, that is correct. 10

Q. Now then, you say that the figures remained the same—how do you divide the 5,700 H.P. between Mill "A" and Mill "C"—what was Mill "A" and what was Mill "C" ?

HIS LORDSHIP : He said 3,200 ? A. About 3,200 and approximately 2,500, that is the installed power, with the power we have been using.

HIS LORDSHIP : That is what we have been getting all along, the installed head.

MR. TILLEY : And you cannot give me any figure for Mill "A" prior to 1912 ? A. No. 20

Q. I beg pardon ? A. No, I cannot give you the figure.

Q. Of installed H.P. ? A. No.

Q. And did the forecast in this letter, that you would use your full installed H.P. of 5,700 come true ?

A. No, we are not using 5,700 H.P.

Q. You are not ? A. No.

Q. And you have not ? A. No, I do not believe we have.

Q. You never have ? A. From my own personal knowledge, I do not think we have ever used 5,700 H.P. at the both plants combined.

Q. Well, to use the 5,700 H.P. until you made the change, you would have to use the full H.P. of each plant ? 30

A. No, we did not use the full H.P. at each plant.

Q. Take this plant, the Mill "A," the full installed H.P. was 3,500, you say ? A. About 3,500.

Q. Did you ever use that at Mill "A" ? A. I do not believe we ever did use that.

Q. How near did you ever come to it ? A. Well, I cannot say how near we came to it.

Q. Did you come close to it ? A. I presume we came near to it when we were running the mill to maximum capacity. 40

Q. You were doing that, when ? A. At certain months in the year.

Q. Let us have what the capacity is, what is the capacity of Mill "A."

A. What date are you referring to ? 1916 or 1925 ?

Q. Well, take 1916 first ? A. There are your actual production figures in Exhibit 100 and 100-A—we were running between 3,600 and 3,700 at that time, in 1916.

Q. 3,600 or 3,700 barrels per day ? A. Yes.

HIS LORDSHIP : Between 3,600 and 3,700 ? A. Between 3,600 and 3,700 barrels.

MR. TILLEY : Q. Was that the highest point you had ever reached to that date—had you ever been higher than that before—I do not want after 1916, I only want prior to 1916 for the moment—did you ever get higher ? You have given us the figure in 1916—I want to know whether that was your highest point.

HIS LORDSHIP : Up to that time.

WITNESS : 1915, on the 28th day of December we ran 3,930 barrels.

10 MR. MCCARTHY : Q. In the day ? A. For the day of twenty-four hours on the 28th day of December.

MR. MCCARTHY : 28th December, 1915—I did not get the figures ?

A. 3,873 on the 29th, 3,930 on the 28th; on the 30th, 3,747, and the 31st—

HIS LORDSHIP : 3,930 appears to be the peak ? A. Yes.

MR. TILLEY : Q. Now that is one day, but I want to get some stages, for instance what was your output for some years prior to 1905 and 1906—when the changes were made—tell me ? A. 1905 and 1906.

Q. Tell me exactly what date were these changes made in 1905 and 1906 ?

A. What are you referring to now ?

20 Q. The hydro-electric power house ? A. Yes, and such—

Q. And such like ? A. The Power House proper was built in 1905, and the apparatus were installed in the Fall and Winter of 1905 and 1906 and the generators commenced operating in April, 1906, some date in April.

Q. Now, how long—of course the raceway had to be dewatered at that time, didn't it, in order to get that work in ? A. In order to get the gates in, I cannot say how long it was dewatered.

Q. How many months ? A. It would not be months, just while they were putting in the gates.

30 Q. The mill would keep running ? A. The mill would keep running until the channel was dewatered.

Q. How long was it dewatered ? A. It would probably be dewatered one or two short periods.

Q. A day ? A. One or two days, in order to get the head gates ?

HIS LORDSHIP : That would be in the Spring of 1906 ?

A. I think in the spring of 1906 or about that time, the fall, I would not be quite sure.

HIS LORDSHIP : You would not be ready for it in the Fall ?

A. We had the power house ready in the Fall.

40 MR. MCCARTHY : I cannot hear you ? A. We commenced in the spring of 1905, to erect a power house, and the building itself was completed about July, and the turbines were installed sometime in November, or in December or November in 1905, and in January and February of 1906.

Well, we only had the one mill, and I had to keep running as much as possible so the channel would not be dewatered for a very long period at one time.

MR. TILLEY : Q. Now, Mr. Cherry, I just want to get this in some orderly fashion, possibly I can ask you this question first—what has been the

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capacity of your mill from the beginning—I suppose you have had changes in your capacity, haven't you? A. Oh, yes.

Q. Now, will you tell us what the capacity of the mill was, Mill "A"?

A. I would say from 1,500 to 1,700 barrels under ideal conditions.

HIS LORDSHIP: That was away back in 1888? A. In 1888.

MR. TILLEY: Q. 1,500 to 1,800 under ideal conditions? A. In 1888.

Q. How long did that last? A. 'It would last up to probably four or five years—

Q. Four or five years, that would bring you to about 1893?

A. To about 1893.

10

Q. Then, what increase was made? A. There don't appear to have been an increase made until 1894.

Q. Until 1894? A. 1894, the mill was running then approximately 1,900 to 2,000.

Q. I think you are probably confusing two things, I do not want to know what capacity you turned out, but the capacity? A. There was no changes in the installed machinery up until about that time.

Q. Until 1894? A. Until 1894.

Q. That is what I want, then what increase in capacity was brought about by increased machinery at that time—I have what your actual output— 20
for the moment—what was your capacity? A. I presume the capacity would be about the same as the original installation.

HIS LORDSHIP: About the same? A. About the same as the original installation in 1888.

Q. I thought you said you increased? A. The output increased, not the installed capacity of the mill.

Q. You did not increase your rolls, whatever it is? A. Not up until that date.

Q. When did you increase them? A. I think probably about 1900 would be about the first increase. 30

Q. And then you increased to what—I do not want your actual output, I want your capacity for the moment?

A. Just let me understand your question.

Q. What you could turn out in twenty-four hours, per day.

A. In what period, 1900?

Q. I want to know when you made changes to increase the output you were capable of making in that mill? A. I made several changes.

Q. Let us have them? A. I cannot give you the details, but I know we scrapped inferior machines, and put in more up-to-date machinery.

Q. And can you say what your capacity was from time to time? 40

A. I can give you the output, but not what the capacity was.

Q. Was the output the full capacity of the mill?

A. No, it would depend on the demand, on the demand for the product.

Q. That is what I thought, for the product—now, can you tell me anything about the changes you made, so as to increase your possible output in the mill, your possible? A. I told you that 1900 was the first change to

increase the possible output, what the increase in the installed capacity is, I cannot say.

Q. You cannot say? A. No.

Q. Well, now—

HIS LORDSHIP: Let me understand you, in 1888 you said that under ideal conditions you had a capacity from 1,500 to 1,800 barrels per day—that was up to 1888? A. Yes, up to 1888.

Q. Now, when you were speaking of that, you were speaking of capacity, not of your output? A. Of the capacity.

10 Q. And when you say in 1894 you increased your output but did not increase your capacity, you are still using the words in the same sense as, that is, you were turning out more flour, but you were doing it with the same machinery? A. That is quite right.

MR. TILLEY: Q. Now, when did you make a change so that you improved your conditions, and could turn out more? A. I think I answered that question by saying in 1900.

Q. And how much more could you turn out in 1900?

A. I will have to look at the table to give that.

Q. Yes?

20 MR. McCARTHY: I do not know if your Lordship has observed it, but the witness's question is impossible.

HIS LORDSHIP: I do not know, I am trying to understand, I think Mr. Cherry has been confused between capacity and output in some of his earlier answers. I am just trying to get it cleared up here, until I am sure of it. Do we really know what we are getting now?

MR. TILLEY: Q. I suppose, Mr. Cherry, there is some time in the year when you are going at full capacity in the mill, and that is usually what time in the year? A. Well, oh, say September, October, and probably the first few days in November.

30 Q. September, October and November, then if we take your September, October and November figures in Exhibits 100 and 100-A, can we treat that as being the capacity of your mill from time to time, its capacity to turn out flour? A. It might be the maximum, and it might not be the maximum capacity.

Q. Why not, why do you say that? A. Well, we might not require—

HIS LORDSHIP: You are confusing it, Mr. Cherry, you told us here that under ideal conditions in 1888 you were turning out from 1,500 to 1,800 barrels, at least you say that is the capacity? A. Installed.

40 MR. McCARTHY: I do not know as he said that was the maximum capacity? A. I said the installed capacity under ideal conditions.

HIS LORDSHIP: From 1,500 to 1,800 barrels per day in 1888? A. In 1888.

Q. Now, do you mean by that, that if you had had sale for 2,500 barrels per day, you could not have turned it out? A. No, we could not have turned it out in 1888.

Q. No matter what quantity you could sell at a good price, you could not have turned out, even under the best conditions in 1888, more than 1,800 barrels a day of twenty-four hours? A. That is correct.

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No. 18.
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Q. That is what I understand by the capacity of the mill? A. Yes.

HIS LORDSHIP : Then it is in that same sense that we are using the word subsequently—now, when you come down to 1894, you have turned out more barrels per day in 1894 than you could in 1888—if you could have sold the flour? A. Yes, well under conditions, that is with a reasonably good wheat, and in properly dry weather, the climatic conditions influence the output of your mill from day to day.

MR. MCCARTHY : I cannot hear.

HIS LORDSHIP : He says the climatic conditions affect the output of the mill from day to day. 10

Q. What I want to know is, had any change taken place in your mill from 1888 to 1894? A. Not that I know of.

Q. As a result of which, you could have turned out more barrels per day in 1894 than you could in 1888?

A. Not that I know of, there had been no installations up to that date, that I know of.

HIS LORDSHIP : No installations up to 1894.

MR. TILLEY : Q. Now when were there installations—that is what I want to get at? A. 1900.

Q. 1900? A. 1900 were the first installations I can account for. 20

Q. What changes were made? A. Some milling machines were removed, and replaced with new, and some additional improvements made.

MR. MCCARTHY : Q. When was that? A. In 1900.

Q. You are speaking of the milling machinery, not the power? A. We are speaking of the milling machinery now.

MR. TILLEY : Now your increase in output—

HIS LORDSHIP : Output or capacity?

MR. TILLEY : Whichever you can give me? A. I cannot give you the figures about installed capacity, I can about output.

Q. Then how much did you increase the output? A. We were running 30 about 2,700 or 2,800 barrels per day at that time.

Q. 2,700 to 2,800? A. A day, yes.

Q. Now, when was the next change? A. The next change I think was about 1902.

Q. And what changes were brought about then? A. I do not know what machines were installed, but I know that the capacity at that date was 3,400.

MR. MCCARTHY : Q. When you say machines, do you mean milling machines? A. Milling machines.

MR. TILLEY : Q. Did you put in additional milling machines? 40

A. Either additional machines, or replacing.

Q. Which was it? A. I cannot say which it was, for we removed the old inefficient, and put in new more efficient, or extra machines.

Q. Well, would this statement that we had yesterday—will this statement, Exhibit 96? A. Perhaps it might—I cannot give it.

Q. Does that statement purport to be a statement of all your expenditures, or only some of your expenditures.

MR. CHERRY : A. I think it purports to be a statement of all expenditures on the mill, that is what it was asked for.

Q. But it says, "Certified copies of entries in the old private ledger"—what does that mean? A. It is a personal ledger, I presume, the ledger that the mill account was kept in.

Q. Well, do they keep all the expenditures of the mill, or did they at that time keep all the expenditures of the mill in that account? A. I do not know, sir, I never had anything to do with the accounting in the Winnipeg office.

10 Q. Then this statement, Exhibit 96, may be a statement only as to some expenditures? A. I think it is a statement of all the expenditures.

Q. All the expenditures made on Mill "A"—it seems remarkable.

A. Mill "A" machinery.

Q. All the expenditures made on Mill "A" machinery since 1888 are shown by that Exhibit 96.

MR. McCARTHY : From when?

MR. TILLEY : Q. 1888? A. 1889.

MR. TILLEY : Q. Are they all there? A. I cannot say whether they are all there or not.

20 Q. Show me any of these expenditures you have already referred to that refer to mill machinery? A. I said 1900.

Q. You said 1900? A. I do not see the 1900 there, unless that was purchased in 1899—no, it is not there.

Q. Then what was the next year you mentioned after 1900?

HIS LORDSHIP : 1902? A. 1902.

MR. TILLEY : Do you find that expenditure included in Exhibit 96?

A. No.

Q. No, that is not there—then these expenditures must be in some other book? A. They must be somewhere, yes.

30 Q. And you say they were asked to give a statement of all the expenditures, and they did give us what was in the old private ledger? A. I think there is a leaf missing there.

Q. What? A. There is a jump there from 1895 to 1905 and it is just possible one of the leaves got mislaid.

Q. You think then there is a sheet missing? A. Yes.

Q. Well, then, what else, what next—you have got to 1902? A. 1902, the output, the installed capacity of mill in 1902 was 3,400 or 3,500 barrels.

Q. Now, after 1902, what was the next change? A. I think about 1910 was the next change.

40 Q. 1910, what was the installed capacity? A. About 3,500 or 3,600.

Q. How much was the increase then? A. The increase would be probably two hundred, one to two hundred barrels.

Q. By additional machinery? A. I presume so.

Q. Will you show me any expenditures in Exhibit 96 for additional machinery in that year—there is nothing there? A. There is nothing there.

Q. Then it must be some place else, the entries? A. Yes.

Q. Now, I notice, Mr. Cherry, I was under a misapprehension, I notice

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that the first sheet is certified copy of entries in old private ledger, 1889, but the second sheet is "certified copy of entries in private ledger, property account, covering additions to property at Keewatin, Ontario, from 1905 to 1927," and that must be wrong, mustn't it—I mean, the statement is inaccurate, is it not? A. I think that probably has reference to property outside of expenditures on the mill.

Q. But then we have nothing here showing expenditures on the mill?

A. I do not see anything in that statement.

Q. Then look, what is this? A. I think the turbines are there.

Q. This has nothing to do then? A. The power house is there. 10

Q. The power house, I see, is here? A. I think that is outside the mill.

Q. Well, first—? A. 1906.

Q. Additions to property account, Keewatin, that would, I should think, include additional machinery in the mill? A. Well, they kept a separate account for the mill and the property account, I think for property besides the mill, and I think probably that statement has been mixed or a mistake in sending it.

Q. Then this statement does not purport, it does no, whether it purports or not, it does not give us information as to expenditures made in the mill? 20

A. Not on these sheets.

HIS LORDSHIP: If at all—that is, there are no expenditures on the flour mill shown on these sheets at all?

A. Well, there is the elevator account here, the elevator would not be the mill, and there is the power account, the power house, new power house in 1906, and these are the only entries I see there, no addition to the mill.

HIS LORDSHIP: Exhibit 96 does not appear to give any figures on the flour mill.

MR. TILLEY: Q. Then what is the next change after 1910? A. 1916 or 1917. 30

Q. What happened then? A. Well, there was additional machinery added, rolls and bolters.

Q. To bring the capacity up to, what was your capacity? A. About 5,000 barrels.

Q. That is the installed capacity? A. The installed capacity up to about 5,000 barrels.

HIS LORDSHIP: That was in 1917? A. 1916 or 1917.

MR. TILLEY: Q. If you would just fix the exact time for that? A. In a minute—in 1917.

MR. TILLEY: Q. In 1917 it was completed? A. The installation 40 was completed in 1917.

Q. Now, just let me see some figures—how high did you get in your output for 1915?

HIS LORDSHIP: Pardon me, the increased capacity was to 5,000 barrels?

A. Up to 5,000 barrels.

MR. TILLEY: Q. It was not an additional 5,000 barrels?

A. Do you want 1915?

Q. What would your output be in 1915 ? A. It would take some time to find that out, to look all over these—3,758½ barrels on September 14th, 1916.

MR. McCARTHY : Q. I thought you said 1915 ?

WITNESS : Pardon me—3,710 barrels on the 19th October, 3,749 on the 20th October, 3,727 on the 21st of October, 3,817 barrels on the 27th—that is October, 1915.

HIS LORDSHIP : October, 1915, you were running from 3,700 barrels ?

A. Up to 3,800.

10 MR. TILLEY : Q. And then you increased your output by over a thousand barrels a day in the changes you made in 1916, 1917 ? A. About a thousand barrels.

Q. I think the changes commenced in 1916 and was concluded in 1917, were they not ? A. Yes, they were concluded in 1917—1917 is the first.

Q. The first you got the full benefit ? A. The full benefit.

HIS LORDSHIP : That is the actual output was increased. A. The actual output increased.

HIS LORDSHIP : The actual output increased to 5,000. A. The actual increased capacity was increased up to 5,000 barrels.

20 HIS LORDSHIP : But you have been telling us in 1916 your actual output ?

A. That is correct.

Q. 3,700 barrels output in 1915 ? A. That is correct.

Q. Now, in 1917, you had increased your capacity to 5,000 ? A. Yes.

Q. But I have not understood you to tell me what you have increased your output to, Mr. Tilley has not asked you.

MR. TILLEY : I think the output did get to that ?

MR. McCARTHY : 5,000 barrels a day ?

HIS LORDSHIP : He just mentioned it generally. I wondered if he meant me to understand it that way ?

30 A. 1922, with the same installation as in 1917, on the 21st of October, the output was 5,100 barrels.

HIS LORDSHIP : In 1922, on October 21st, the actual output was ?

A. 5,100 barrels.

HIS LORDSHIP : Is that as high as you have ever gotten ?

A. November 1st, 5,157, November 10th, 5,151.

HIS LORDSHIP : This is all with the same installation as you had in 1917 ?

A. That is correct. I think the largest output we ever had was 5,200.

MR. TILLEY : Mr. Cherry says he thinks the largest output they ever got in one day was 5,200 ? A. About 5,200.

40 Q. That would be under ideal conditions ? A. Under ideal conditions.

Q. And prior to it reaching 5,000, in November, 1922, I see that it was running along before that, four thousand odd ? A. Four thousand odd.

Q. Getting close to the five thousand, and then prior to that getting close to four thousand, and gradually working it up to a five thousand barrel output ? A. That is correct.

Q. And you say that you cannot tell me anything about the H.P. used at Mill "A" prior to 1912, I think you said ? A. Not prior to 1912.

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Q. Can you tell me what H.P. you were using in 1888? A. No, I could give you the cubic feet per second under a sixteen foot head, but I cannot give it to you in H.P.

Q. You mean some measurements of your own? A. No, the manufacturer's foregate discharge rating.

Q. The discharging rating of the gates that was there out of the turbines in 1888? A. Yes.

Q. Well, what was it? A. Two sixty inch wheels, turbines, 209 cubic feet second each.

MR. MCCARTHY : Q. What are you giving? 10

A. The original 1888 installation.

MR. MCCARTHY : Not in feet? A. The full gate discharge rating in second feet.

MR. TILLEY : Q. How do you get that information? A. I got that from the manufacturer's catalogue, from their manufacturer's rating.

Q. Where did you get it from? A. From the catalogue.

Q. Have you got it here? A. No, we have not got it here.

Q. When you say "we," now who did collect the information?

A. It was collected some years ago.

Q. Has it been on file in your office? A. It has not been on file, it was 20 collected and turned in. I won't make that statement—it was turned in to any person, that was generally understood to be the rating, the discharge rating given to us by the manufacturer.

Q. In 1888? A. In 1888.

Q. Did you have that in mind yesterday? A. Well, I had it in mind, but I could not give the figures.

Q. When did you get the figures? A. I got the figures after I thought over it last night, and looked at some notes I had.

Q. Where are the notes? A. The notes are in my pocket, I think.

Q. Are these the notes? A. No, those are the figures that I took 30 down so that I could remember them. You said yesterday—

Q. Who did you take them down from, who gave you the figures to write on the paper? A. I got them from a statement, something similar to that.

Q. From whom? A. A statement that I had with me, that we got in the office.

Q. I beg pardon? A. A statement I had with me, that I got from our office.

Q. Mr. Cherry, did you write these out since last night? A. Yes, I wrote it out this morning at the Queen's Hotel. 40

Q. Now, did you not get it from the Queen's Hotel Manager? A. No Manager.

Q. Now, who did you get it from? A. I told you I had it in a note book?

Q. Where is the note book? A. I have not got it here.

Q. Where is it? A. It was not exactly a note book, it was a sheet of paper that had the notes on.

- Q. Another sheet of paper? A. No, it was typewritten?
 Q. Typewritten? A. Yes, sir.
 Q. Prepared by whom? A. Prepared by the stenographer in our
 office, at Keewatin.
 Q. Under whose instructions? A. Under my instructions.
 Q. Did you give her the information to put down? A. We got it.
 Q. You say "we,"—I want to know who your partner is?
 A. We got the rating—
 Q. Who is "we"? A. The master mechanic.
 10 Q. And who is the master mechanic? A. Mr. Alexander—we got
 the rating from the catalogue of the manufacturers.
 Q. I would like to see the catalogue? A. It is on file at our office.
 Q. Where? A. At Keewatin.
 Q. At Keewatin? A. I think so.
 Q. And when you wanted these figures—since you were in the box
 yesterday, I suppose Mr. Alexander did not give them to you—you discussed
 it with him? A. No, I did not discuss it with him.
 Q. Where did you get it from? A. From a typewritten copy.
 Q. Will you let me see it? A. I will after lunch.
 20 Q. That is got from a catalogue in Keewatin? A. Yes.
 Q. Why didn't you bring it down here? A. I didn't know it would
 be called for.
 HIS LORDSHIP : Now, you have not put on record any figures as yet?
 MR. TILLEY : Yes, 1888.
 WITNESS : There is one 22" wheel, 28 cubic feet second.
 HIS LORDSHIP : Then your total of the discharge installation with full
 gate discharge installation in 1888 was how much? A. In second feet, 446.
 HIS LORDSHIP : 446 second feet—is that right? A. This is correct.
 MR. TILLEY : Q. How do you get that? A. Two 60's at 209 is 418,
 30 and one 22" at 28 feet second is 446 cubic feet second.
 Q. Now, at what head? A. I think that is under a sixteen foot head.
 Q. You think it is under a sixteen foot head?
 A. I think under a sixteen foot head.
 Q. Do you know? A. Yes, I think I do. I think that is under a
 sixteen foot head.
 Q. Mr. Cherry really, I suppose Mr. Alexander, the master mechanic,
 is the man what knows about these things? A. Yes, he knows about them,
 too.
 Q. And you are giving your information from him, to be perfectly
 40 frank? A. I was with him, and we got it out of a catalogue.
 MR. MCCARTHY : Mr. Alexander was not there at that time.
 MR. TILLEY : Q. You are not giving it from memory as to what was
 there in 1888? A. Not from memory.
 Q. Now, what is the next item you have got? A. 1893.
 Q. Hold on now, that has been changed? A. I am going to give you
 the change, if you will just wait a moment and let me speak.

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Q. Yes? A. Two 66" turbines, wheels, 268 cubic feet each discharge rating.

Q. Now, what turbine is that? A. Two 66" new American turbines manufactured at Dayton, Ohio.

Q. Yes? A. The discharge rating we have, 268 feet second feet.

HIS LORDSHIP: Is that the whole? A. There was one 22, that one 22" wheel is still in there, the 28 cubic feet second.

HIS LORDSHIP: Now, to make your total then you had two at 268—536, and one 28—564? A. 773 cubic feet seconds.

HIS LORDSHIP: Two at 268? A. And one at 209 and one at 28, the 10 original.

HIS LORDSHIP: I did not have the 209—that makes 773? A. 773 according to our figures.

MR. TILLEY: Q. Now, Mr. Cherry, I would like to ask you, you say sixteen feet head—I want to ask you what authority you had for sixteen foot head, because I am told that is wrong for that turbine—now how do you say sixteen foot head? A. When I say sixteen foot head, some of our ratings were figured on the sixteen foot head, and I think these were two, I am not making a general statement if it is a sixteen foot head, or any definite head.

Q. What do you mean by "some of our ratings"—do you mean your 20 computations with Mr. Alexander? A. No, not with Mr. Alexander.

Q. What ratings? A. Some of our ratings in the old record were ratings under sixteen foot head, and twenty-foot head.

Q. In your office? A. The statement handed to the Dominion Government shows sixteen and eighteen, or eighteen and twenty feet, I would not say which.

Q. Are you saying now, you gave these statements of these things to the Dominion authorities? A. I think so.

Q. When? A. Sometime about 1916, 1915 or 1916.

Q. Did you keep a copy of it? A. I think we have a copy of it. 30

Q. Where is it? A. I am not sure whether I have it with me or not.

Q. Why are not these things produced to us? A. I did not know that they would be required?

Q. The capacity of these turbines? A. I did not expect to be questioned on the capacity of turbines.

Q. Did you expect Mr. Alexander was going to be questioned about that? A. No, I did not.

Q. Now, you have papers in the company's possession that give some record in regard to the discharge capacity of these turbines from time to time?

A. No, I do not think it is the discharge capacity, I think it is the 40 capacity and horse and power.

Q. The capacity and horse power in any form at all?

A. I think we have a statement.

Q. A statement where? A. A copy of a statement.

Q. I am not asking about a copy of a statement, record? A. If we gave the original to the International Commission, we would certainly have a copy.

—continued.

- Q. And you did give a statement to the International Commission ?
 A. Yes, we did.
 Q. And you have not got that here ? A. No.
 Q. I do not know why ? A. I might have it here, in my papers at the hotel, I am not quite sure about it.
 Q. I cannot understand why these things were not produced to us, Mr. Cherry; why should I be getting them this way, little by little, on a piece of paper.
 HIS LORDSHIP : What the witness has been giving to us is the discharge rating, and he is now speaking of records of horse power capacity.
 10 MR. TILLEY : I do not know what he has—
 Q. What have you by way of records regarding these early installations ?
 A. Well, we have not got anything by way of records, only what I am saying, we took these discharge ratings from the manufacturer's catalogues.
 Q. And you have always had the manufacturer's catalogue ? A. I think so, I think it has always been there.
 Q. Did you give that information to the Dominion authorities ? A. I think they got it from the office, I do not know where they got it.
 Q. They got—? A. They got it from a man by the name of Ritchie
 20 we had at that time, the master mechanic at that time.
 Q. Now you can get us copies of what you furnished in that way ? A. One copy, I think.
 Q. Beg pardon ? A. I think I can give you one copy in reference to the wheels, to the installed horse power.
 Q. Is that all the information you gave to the Dominion authorities ?
 A. We gave them more than that, but I do not know what it was.
 Q. Was that the information on which the report was made up ? Was that the information on which this report to the International Waterways Commission on Lake of the Woods levels was made up ? A. If you would
 30 just let me see it, I will tell you in a moment—I think that is probably a copy of the statement.
 Q. You think that is a copy of the statement ? A. Yes.
 MR. TILLEY : That is at pages 158 and 159 of this ?
 A. Just a minute now, until I see.
 Q. This report of Consulting Engineers to the International Joint Commission—is that right ?
 A. Yes, that is the statement, I think.
 Q. That is the statement that you furnished ? A. Yes.
 MR. MCCARTHY : What is that—is this an Exhibit ?
 40 MR. TILLEY : At page 158, it is shown at pages 158 and 159 of this report.
 HIS LORDSHIP : Is that in, Mr. Tilley ?
 MR. TILLEY : No, it is not in yet, but that is the statement—I have some pencilling on that, I will just take it off.
 Q. You are referring now to the part that is in fine print—the part that you handed to the Commissioner ?
 A. I do not remember handing that to them.

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Q. What is it you did hand to them? A. We gave them horse power rating of the new wheels.

Q. I thought you were identifying this statement about "the turbine installation from 1887 to date has been as follows"—now they must have got that from you, didn't they?

A. Yes, I think they got that from us, but it isn't a statement of the—it is not a copy of the statement I had reference to. The statement I had reference to shows the horse power, the installed horse power, I do not know whether that is in there or not. I did not see it.

Q. Now see, at page 158, you would make this clear—at page 158 of 10 this report, there is some fine print, commencing with a heading, "the turbine installations from 1887 to date has been as follows," and then after that heading you have some statement with regard to the turbine installation in different years, and that is the statement that you handed to the engineers for the International Waterways Commission—now is that right? A. Yes, that is right, they must have got it from our office.

Q. They must have got it from your office—

MR. MCCARTHY: Are you putting that in?

MR. TILLEY: Yes, I am putting it in, that part.

HIS LORDSHIP: Pages 158 and 159 with reference to the statements to 20 which the witness has identified?

HIS LORDSHIP: This will be Exhibit 102.

EXHIBIT No. 102. Copy pages 158 and 159 of report Engineers to International Joint Commission relating to official reference *re* Lake of the Woods levels, dated September 1st, 1915.

HIS LORDSHIP: This is Exhibit 102, so far as Exhibit 101—that is the Publication of the Department of the Interior—that is resting for the time being, to be considered, and 102 will be this Exhibit.

MR. TILLEY: That extract.

EXHIBIT No. 102. "Extract from Engineers' Report to International 30 Joint Commission relating to official reference *re* Lake of the Woods levels, dated September 1st, 1915.

Page 158:

"Discharge through Mill "A"—Lake of the Woods Milling Company.

"The turbine installation from 1887 rated at 180 H.P. connected to a fire pump."

MR. TILLEY: Q. Now then, following upon that extract, we have this, "the present installation together with the manufacturer's rating based on a 20-foot head is, therefore, as follows"—now then, did you furnish the Engineers with the statement as follows? A. That is the statement, I 40 think there, of the horse power, I think that is the statement I have reference to.

Q. You furnished them with that, too? A. Yes.

HIS LORDSHIP: This is based on the 20 foot head?

MR. TILLEY : Yes, my Lord, on a 20 foot head.

Q. That is right, that statement is furnished by you ? A. Yes, that is correct.

HIS LORDSHIP : And am I right in understanding it is based on a 20 foot head ? A. A 20 foot head, that is correct.

HIS LORDSHIP : That is correct.

MR. TILLEY : Q. So these two statements are yours ?

A. They are the company's statements.

Q. The company's, and you approved of them at the time they were sent in—is that right ? A. I do not remember whether I ever saw them or not, but I know they are the statements.

Q. The statements by the company, then that is on a 20 foot head.

And these other figures, above that, you also gave are based on a 20 foot head—that is for the cubic feet per second ? A. I said 16, but I did not make a positive statement it was sixteen feet.

Q. It should be twenty foot head ? A. It should be on a 20 foot head.

Q. So now we have got the figures, and the figures are based on a 20 foot head rather than a 16 foot ? A. That is correct.

HIS LORDSHIP : May I have a look at that, Mr. Tilley. I am not sure that I quite understand.

HIS LORDSHIP : This is just dealing with the manufacturer's discharge rating ?

MR. TILLEY : Yes.

HIS LORDSHIP : Following up what he has been telling us, yes, I understand.

MR. TILLEY : Q. Now then, you can say then if—will you give us—have you got those sheets showing power ? A. Yes, I have got it right here.

Q. Now then, Mr. Cherry, I just want to bring to your attention this, that in the statement you furnished back in 1916 ? A. Yes.

Q. You say that the one 60" turbine was removed, and two 66" turbines were installed in 1896 ? A. That is not correct.

Q. That is the statement you gave them ? A. Yes, that may probably be the statement I gave them, but that year is not correct.

Q. Now then, Mr. Cherry—will you, have you any record or document of any kind that you can show to the Court to establish 1893 as opposed to 1896 ? A. Yes, I can wire for them and get the documents.

Q. I am asking you if you have them here ? A. I have not got them here.

Q. Now, we asked you for that on your Examination, whether you could show it was 1893, and you did not have anything then ? A. No, I did not have it then.

Q. But at any rate, you have not anything here. A. I can get documentary proof that that is the year that the wheels were installed in 1893.

Q. In 1893 ? A. Yes.

Q. The wheels were installed ? A. In April or May, I remember the date.

Q. Well, is anything that follows there, will you just look at what

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follows, page 159—is there anything else there supplied by you, or have we got all that was supplied by your company? A. I think that is all that was supplied by the company that I know of.

Q. I wish you would look over it and be careful to be sure of it? A. That is on page 159?

Q. Pages 158 and 159? A. Yes.

MR. TILLEY: I am going to ask to be allowed to put in a copy of that. This is a copy of my own.

HIS LORDSHIP: I suppose Mr. McCarthy may want to inspect the volume as well. 10

MR. TILLEY: I say, that is the only part I am putting in.

HIS LORDSHIP: You have Exhibit 102 noted as pages 158 and 159, out of this book, to be accurate.

MR. TILLEY: Report of International Waterways Commission, 1916.

MR. TILLEY: Q. Now, Mr. Cherry, I suppose that the information that you are going to give me about the power—or the information that you could give is contained in these pages, 158 and 159? A. What is that?

Q. What we were just looking at? A. I presume it will be a copy of that, but I would like to read it and compare it with the statement?

Q. I do not know that I would like anything more than I have now. 20

A. That is all right, but I would like to have that, to read the document over and compare it.

Q. I am taking that as the thing that your company would have, and I have not any original record from you to check it up, and I do not know that I will pursue that further? A. That is all right.

MR. TILLEY: Now, just to complete, I could give the pages now of these volumes that I want to file. Possibly I had better let Mr. McCarthy look at them first, and then we can discuss it after he has had an opportunity of checking up. These are the pages (memorandum handed Mr. McCarthy by Mr. Tilley). 30

MR. TILLEY: Q. Now, Mr. Cherry, what did the alterations and improvements in 1912 cost the company?

A. I think you had that in the statement there, I think so. I think I gave the amount yesterday?

Q. I beg pardon? A. I think I gave that amount.

Q. Yes? A. \$98,750.00, I think I did—that is the new water wheels.

Q. But there were a lot of other things? A. The building and the wheels and the head gates.

Q. There was a lot of other work done at that time? A. There was the brick annex built between the elevator and the Mill "A"—\$47,315.74. 40

Q. That is also in that statement? A. That is there.

HIS LORDSHIP: \$88,750—how much, Mr. Tilley?

MR. TILLEY: \$98,750 for the new water wheels, Mill "A."

Q. That I presume would include? A. The wheels, the power house, the head gates and the concrete wall.

Q. The power house? A. The Power House.

—continued

Q. The Power House was in 1905 ? A. There was a new Power House erected in 1912, a new installation, I answered that yesterday.

Q. Now, we will just come back to that in a moment, and that would all be included in the \$98,000. A. In the \$98,750.

Q. There is a brick annex, \$47,315.74, was that at the same time ?

A. At the same time.

HIS LORDSHIP : And included in the same figures ?

MR. TILLEY : No, my Lord, that was additional.

WITNESS : Is that 1912 or 1913, I forget the date ?

10 Q. There is no date to it ? A. Both was the same time, the same year.

Q. That would be an expenditure of about \$140,000 or \$145,000 ?

A. \$140,000 that year.

Q. Then in 1905 there was a Power House erected and certain extensions as shown for that year, in 1906, in connection with it—Power House, Keewatin, in 1905, \$15,919. A. That is the installation of electrical machinery, that is the building proper, the turbines.

Q. That is the electrical machinery—now then, to make that clear in the notes, you say the item under heading “Power House, Keewatin, 1905—\$15,919.11”—that would be for the building ? A. For the building and the
20 turbines.

Q. For the building and the turbines ? A. Yes.

Q. And the item in the following year, “1906, new power house—\$24,016.30,” that was the equipment ?

A. That would be for the generators and the equipment and the generators inside.

Q. Now, do you say then that the new Power House was established in 1912 ? A. I answered that question yesterday.

Q. Well, I am asking you ? A. Yes, yes.

Q. What happened to the 1906 Power House ? A. The 1906 Power
30 House is still there.

The 1906 Power House is a hydro-electric Power House, a separate Power House from the mill Power House, two separate expenditures.

Q. You are referring now to the power for the mill ? A. Yes.

Q. I am sorry, I thought you meant another Power House ? A. No.

HIS LORDSHIP : One was a water power house, the other was a hydro-electric ? A. Yes, Mr. Tilley.

MR. TILLEY : Mr. Cherry, have you the discharge capacity in second feet of the Voith unit ? A. I think it is 1534 cubic feet seconds. There are two twin runners.

40 HIS LORDSHIP : That was put in in 1924 ? A. No, sir, in 1912.

HIS LORDSHIP : The Voith ?

MR. TILLEY : The German Voith.

HIS LORDSHIP : In 1912 ? A. Approximately 1352 feet is the rating I have.

Q. Cubic feet, I have the rating, I think you said 1,500 ? A. No, there are four runners on that wheel, and they each discharge 338—1352, that is under a twenty foot head.

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Q. Where do you get that? A. I get it from the manufacturers.
MR. TILLEY: I would like to know—you say—there is a figure, and there is a head—I would like to know what authority you have—I am not too critical, but I would like to have a little more than a statement from you. It is a twenty foot head, when a few minutes ago on another purchase you changed it from 16 to 20? A. When I made that statement I said I was not sure, but I thought it was a 16 foot head.

MR. TILLEY: Q. It only shows that error might creep in—I want to know why you said 20 foot head for this Voith turbine? A. That is the manufacturer's rating, I think? 10

Q. Where did you get that—where did you get it, show it to me?

A. I got it from, I heard it discussed.

Q. Where? A. When they were putting the wheels in, about that time.

Q. You heard it discussed? A. Yes, is that not giving it as in there, is it not?

MR. TILLEY: No.

HIS LORDSHIP: You said four runners, of how much each?

A. 338 cubic feet second.

MR. TILLEY: Q. You see, Mr. Cherry, what I am asking is this, you did not give that information in this statement, page 159? 20

MR. MCCARTHY: Q. What was the date of that?

A. 1912 installation.

MR. TILLEY: Q. Now, I want to be sure of that, because it makes quite a difference whether it is a sixteen foot head or a twenty foot head? A. Yes, I am satisfied it is a twenty foot head.

Q. They are there now? A. Oh, yes, they are installed there now.

Q. They are installed? A. Yes, they are installed there now.

Q. And I suppose, Mr. Alexander can tell us, because he has been in charge there—he knows, I suppose? 30

A. Yes, I think he would know.

Q. He would know? A. He would know the correct form for figuring it, I presume.

Q. He would know how to figure it? A. Yes.

Q. And you do not profess to? A. I do not profess to at all.

Q. You cannot help us any more on that Voith machine? A. No.

Q. You say it is 20, you believe it is on 20 foot head? A. No, that is the best of my belief, I am not trying to hide anything, or keep back anything.

Q. No, I am not suggesting that, but Mr. Alexander can certainly speak more definitely about that, than you? A. I think so. 40

HIS LORDSHIP: Were you wanting to deal with these reports, that are in as Exhibit 101?

MR. TILLEY: Just as soon as my friend has finished.

HIS LORDSHIP: You were wanting to deal with them with this witness.

MR. TILLEY: I do not know that—I will ask him.

Q. I suppose, Mr. Cherry, these matters that we have been taking up

are more in another department than in the department you look after personally, I mean to say it is a technical sort of subject, and Mr. Alexander looks after it entirely, does he? A. He has ever since 1907.

HIS LORDSHIP: Speak up. A. Since 1907 I think he has been looking after that work that is his department, the mechanical department.

MR. TILLEY: Q. The mechanical department, and all you can say with regard to the figures that were found in these reports is that is the source to which you would go if you wanted to get accurate information about discharge in previous years, about actual discharge, that is so, is it not?

10 A. Actual discharge or actual discharge full gate rating of the wheels.

Q. Yes, I know, and then as to these Manitoba hydro-metric surveys, that is the source to which you would go for information about discharge in the Lake of the Woods? A. Yes, if we wanted to get the discharge.

Q. That is where you would go for information?

A. That is where we would go for information, that is the only source I know of.

Q. Then there was litigation, was there not, in 1905 or 1906, between the Lake of the Woods and the Keewatin Companies? A. Not that I am aware of.

20 Q. Well, it is referred to in the Minutes? A. I never heard of it before.

Q. You never heard of it before—had it anything to do with power, water power or anything of that kind? A. No, I do not think it had anything to do with water power, but I never heard of that before.

Q. Now, when you had that condition that you referred to yesterday of the lower head at the gates than you had at the entrance to the mill race, were your turbines on full at such a time as that, or were they only partly on?

A. Well, I cannot say, we have not got a record of the gate openings for these dates, but I presume the gates would be fairly well open to get all the water there we could, to develop power, I presume so.

30 HIS LORDSHIP: When would that be?

A. That was 1911.

MR. TILLEY: Q. 1911? A. Yes.

Q. Until you took out the corner and rock at the entrance of the race-way? A. Until the water came up, 1911 was the low year, we had a low water head, as the water gradually came up the disturbance would decrease.

Q. It decreased, or would decrease? A. Did decrease.

Q. Then why did you blast out anything in 1924 or 1925? A. To get the full flow of water in even flow—after it struck these corners it eddied around, and we lost a few tenths of head.

40 Q. However, you have given us the best evidence you can as to that, Mr. Alexander is the one who theorized about it and worked out the problem?

A. I do not think there was very much theorizing done.

Q. Did you get your information from him? You would only happen to see it while passing? A. That is quite true.

Q. Then, had you a fire in 1911? A. Yes.

Q. What was destroyed? A. A few of the machines in the smut room.

Q. And did you have to put in new installations then?

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MR. MCCARTHY : I did not hear what you said?

A. The fire in 1911.

MR. MCCARTHY : And some machines were destroyed where?

A. In the smut room.

MR. TILLEY : Yes?

A. We replaced the machines destroyed by new ones and more up-to-date machinery.

Q. Then, can you tell me, have you any records or can you say what horse-power you used to manufacture a thousand barrels, stating it in any way in which you can? A. Well, in 1888 I would say that it would take one 10 h.p. to two and a half barrels with the present installation, I believe one horse would produce three barrels or probably three and a half.

Q. Now, take it per thousand barrels per day—what horse-power do you say?

HIS LORDSHIP : Pardon me, you said in 1888 one h.p. for two and a half barrels?

A. That is approximate, not definite.

MR. MCCARTHY : What do you say today?

HIS LORDSHIP : Now?

A. Three to three and one-half. 20

MR. TILLEY : Three is what you said first?

A. Yes.

Q. For how many barrels? A. It would be three barrels for one horse-power.

Q. One horse-power for three barrels? A. Yes.

Q. Did you keep a record of that? A. No, I did not keep a record of that.

Q. Your present capacity in Mill "A" is what horse-power capacity?

A. I think it was 3,500 I said, you are going back to something I have answered. 30

Q. Did you say 3,500. A. About 3,500 that is including the wheels and turbines installed in the Power House, that is the actual power installation at Mill "A".

Q. And you cannot give me from any record you have got, the horse-power consumption per thousand barrels? A. No, sir.

Q. You can only make a guess at it? A. A guess at it.

MR. TILLEY : That is all, thank you.

Q. Would it be fair to say that in the years when the war was on, that you were running to your full capacity, getting all the production you could?

A. Not in all the years, I think the first or the second year of the war, we 40 were shut down, I think we were shut down for part of the time for lack of business.

Q. What year? A. I think that would be 1915.

Q. How long? A. I cannot say for how long, until I refer to the tables, but I know we were short of business one of the war years, I think it was either 1915—I would not be sure.

- Q. It would not be 1916? A. I do not know.
- Q. The production figures would show that? A. The production figures would show that, but I cannot remember it right off.
- Q. However, we have the figures there? A. We ran some Sundays there to catch up.
- HIS LORDSHIP : Later on?
- A. Later on, at certain periods, you can see it in the records.

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RE-EXAMINED :

BY MR. McCARTHY.

- 10 Q. Mr. Cherry, have you given us all the changes in your milling machinery as distinct from the power machinery? A. Yes, I think so.
- Q. The ones that I have noted here are that in 1902 you put in milling machinery—what did that consist of? A. About 1900—either 1900 or 1902.
- Q. I have it down 1902—what do you say it was? A. I think it was rolls.
- Q. Would that be it? A. I think I said 1900.
- Q. Give me the true date, I do not care what you said before? A. 1900.
- Q. Is that the first change you made in milling machinery? A. That is the first change, so far as I know.
- 20 HIS LORDSHIP : Mr. McCarthy, he said before that in 1900 there were further installations, there were more efficient mill machines substituted for some, and there were some added that was in that year, but not 1902, he also said they put in some new, or some replaced milling machines and he could not be sure which, in 1902, as well. A. Yes, that is correct.
- MR. McCARTHY : That is what I want.
- Q. Now, let us go back to 1900—was that the first change you made in milling machinery since 1888? A. Yes.
- Q. And what was the nature of the change? A. There was one set of rolls added at that time.
- 30 Q. One set of rolls? A. And some of the rolls up stairs, I think scrapped, and the newer and more up-to-date machines installed in their place.

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RE-CROSS-EXAMINED :

BY MR. TILLEY.

- Q. There is one question that I would like to ask Mr. Cherry, arising out of the last statement you made, I am instructed that the Maple Leaf Company, carrying on business just about under the same conditions you had—I mean to say, they are large manufacturers? A. Yes.
- Q. They have an output of about 3,000 barrels at Kenora? A. I do not know the output, but the mill is rated at about 3,000 barrels.
- 40 Q. Now, would you be surprised if the Maple Leaf used only 1,300 h.p. to manufacture the 3,000 barrels, that they buy that power for the purpose of manufacturing? A. To manufacture 3,000 barrels?
- Q. Yes? A. I would be surprised.

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Q. That is a very little for the balance of the h.p.? A. Yes, I would be surprised.

MR. TILLEY : Because the plant would be about the same as yours?

A. I really do not know what installation they have, what system they have, the system would have a good deal to do with it.

Q. What do you mean by "what system"? A. The system of milling.

Q. What have you in mind? A. Different millers have different systems of running mills.

Q. They are a very efficient mill? A. Yes, it is an efficient mill, up-to-date mill. 10

Q. And you would expect them to be using about the same as yourselves?

A. About the same.

MR. TILLEY : That is all, thank you.

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RE-EXAMINED :

BY MR. MCCARTHY.

Q. Now then, you say there were additions to the milling machinery in 1902? A. Yes, sir, in 1902.

Q. To what extent, what was the nature? A. New milling machines installed for handling the product of the rolls in the mill.

Q. What was the effect of the installations of the new milling machinery on your production, or had it any? A. Yes, it had considerable effect. 20

Q. What, can you tell me? A. I would have to get the record of the output to tell you.

Q. I do not want an accurate record, if you can give His Lordship some idea? A. In 1902.

Q. Some idea in 1902, what the effect in the output of the mill was by the altered conditions in the milling machinery? A. I think the mill was increased about 400 barrels.

Q. Then was there any further change in the installation of your mill machinery later on? A. 1910, I think. 30

Q. What was done then? A. There were some new sifters added and some rolls, I think, at that time.

Q. Did that have any effect on your production or daily output?

A. Yes, I think the daily output—

Q. What? A. I think the daily output increased—I would like to have a look at the records.

MR. MCCARTHY : I do not know what records you want to look at, so I cannot help you.

HIS LORDSHIP : What year is that you are speaking of?

A. 1910. 40

HIS LORDSHIP : He said it increased from one to two hundred barrels per day, Mr. McCarthy.

WITNESS : That is correct, because I had the records before me here, and I knew what I was talking about.

MR. MCCARTHY : Q. Then, I want to ask you about—is there anything else that affects your output besides horse-power and the market?

A. Horse-power and market?

Q. Yes? A. The quality of wheat being milled.

Q. The quality? A. The wheat varies in quality from year to year—some seasons the crop will produce a larger percentage of extraction than other years.

Q. The quality of the wheat—could you put that in figures, or percentage, I mean, can you give me a gauge or—? A. It would probably amount to a difference in the yield per barrel of four or five pounds, per barrel of 196 pounds of flour.

10 Q. It would mean four to five pounds of weight less in a bad crop than in a good season? A. In a good season.

Q. Then, has the climate any effect? A. The climate has effect, yes.

Q. To what extent? A. To the extent of making it—with considerable humidity in the air, the stock don't bolt as freely from the different machines.

HIS LORDSHIP : It is now time to rise. Would you care to have until after lunch to look into these books?

Now since Mr. Robinson has had an opportunity of looking at these books is there still strong ground for opposing their being admitted?

20 MR. McCARTHY : I understand so, my Lord, yes, I have never seen the report.

HIS LORDSHIP : That is why I wanted to allow you the noon hour.

MR. McCARTHY : If we might mention it after lunch, as to the admissibility and reasons.

HIS LORDSHIP : If you will speak to it then.

MR. McCARTHY : Yes, my Lord.

HIS LORDSHIP : Court will rise until two o'clock.

Court adjourned for lunch.

Court resumed two o'clock p.m.

30 HIS LORDSHIP : Mr. Tilley, will you tell me just on what grounds you think these books should go in?

May I have one of them. I suppose they are all of one character.

MR. McCARTHY : No, I was going to explain, they are not all of the same character, exactly.

MR. TILLEY : If your Lordship will let that stand, we may be able to agree upon certain things that possibly will be evidence to show where measurements were taken or something like that.

HIS LORDSHIP : I was wondering, just after glancing at it, if it was not possible to get from the Department of the Interior, from their staff, some member, perhaps some member who could give some evidence substantiating.

40 MR. TILLEY : I have a witness here for that purpose, but if we have to go through to prove everything, it will be interminable, and when you get to the end of it, there is no dispute about the thing, except we want probably a little light on how it has been done and where it is done.

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HIS LORDSHIP : Shall I simply allow the question of the admissibility or otherwise of the books submitted for Exhibit 101 to stand for the time being?

MR. TILLEY : To stand for the time being, if my friend is willing. I think, if we want to refer to any part in the meantime, it may be all accepted. I doubt if any question will arise. If there is any part that is objected to, it can be discussed.

MR. ROBINSON : I take it as mainly with the discharge——

MR. TILLEY : We are interested in the discharge measurements.

MR. ROBINSON : I think my friend can use these for any purposes of calculation, there are one or two things about which I have not had any chance to investigate. 10

HIS LORDSHIP : It does not look like an easy question to solve.

MR. TILLEY : It is not very easy to solve and it might provoke a lot of delay that we think probably we can overcome.

MR. ROBINSON : Might I ask my friend then, if he has any witnesses here who can bring on Monday the map prepared by the Department of the Interior, I think it was of the two outlets of these rivers, my Lord, Mill "A" and Mill "C" upon which these reports, the first three of these reports are based ; they show exactly, as I remember them where these measurements were taken

MR. TILLEY : I am not instructed about that, but we will do what we can, it will allow a great many of these books to disappear when we get working at it. 20

HIS LORDSHIP : If they can be utilized it seems a very convenient form in which to have the information.

Very well then, that question will stand as it is for the time being.

MR. MCCARTHY : Then, I understand there are a great many pages referred to, about which we know nothing whatever, not connected with our own mills at all.

Q. I will sort those out. I have not put those on the record yet.

HIS LORDSHIP : The use that is to be made of it, is strictly limited to the particular parts that are relevant to the issue here. 30

MR. TILLEY : Quite.

MR. ROBINSON : Upon that, the memorandum of pages with which my friend furnished us refers to a lot which do not seem to be relevant, but perhaps that again we can agree upon.

THOMAS J. CHERRY :

RE-EXAMINATION CONTINUED BY MR. MCCARTHY.

Mr. McCarthy, Q. Then I understand that my friend is putting in from the bottom of page 158, beginning with the words, "The turbine installation from 1887"—down to the words, "The only available record" on page 159 as Exhibit 102. 40

And I understand, Mr. Cherry, you have undertaken to produce some evidence with regard to the installations which appear at page 159 as of the year 1896? A. Yes.

Q. You say that is of record? A. I will get that. I will wire for it tonight.

Q. Then I only want to ask as to one other thing, at page 159 you say, "1905 March and April, two units of 33 inch twin runner horizontal"—was that in 1905 in March and April they were installed? A. No, the Power House was erected in March and April, 1905, the wheels were installed in the Fall of 1905 and the winter of 1906, they commenced operation in April, 1906. I think that is the answer I gave to Mr. Tilley.

Q. I did not just follow you, perhaps I could not hear you? A. That is correct.

Q. The Power House was installed in 1905 and the turbines? A. And the generator.

Q. In the Autumn or Winter of that year? A. Of that year.

Q. And they started operation in April, 1906? A. 1906.

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MR. TILLEY : May I ask this one question?

MR. MCCARTHY : Are you allowed three bites to a cherry?

MR. TILLEY : Q. Was not Mr. Scovill there making some measurements at one time? A. I believe, at one time.

Q. When? A. I believe 1912 or 1913, I am not sure which.

HIS LORDSHIP : Who is Mr. Scovill?

A. Mr. Scovill at that time, I think was an Engineer of the Public Works Department and had some connection with the International Joint Commission. What connection he had with the Commission I am not prepared to state.

MR. TILLEY : Q. He is retained by you? A. Not that I know of.

Q. Is he not working on this case for you? A. He may be giving information, he is not reporting to our office, if he is.

Q. Have you seen any measurements that he made? A. Let me get that right, measurements he made in 1912 or 1913?

Q. Yes? A. No, not that I can identify them as his measurements.

Q. What do you mean by that, "identify them as his measurements?"

A. I mean if I was reading that book and reading over the measurements, I could not identify them as made by Mr. Scovill.

Q. I am just reading from the book, the situation was established in July, 1917, that is the particular situation by Mr. Scovill when the first data was taken on this survey? A. I have seen the entries in that book, but I am not prepared to state that they were made by Mr. Scovill although it is stated there.

Q. Have you seen any measurements that he made, that are not in the book? A. Not that I am aware of.

HIS LORDSHIP : What you mean is, you do not know whether they are his or not?

You have seen measurements, but whether they were made by him or not, you do not know?

A. No, sir.

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MR. TILLEY : They were shown to you by him, given by him or supplied by him?

A. Any books or measurements that we have were supplied from the Department.

Q. You got none from Mr. Scovill? A. Not personally.

Q. What do you mean by "personally?" A. I mean if Mr. Scovill came to the office and handed us a book, I would say that was personally, but if you communicate with the Department in which Mr. Scovill is engaged, and they send you books, I would not call that personal.

MR. TILLEY : That is all right.

10

MR. McCARTHY : That concludes the evidence in regard to Mill "A."

HIS LORDSHIP : Then this evidence which we are now taking will be in regard to Mill "C."

JAMES ALEXANDER : sworn

EXAMINED BY MR. McCARTHY.

Q. Mr. Alexander, when did you first come up to Keewatin? A. In April, 1906.

Q. In what capacity? A. I went for the MacDonald Engineering Company, carpenter.

Q. Carpenter for the MacDonald Engineering Company, and that company, I believe, had a contract for building Mill "C?" A. Yes, sir.

Q. And you worked with them there as a carpenter? A. Yes, sir.

Q. When did you start to work for the Lake of the Woods? A. In January, 1907.

Q. In January, 1907, as what? A. Millwright.

Q. Millwright? A. Learning to be a millwright.

Q. And have you retained that position since? A. Yes, I have been with them since, continuously.

Q. As a millwright? A. Yes, and Master Mechanic for the past five years.

Q. And Master Mechanic for the past five years—are you a hydraulic engineer? A. No.

Q. Then, what was the condition of the building at Mill "C" when you got there? A. The train shed, what is known as the train shed, and part of the mill was up to the first floor, that is the concrete work was completed up to the first floor.

Q. What is known as the train shed? A. And part of the mill.

Q. Was up to the first floor? A. Was up to the first floor.

Q. Looking at this photograph, can you identify it? A. Yes, this is the first floor just immediately above the track.

Q. When you say train shed, you mean the building with the advertisement on the front of it "Five Roses Flour?" A. Yes.

Q. And the mill property is where? A. Behind.

Q. And does that represent the situation as it is today? A. Yes, exactly.

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Q. And as it was when the work was completed? A. Yes.

HIS LORDSHIP : It is the one story train shed you spoke of?

A. The train shed, it is in there, the building was up to that level when I got there, it was up one story like, the first floor.

HIS LORDSHIP : Do you mean this three story building is what you call the train shed?

A. Yes, there are two stories above that—

The train shed passes through here, and two stories come over the train shed, this top story was built later.

10 Q. Is this south? A. This is facing south.

Q. Then the lower story of the southerly wing of the main building is the train shed? A. Yes, sir.

Q. Is that right? A. Yes, sir.

HIS LORDSHIP : That will be Exhibit 103, Mill "C." Photograph showing train shed and view of premises as they stand today.

MR. MCCARTHY : As they were on completion? A. One story has been added, on the front.

Q. When was that added? A. That was added in 1923.

Q. Lately? A. Yes.

20 HIS LORDSHIP : That is a picture of it as it is today, and as it was when the plant was completed in 1907, except that one story has been added on the top of the southerly wing of the main building.

A. Known as the warehouse part.

Q. Mill "C"? A. Mill "C".

Q. Then you were just telling His Lordship the main building and the train shed, that is the concrete work was completed up to the first story?

A. Not completed, part of the mill was up.

Q. Then, what was your work in connection with the construction end?

A. Setting up the forms for the concrete work.

30 HIS LORDSHIP : You say that third story was added when?

A. In 1923, in the Spring.

MR. MCCARTHY : Q. Then, when was the mill completed and ready to run? A. Yes, June, 1907.

Q. Had you anything to do with the installation of the machinery part of it? A. I was working for the Lake of the Woods Milling Company, and I would build stairs and install one or two of the machines that were not in the concrete.

40 Q. Now then, can you tell us what the condition of the head race was at that time, July, 1906? A. The head race, the head race was completed, the work was finished in the head race.

MR. MCCARTHY : That work was finished in the head race when you got there?

A. Yes, underneath the mill part the work was finished.

Q. South of the southerly building line? A. No, there was no work completed south of the southerly building line.

Q. But the work underneath, the work of the head race and wheel pit were completed? A. Yes.

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Q. Underneath the mill when you got there? A. Yes.

Q. And somebody else perhaps will be able to tell us more about that in detail than you will? A. Possibly.

Q. Can you tell us, I do not know whether—

HIS LORDSHIP : When you say it was completed down to that point, you mean it was completed from the north end down to the southerly limit of the building?

A. Yes.

MR. TILLEY : Q. Do you mean the mill race?

HIS LORDSHIP : Yes.

MR. TILLEY : What I thought, the witness meant the work under the mill had been done.

HIS LORDSHIP : The mill race?

A. The part under the mill was completed.

MR. McCARTHY : Q. Only that part, not the part farther south?

MR. TILLEY : I think your Lordship has a little wrong apprehension, I think what the witness was referring to, the new work in 1906 under the mill was completed, but he is not talking of the mill race. Of course, that was there before.

HIS LORDSHIP : I misunderstood.

MR. McCARTHY : He said the work done on the mill race and wheel pit underneath the new building that was being erected was completed when he got there?

A. It was completed, yes.

Q. And that would be the portion north of the southerly wall of the mill?

A. To the southerly wall of the mill, yes.

Q. Now, was any work done south of the southerly part of the mill, that is Portage Bay, after you got there? A. Work done, yes, the head gates were put in.

Q. Where? A. South of the southerly wall of the mill.

Q. How far south? A. To the stop logs would be about thirty feet from the building line to the stop logs.

Q. From the building line to the stop logs would be about thirty feet?

A. Yes.

Q. And who put the stop logs in? A. The Lake of the Woods Milling Company.

Q. Was the head race unwatered for that purpose? A. Yes, it was unwatered then.

Q. Then how many openings are there in the stop logs? A. Two.

Q. And of what width? A. Twenty feet, I think twenty feet two inches.

HIS LORDSHIP : Did you say two?

A. Yes, two.

HIS LORDSHIP : And twenty feet each?

MR. TILLEY : Twenty feet two inches.

HIS LORDSHIP : Twenty feet two inches.

MR. McCARTHY : And what was the nature of the construction?

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- A. Concrete, reinforced concrete.
- Q. Reinforced concrete and steel? A. Steel channel beams for the logs to work in.
- Q. Work up and down? A. To set in, yes.
- Q. Then between the stop log construction and the southerly wall of the mill, was there any other construction? A. There is the rack, the rack that holds the rubbish from getting into the wheels.
- Q. Cement construction, I suppose? A. Yes, two concrete walls curve into the mill, two concrete walls on either side.
- 10 Q. Joining the concrete construction of the cement wall of the mill? A. Yes.
- Q. That is controlling the water—guiding the water into the wheels? A. Yes.
- Q. Guiding the water into the wheels? A. Yes.
- Q. Then south of the stop logs was there any construction? A. South of the stop logs?
- Q. Yes? A. There was a wall built on either side of the intake, underneath the railway bridge.
- Q. A wall on either side? A. Yes, a dry stone wall.
- 20 Q. A dry stone wall running from the stop logs to where? A. To underneath the railway bridge.
- Q. Extending beyond the railway bridge? A. No, I think they just stop about the south side of the railway bridge.
- Q. They just stop about the south side of the railway bridge? A. Yes.
- MR. TILLEY : Did you say that was a dry stone wall?
- MR. MCCARTHY : A dry stone wall?
- A. Yes.
- Q. What do you mean by a dry stone wall? A. There is no lime, the stones are just placed one on top of another—there is no lime or cement used.
- 30 HIS LORDSHIP : What they call dry masonry?
- A. Yes.
- MR. MCCARTHY : This wall, of course, goes into the water? A. Yes, yes.
- Q. And when was that done, do you remember? A. That was done the same year, 1906.
- Q. All this construction was done in 1906, was it? A. Yes.
- Q. That is the stop logs were put in, and the wall guiding the water from the stop logs to the entrance to the mill and this, what you call the dry stone wall running from the stop logs to the C.P.R. bridge? A. Yes, sir.
- 40 Q. All done in 1906, and have they remained in that condition ever since? A. Yes.
- Q. There has been no change since 1916? A. No change.
- Q. Now then, were there any head gates put on at the entrance, under the bridge, at all, or anything of that kind? A. No, just the stop logs.
- Q. Just the stop logs, thirty feet from the mill? A. Yes.
- Q. Now, I believe you said the mill race was unwatered? A. Yes.
- Q. And you made certain plans and measurements? A. Yes, sir.

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Q. In connection with that—in what year? A. That was made in 1926.

Q. And there had been no alteration in the mill race south of the southerly wall of the mill building in the meantime? A. 1926?

Q. Yes? A. There had been an alteration made in the mill in 1925.

Q. In the mill? A. In the mill, and in the race way underneath the mill.

Q. I am not speaking of that, I am saying from the southerly wall of the mill, and southwards, out from the southerly wall? A. From the southerly wall of the mill? 10

Q. Out to Portage Bay? A. Yes.

Q. Had there been any alteration there? A. I do not quite understand—the southerly wall of the mill—is that the southerly building line?

Q. Yes? A. No, no change made there.

Q. Then you said there was a change made under the mill? A. Yes.

Q. Now, does this plan, representing the condition as you found it when you made your measurements in 1906 A. No.

Q. What does it represent? A. It represents it as it was from 1906 to 1925.

Q. That is the same thing, from 1906 to 1925? A. Yes, it represents 20 it as it was then.

Q. Does that represent it as it was from 1906 to 1916? A. Yes, exactly.

Q. So if any change is in that that my friend wants to ask about, you will be able to tell him? A. Yes.

Q. So this only represents the situation as from 1906 to 1916? A. Yes.

Q. Then will you explain what these different sections represent?

MR. McCARTHY : Would your Lordship like a copy.

MR. ROBINSON : Suppose we follow the tracing and his Lordship can look on the blue print (Exhibit 104). 30

MR. McCARTHY : Q. First of all, how are these sections lettered?

A. By "A", "B" and "C".

Q. Section "A", "B" and "C" on the right hand side of the plan correspond with the same sections on the left hand side? A. Yes.

Q. Lettered the same? A. Yes.

Q. Now, what is section "A" to begin with? A. Section "A" is here.

Q. What is it? A. That is the intake at the south building line.

Q. Does that represent the intake at the south building line? A. Yes.

Q. And what does section "B" represent? A. The section in the middle, between the two building lines. 40

MR. TILLEY : Under the building?

A. Yes, under the building.

MR. McCARTHY : Q. And section "C"? A. Is just at the entrance to the penstock, or underneath the stone wall.

Q. The stone wall? A. Or the south wall of the mill building.

Q. These three sections, "A", "B" and "C" are all under the train shed? A. Under the train shed.

Q. So what would be the south wall of the train shed—the north wall of the train shed is the south wall of the main building? A. Yes.

Q. And where does the drop take place? A. Here (indicating).

HIS LORDSHIP : Where is here?

MR. TILLEY : In the centre of the compartment marked “chamber”.

WITNESS : In the centre of the part marked “turbine chamber”.

MR. MCCARTHY : Q. Where on your chamber is it? A. There are three wheels.

Q. But where does the drop, the actual fall? A. It drops—

10 Q. Where on the plan? A. Right through this portion here (indicating).

Q. Beginning at the first wheel pit? A. Yes.

Q. Now, let us go—take the section “A”—what does section “A” illustrate? A. It illustrates the entrance at the south wall.

Q. At the south wall?

MR. TILLEY : Of the train shed?

WITNESS : Of the train shed.

MR. MCCARTHY : Q. And going back to this section—what are these walls—just explain them? A. They are concrete walls, three feet six.

20 Q. Yes? A. On each side.

Q. On each side, and they were put there by whom? A. By the MacDonald Engineering Company.

HIS LORDSHIP : Are these the two wings that are shown there?

A. No, sir.

MR. MCCARTHY : Q. These—these are the inside walls which are three feet thick? A. Yes.

Q. And what is the distance between them from wall to wall?

A. Twenty feet at the opening.

HIS LORDSHIP : Twenty or twenty-eight?

30 A. Twenty feet there (indicating).

MR. MCCARTHY : Q. Look at the lower corner, I see the words “solid rock”—what is that? A. That is solid rock, it is there as it has been originally, always.

MR. MCCARTHY : Q. Is that in the same condition, solid rock as when you went there? A. Yes, in 1906.

Q. And these columns or whatever you call them, or walls, were built by the MacDonald Engineering Company? A. Yes.

Q. Outside of that, I see two other walls which are marked trestles?

A. Those are trestles that carry the train shed floor.

40 Q. And what was in between the trestle and the wall? A. Stone, filled in with stone, like loose rock.

Q. You say, you excavated that to get the correct lines of the solid rock?

HIS LORDSHIP : That is the cut off face between the two?

A. Yes, sir.

MR. TILLEY : Q. When you pointed to that space, I think you said that was loose rock that was in there? A. Yes.

Q. Not solid rock? A. No, this was filled, from here (indicating).

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MR. TILLEY : That was loose rock that had been?

A. We used this part, from here and the floor is built up level.

MR. MCCARTHY : I do not think my friend has that correct.

Q. Before you made this plan, the space between the trestle and the wall was filled with loose rock? A. Yes.

Q. And you took that loose rock out to make this plan so as to get the correct line for the solid rock? A. Yes.

Q. Then, what is the depth of the canal formed by these walls when the elevation is 1060, or the elevation 1045.20? A. 1045.20 is the floor.

Q. The next elevation is 1060—what is the 1060? A. That is just an arbitrary elevation of the water, it is just to try and illustrate. 10

MR. TILLEY : It is an assumed level?

A. Yes, it would be higher or lower according to the elevation.

MR. MCCARTHY : Then pass on to section "C" and that same type of construction continued? A. Yes.

Q. And are the measurements on the plan correct? A. Yes.

Q. I see it is twenty-two feet ten and three-quarter inches? A. Yes, a slight taper.

Q. And when you get to the section at "C", it is twenty-six feet?

A. Twenty-six feet. 20

Q. And that is illustrated on the left-hand side by the tapering condition of the raceway underneath the train shed? A. Yes.

Q. And the illustrations on the right hand side, as of solid rock are by actual measurement though? A. Oh, yes.

Q. Then, in building these piers or walls, was there an excavating done on the floor? A. Not that I know of. I was not there when it was done.

Q. You were not there? A. I was not there.

Q. Now then, that takes us under the train shed, under the mill?

A. Yes.

Q. Then, while I think of it, will you give me the sill elevation at the stop logs? A. 1049. 30

HIS LORDSHIP : Where does that show?

MR. TILLEY : That shows on the left hand side at the bottom.

HIS LORDSHIP : Where is the elevation shown?

MR. MCCARTHY : I am asking you as a matter of information.

HIS LORDSHIP : It is not on the plan?

A. No, sir.

HIS LORDSHIP : 1049.

MR. MCCARTHY : Q. Then, when we travel south, from the southerly building line of this plan, does this plan illustrate the manner in which the walls are built to the racks? A. Yes, sir. 40

Q. And then they are apparently straight from the racks to the stop logs?

A. Yes.

Q. And does this give the correct distances across the stop logs, or should there be a pier in there? A. There should be a pier in there.

Q. Yes, there should be a pier? A. Because there are two openings.

Q. Right in the centre? A. Yes, sir.

HIS LORDSHIP : That is, where there are stop logs here (indicating) there ought to be a pier in the middle of the channel?

A. Yes, sir.

MR. MCCARTHY : A cement pier? A. No, just two channels set in cement.

Q. Now, I understand you to say that the Lake of the Woods Company themselves did all the work south of the southerly building line? A. Yes, sir.

Q. And in what was the condition of the water before these wings were put in from the rack to the entrance? A. The condition?

10 Q. Yes? A. Well, I never saw it before these walls were built.

Q. Then you say there were also walls connecting the stop logs—were they built there before you got there? A. You are asking me about the water?

Q. It was unwatered? A. I never saw water in.

Q. You took part in this? A. I was working on the mill building.

Q. I think, witness? A. Yes, I was not with the company then.

Q. You were with MacDonald? A. Yes.

Q. These measurements have been taken since by you? A. Yes.

Q. When the race was unwatered? A. Yes.

20 Q. And it is also shown, although not on this plan there is a wall almost to the railway bridge? A. Yes, to the south of the railway bridge.

Q. On each side? A. Yes.

Q. Now is that shown on that photograph? A. The wall?

Q. I don't think it is—can you see that wall on there—will you show it to me? A. Yes, here, and here, it runs here, on this side on a little slant.

Q. When you say "this side," what do you mean? A. On the west side, it runs on a slant, on the east side, it is straight, on the west side it runs in a slant.

30 Q. Then, when you call His Lordship's attention to that roadway, is that roadway on the C.P.R. right-of-way, coming under the bridge? A. Yes, it passes along that side.

MR. TILLEY : Under what?

A. Under the C.P.R. bridge, along there, it comes just at the end there. The wall referred to is here, and here.

HIS LORDSHIP : That is the dry masonry wall?

A. Yes, the dry masonry wall.

Q. And where is the road, Mr. McCarthy refers to? A. The road comes here, and passes on this side (indicating).

Q. On the west? A. Yes.

40 MR. MCCARTHY : Your Lordship will remember another photograph.

HIS LORDSHIP : At the west of the end of the railway bridge?

A. Yes, sir.

Q. And it runs along to the south side of the railway bridge? A. Yes, sir, that is correct.

MR. MCCARTHY : Then, Mr. Alexander, when this construction work was going on, or after it was completed, what was the condition insofar as the

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C.P.R. right-of-way was concerned, were they running with one, two or three tracks at that time?

A. There was one track when I went there in 1906.

Q. Now, when were the other tracks put in, do you remember?

A. The same year, later in the year, if I remember.

Q. Was it before or after the construction of the walls that you have just been telling us about? A. I think they were building the piers or the abutments for the bridge about the same time as this work was going on, as I remember it.

Q. About the same time as this work was going on—then what effect, if any had the double or triple tracking of the C.P.R. with the entrance to the mill race there? A. The effect, between the bridge? 10

Q. Yes, under the bridge, I mean? A. Under the bridge.

Q. Yes, affected the widening of the bridge up to that—what I want to find out, was the entrance widened or lessened or contracted or did it affect it?

A. It would be somewhat contracted.

Q. Why? A. On account of the building of the wall to get the road around there.

Q. And was any work after that, was any work ever done in, I suppose you would call it, the forebay, the portion of the race in what you would call the fore bay, wouldn't you? A. Underneath the bridge? 20

Q. No, south of the southern wall, you would call that the forebay wouldn't you, up to the stop logs? A. No, we call the forebay in front of the stop logs.

Q. And between the stop logs and the mill building, you call it what?

A. Just the entrance, I call it.

Q. Just so that it is clear, we are both talking about the same thing?

A. Yes.

Q. Dealing with the fore bay. First, the time you went there in 1906, was any work of any kind done in the fore bay? A. The dam was executed after I went there, that is all the work, the cofferdam and the fore bay south of the railway bridge. 30

Q. What was done between that and 1916? A. That remained as it was, completed in 1906, nothing was done.

Q. You spoke of something being done, my question was, was anything done in the fore bay between the time you went there and 1916? A. Yes, the coffer-dam was moved.

Q. Moved from where—you mean removed? A. Yes.

Q. The coffer-dam that was holding back the water? A. Yes.

Q. I do not regard that as work in connection with the channel itself—was any work done in connection with the channel itself, or the watercourse? 40

A. Not that I know of.

Q. You were in the employ of the Lake of the Woods from 1907 on?

A. Yes.

Q. Was any work done in the fore bay except the removal of the coffer-dam? A. None.

Q. Was any work done between the stop logs and the mill wall?

A. None.

Q. Between 1906 and 1916? A. No.

Q. And was any work done on the raceway underneath? A. No.

Q. Then was there any work done in the tail race between these years? A. Yes, there was some work done in the tail race.

Q. Where and when? A. In 1911, there was a little work done there.

Q. Where was it? A. At the tail end.

Q. I am speaking up to 1916? A. Yes.

Q. 1911 you say, what was done? A. There was a small amount of
10 rock taken off the tail end of the raceway on one side, on the west side.

Q. Otherwise the building and the race remained as it was? A. Yes.

Q. Now was any—do you know of the installation of the machinery
there? A. Do I know of it, yes.

Q. You can tell me about that? A. Well, I will try to.

Q. Well, was there any alteration in the installation of machinery be-
between these years, 1906 and 1916? A. There were one or two machines
added.

Q. When? A. In the mill.

Q. When? A. There was in 1910, I think it was, there was a few added.

20 Q. What was added? A. What we call centrifugals—eight machines.

MR. TILLEY : Eight? A. Eight.

MR. MCCARTHY : Were they added, or did they supersede some other
part? A. No, they were added.

Q. Is that power machinery or milling machinery? A. Milling machinery.

Q. Make a distinction, please, I really had in mind power machines, I
should have said so? A. There were no power machines.

Q. But the centrifugals you spoke of were milling machines? A. Yes.

Q. And they were added in 1910? A. Yes.

HIS LORDSHIP : And there were no power machines added from 1906 to
30 1916?

A. No, absolutely none.

MR. MCCARTHY : Q. So with the exception of the alteration of the tail
race which you told us of in 1911 the property remained the same from 1906
to 1916? A. Yes.

EXHIBIT No. 104. Blue print and plan of intake and penstock, Mill "C"
dated April, 1927.

MR. MCCARTHY : I was going to make a suggestion, my Lord. I do not
know how it will fit with my friends' idea, it was only to let the witnesses
away. I have one of the members of the MacDonald Machinery Company
40 here. I purposely called Mr. Alexander first because he rather paves the way
for this man's evidence. This man would like to get away to Chicago tonight
if he could. I do not know if it suits my learned friends' convenience to call
Mr. Stinson first, and then finish with Mr. Alexander on Monday.

MR. TILLEY : No, I mean to say, would he be a long witness?

HIS LORDSHIP : Will you likely take very long with this witness?

MR. TILLEY : I do not think so, but if Mr. Stinson is here, I have no ob-
jection to going on.

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CROSS-EXAMINED :

BY MR. TILLEY.

Q. Now, Mr. Alexander, you spoke of work being done by the Lake of the Woods Company? A. Yes.

Q. Are you trying to distinguish between the Lake of the Woods and the Keewatin Company, or are you just treating them as one? A. I was treating them as one.

Men came down from the Lake of the Woods, Mill "A" and did work, they were known as the Lake of the Woods men.

Q. They came from Mill "A" and did the work on the new mill? 10

A. Yes.

Q. And what time in 1906 was that? A. It would be in August or September, if I remember correct, but that is—

Q. During the late summer? A. Yes, that is as I remember it.

Q. Yes, I know you are speaking from recollection. So that at that time, the work on the new mill whatever was yet to be done, was being done by the Lake of the Woods Company, or its employees? A. Yes.

Q. And then you spoke of the C.P.R. bridge being changed, and you think it was changed in the same year? A. I think so, I am sure it was.

Q. Did you ever see the old trestle bridge? A. Oh no, no. 20

Q. So that the new bridge was there when you arrived? A. Yes, the first one standing, one track across there.

Q. One track across? A. Yes.

Q. Then I do not know whether you mean to have us understand that the C.P.R. had not had two tracks across there before 1906, or whether you mean that temporarily there was just the one track? A. There was just the one as I remember it, there was stone abutments.

Q. During construction? A. Yes.

Q. But there may or may not have been two tracks in 1904 or 1905?

A. Oh yes, I was not there then. 30

Q. You are not proposing to speak about that at all? A. No.

Q. And you are not meaning to say that until August, 1906, there was only one track? A. That is my recollection.

Q. That is your recollection? A. Yes.

Q. You mean to say, your recollection is that they had not had a double track service there or through there before? A. I do not remember of seeing it.

Q. Of course you would not notice it, probably, but I would like to know exactly, one witness told us yesterday that the bridge was there, and I think hesaid two tracks, sometime before 1906—I just want to be sure that you are making the statement that the bridge was put up, or completed in 1906, and that as you understand the system was then changed from single track along to Keewatin and Kenora, to a double track? A. Yes, the double track came along somewhat later, probably the next year. 40

Q. It was a single track service? A. Yes.

Q. It was not merely a single track over that bridge, but it was a single track service all through that part? A. Yes.

Q. All through that part, that is as you understand it, and then there was one span up when you arrived? A. Yes.

Q. And the balance was completed that year? A. As I remember it, yes.

Q. Then, what is the distance to the bridge beyond the south end of the raceway, north to the south end? A. The distance from the mill to the bridge?

Q. No, the C.P.R. bridge where does it stand with relation to the south end of the raceway, at Mill "C"?

10 A. It would be about five feet beyond the stop logs, south of where the stop logs are, approximately five feet.

Q. The stop logs are approximately five feet south of the bridge? A. North of the bridge.

Q. That is the stop logs that you say were thirty feet? A. From the mill.

Q. Thirty feet from the mill? A. Yes, about thirty feet.

Q. So that the distance from the mill to the north side of the C.P.R. bridge would naturally be what, thirty-five feet? A. It would be about thirty-five feet.

20 Q. About thirty-five feet? A. Yes.

Q. And then the bridge is how wide, approximately? A. Well, it has three spans, or three tracks, it would be probably forty-eight feet.

MR. TILLEY : Forty-eight feet wide?

HIS LORDSHIP : The bridge? A. The abutments.

MR. TILLEY : From north to south? A. Yes.

Q. Then, does the raceway extend to the south of the bridge, or does it stop? A. It curves out into the Bay, just about ten feet south of the bridge; it curves out each side into the Bay.

Q. Into the Bay? A. Yes, into the Bay.

30 Q. And that part was done before you got there—that is the directing of the base of the C.P.R. bridge? A. No, that was done after I got there.

Q. That is the point? A. The one stone abutment was there, but not the others, I seen them working at the other.

Q. And then what is the width of the span under the C.P.R. bridge?

A. The width of the span?

Q. Yes? A. From abutment to abutment?

Q. Yes? A. I would say it is about one hundred feet.

Q. One hundred feet? A. Yes, it might be more or less, but it is about one hundred feet.

40 Q. And how much of that is taken up with the roadway? A. The roadway is somewhat of a taper.

Q. Yes? A. I would say, just where the stop logs are on the west side.

Q. On the west? A. It would be about, probably thirty-five feet from the end of the stop logs to the abutment.

Q. To the bridge? A. Yes, and on the south end of the same side it would probably be sixteen or seventeen feet from the dry stone wall of the abutment.

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- Q. Then how far is one dry stone wall from the other ?
A. About ten feet, I should judge.
Q. About ten feet ? A. Yes, and that one runs straight on the east side of it.
Q. I beg pardon ? A. The wall runs straight on the east side.
Q. Straight ? A. And about ten feet from the abutment.
Q. It is about ten feet from the abutment, and how far apart are the two dry walls ? A. It would be about fifty feet.
Q. About fifty feet ? A. Possibly a little more than fifty feet at the stop log end. 10
And then it is that much wider at the other end, possibly about seventy-five, seventy or seventy-five feet.
Q. So that the two dry stone walls would be about fifty feet apart at the stop logs ? A. Somewhat more than that, probably fifty-five.
Q. Fifty-five feet ? A. Fifty-five, I think.
Q. And then they spread out, the two sides ? A. Yes.
Q. To about seventy-five feet apart on the south side of the bridge ?
A. Yes, I would say about that distance.
MR. MCCARTHY : Q. To the south or north side ? A. To the south.
Q. Does the dry stone wall go to the south ? 20
A. Yes, they both travel south, they are running north and south.
MR. TILLEY : Q. Now the distance between the two walls, being about fifty-five feet at the stop logs—how many sets of stop logs are there ? A. There are two sets.
Q. Two sets ? A. Yes.
Q. Each of them about twenty feet ? A. A little over twenty feet, clear openings.
Q. Clear openings ? A. Yes, and then there is some—
Q. And then there is something in between that takes up how much space ? A. Oh, just about three-quarters of an inch, just channel irons, 30 and there is only the thickness of the steel between them.
Q. But there is a concrete pier that holds the iron in place ? A. I judge it is about fourteen inches wide, it is made as narrow as possible to be strong enough.
Q. So that there is a clear opening there of about fifty-five feet clear for water ? A. It is not clear—the stone walls run against the abutments that the stop logs are built in, and then that comes across straight until meets the stop logs.
Q. I do not follow that, will you just show me what you mean ?
HIS LORDSHIP : Will that photograph help. 40
MR. TILLEY : Q. You were probably just going to sketch it roughly.
A. Will I ?
Q. You can show it here ? A. There is the track in here.
Q. At the north side of the bridge ? A. Yes.
Q. And the same on this side ? A. Yes, and the same on this side.
Q. Yes ? And the stone wall runs against that track, so that the clear

opening is just the width between the stop logs, that is the clear opening into the stop logs is just the width of the stop logs.

Q. What is the width there—the opening? A. Twenty feet two inches.

Q. At each side? A. Yes, it may be a fraction of an inch.

Q. And then as you go north from there? A. Yes.

Q. How far are the sides apart, is it uniform width, right up north to here? (indicating). A. No, it curves in north of the stop logs.

Q. So that the two sides of that raceway are not parallel? A. Oh, no, it curves in.

Q. It curves in? A. Yes.

Q. To what size, ultimately? A. To twenty feet.

HIS LORDSHIP: To twenty feet at the narrowest part? A. Yes.

MR. TILLEY: Q. This gives the distances at various stages? A. Yes, fifteen foot sections.

Q. And there is a fall of four feet, I gathered, and then between the bottom of the stop logs, the sill, and the section "A" is there? A. Yes, it is. 1045 here (indicating), and 1049 here.

Q. A fall of four feet? A. Yes.

HIS LORDSHIP: What are these racks that are marked on here? A. That is iron bars that run up and down to keep bark and other rubbish from the wheels, they are about an inch apart, and three-eighths thick, and two and one-half inches wide.

MR. TILLEY: If this witness will stand down, Mr. McCarthy will call the Chicago witness.

MR. McCARTHY: I will call Mr. Stinson.

LEWIS A. STINSON, Sworn. Examined by MR. McCARTHY:

Q. Mr. Stinson, what is your position with the MacDonald Engineering Company? A. Vice-President.

Q. And were you in charge of the work of the MacDonald Engineering Company? A. Generally.

Q. At Keewatin? A. Generally, yes.

Q. When did you first go to Keewatin—in connection with your work?

A. It was the latter part of December or the first of January, 1904 or 1905, right about Christmas time.

Q. Well, were you in a position to make an examination of the ground at the time? A. To some extent.

Q. To some extent? A. Yes.

Q. I fancy to a limited extent. A. Not very limited, no.

Q. I though perhaps——? A. Not very.

Q. Well, what was the condition that you found there in 1904, December? A. Well, the contour of the ground was in the form of steps.

Q. The contour of the ground was in the form of steps? A. Yes.

Q. Stepping which way? A. Stepping towards the Lake.

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Q. There is a lake——? A. Stepping down toward the Lake of the Woods.

Q. Yes, and what was the length or the width of the portage at that point from Darlington Bay to Portage Bay?

A. I will have to think a minute about that—it was very hard to tell where the Bay commenced and it was almost as hard to tell where the Lake ended.

Q. Yes? A. Due to the accumulation of rubbish of various kinds, slabs, sawdust, stone, it was a miniature thousand islands there.

Q. I am speaking of this particular ridge? A. Oh, you mean up on 10 top?

Q. Yes? A. Oh, that was a ridge of rock.

Q. A ridge of rock? A. Yes.

Q. What was the length of the ridge—what was the distance across the ridge? A. Across, you mean from north to south?

Q. Yes? A. Oh, I would say, that was covered with a mill, it was very hard to get its dimensions.

Q. I only want your idea—I want to get some idea?

A. I would say fifty feet.

Q. Across the ridge? A. Yes, although it was a gradual slope almost, 20 it kept raising, it would come up a step and go on level, and then up a step, so it was a very hard thing to arrive at it.

Q. I do not know whether you have got what I am asking you in mind. Portage Bay is on the south and Darlington Bay or Winnipeg River on the north? A. Yes.

Q. And a strip of rock divides them? A. Yes.

Q. And what is the length from one piece of water to the other? A. The total length from one piece of water to the other I would judge would be three hundred feet.

Q. You said just now, fifty feet? A. I thought you meant the level 30 platform in the centre. That was only guess work.

Q. What was there when you got there in the way of buildings? A. A stamp mill, aside from the Lake of the Woods Flour Mill.

Q. Never mind the other mill at all, please, forget about the other mill—we are only talking of your mill, the stamp mill? A. There was this stamp mill, the remains of an old saw-mill, or where it had been.

Q. Yes? A. And perhaps some very minor outside interests that I do not remember—those are all that I have in mind now.

Q. And where were they situated on this neck of land? A. Facing 40 the Bay.

Q. There are two bays, there is Portage Bay and Darlington Bay?

A. I call the one Lake of the Woods, is that Darlington Bay?

Q. Darlington Bay is the Winnipeg River—Portage Bay is the Lake of the Woods? A. Let me see—what is your question?

Q. I said, where were those buildings situated?

A. The stamp mill occupied the site which is now occupied by the Mill, or very nearly so.

- Q. And where was the saw-mill? A. Off to the right or east some.
- Q. Off to the right or east some? A. Quite close.
- Q. How long were you there on the occasion of your first visit? A. I believe four days.
- Q. Then when was the next time you saw it?
- A. When blasting operations were just beginning.
- Q. When? A. Sir?
- Q. When? A. That was along in the early part of the summer.
- Q. Along in the early part of the summer when blasting operations were first beginning, that is when your construction work first begun? A. Yes, sir.
- HIS LORDSHIP: That was in 1905? A. Yes.
- MR. McCARTHY: Q. Was there water in the canal at that time? A. Yes, sir.
- Q. There was water? A. Some water.
- Q. What was the condition of the water on the south side of what is now the mill building, and the train shed?
- A. I have got to get standing on my feet on these directions—on the south side?
- Q. The south side is the Lake of the Woods side?
- 20 A. I get you now—what was the condition of that water?
- Q. Yes? A. It would be—I remember its being extremely clear.
- Q. Can you describe it, its width, its contour, and so on? A. Sure, somewhere about, on the surface line somewhere about thirty feet.
- Q. Thirty feet? A. That is south of the present C.P.R. bridge?
- Q. South is on the Lake of the Woods side?
- A. That is the intake side?
- Q. Yes, all right? A. That opening there, there was an opening there, it came in on a sort of a curve each way.
- Q. Yes? A. Then at the end of this and directly in front of it was a
- 30 tower, almost directly, I think a little bit to the west was a tower that an aerial tramway had been used on, and that used to be up quite a piece north I understood for the purpose for barges to come between the mainland and this tower, which brought down this crushing material or what was to be crushed.
- Q. What I am more concerned with, what was the contours of the water lines between the bridge and the mill building? A. And the mill building?
- Q. Yes? A. Well it was, the general line might have been nearly straight, but it was irregular as a rough blasted face generally; that is about all I can describe it, or in a shattered form from the lay of the rock there, it seemed to break out in a shattered and rough face, not faced, no channeling
- 40 had been done or anything of this kind.
- Q. What do you mean by channelling? A. In removing rock there is such a thing as a channelling machine which makes a channel of a narrow width, and then you blast out from that, which leaves a wall perfectly proper.
- Q. This was a rough job, just blasted out? A. And it was a rough job.
- Q. Then when did you first unwater it? A. Just the date I do not know; we had a lot of trouble getting the dam tight.
- Q. But about when? A. Probably along the season pretty well.

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Q. About when? A. It would only be a guess.

Q. Well, all right—can you give me the month, or anything? A. I think it would be better not to guess that, for I cannot say positively.

Q. It was in the summer? A. Oh, yes, it was in the summer.

Q. Now had your contract anything to do with the fore-bay or the mill race running up to the mill?

A. Our contract commenced on the south building line of the car-shed, train shed.

Q. Yes? A. Of the mill building.

Q. Yes? A. Then our coffer dam was outside of that, it was not 10 permanent work, of course that was temporary.

Q. That was temporary—now what was the condition of the rock underneath the train shed? And the mill building, and what work did you do there? A. It was very level and smooth, the rock—what are you speaking of?

Q. The sides? A. The floor, I understand, that is your question, is it?

Q. That is part of the question, yes? I wanted to know what were the condition of the walls and floor—that is the general conditions of the rock? Underneath the train shed and the mill building?

A. The vertical walls were very irregular and ragged, and sloped up, I 20 would say at a fifteen degree angle from the floor of the race.

Q. Yes? A. But the floor of the race was quite smooth because that was the natural lay of the rock, as I understood it.

Q. Anyway, it was quite smooth? A. The floor was.

Q. But the walls were what? A. They were rough, very rough and sloped apart.

Q. And sloped apart—then what, if any work did you do on the walls or on the floor? A. At what point?

Q. Under the building? A. Under the train shed or under the building, the mill? 30

Q. Wherever your work began—what I want you to do is to tell me what you did underneath under your contract—what work you did under the train shed or under the mill?

A. I understand—we built in a smooth wall on either side of it.

Q. Out of what? A. Out of concrete.

Q. What are you speaking of, a smooth wall of concrete, where? Where did the wall begin and where did it end?

A. At the south building line of the train shed.

Q. Yes? A. That is where our work started and ended, and started and finished, was at that line. 40

Q. Yes? A. Now, we started from that line and went north through the mill and wheel pits and so on toward the discharge entrance.

Q. Towards the discharge entrance? A. Yes.

Q. Did you alter in any way the level of the floor?

A. Not until after we had passed the south wall of the mill building proper.

Q. Not until after you had passed the south wall of the mill building

proper? A. I mean had passed—until we had gone north of the south building line of the main building proper and the first shots were put—

Q. Now stop there a second. You made no alteration in the floor up to that point? A. No.

Q. Then what did you do on the vertical, on the sides?

A. We built in this concrete wall.

Q. You built in a concrete wall? A. Yes, a retaining wall, as we called it.

Q. You spoke of the sides being rough and jagged? A. Yes.

10 Q. What did you do—anything, to overcome the raggedness of the rock? A. I did not do any blasting, and the space between our concrete and that present wall line, we were narrower than that was—

Q. I only asked what you did, please? A. We might have taken a hammer and knocked off a little point or something but not of any importance.

Q. Just what did you do, please? This plan put in by Mr. Alexander, I see he found that—is that your work? Does that represent your work?

A. This is the new one?

Q. It is one made by the last witness, Mr. Alexander, of what he found there, and I wanted to know if it is your work? A. Yes, that is our work.

20 These are our retaining walls.

Q. These are what you call retaining walls? A. Right.

Q. And they are placed, they are built inside the solid rock? A. Yes, sure.

Q. And what I want to know, was there any removal of rock by blasting? A. No, sir, there was not a blast fired in there.

Q. Not a blast fired? A. No.

Q. Then may I take it that from the southerly building line of the south wall? A. Yes, sir.

Q. Out to a point north of the south wall of the mill—do you hear me?

30 A. Yes, sure.

Q. To the south wall of the mill—the floor was level and remained as it was, and the only changes you made was the addition of these retaining walls?

A. That is right.

Q. Now then, you got to a point where you said the level changed?

A. Yes, sir.

Q. Where was that? A. It was inside this line a little bit.

Q. When you say “this line” it does not mean anything on the notes—where was this line, what line do you mean? A. It was north of the south building line of the main south wall of the mill proper.

40 Q. Yes, and what did you do there? A. We started blasting.

Q. You started blasting—yes? A. For the draught tubes.

Q. And how much work did you do there?

A. Nearly all the blasting was done there, practically all we did was done there.

Q. What did you do there? A. We blasted out the pits.

Q. To what depth? A. As I remember about forty feet below the mill floor.

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Q. So we have a perfectly level floor running between the two retaining walls up to a point north of the south wall of the mill proper, and then you say you began blasting, and you blasted down how far? A. About forty feet—twenty years is a long time to remember.

Q. I realize you are only giving me your best? A. Yes.

Q. Forty feet below the floor, and how large was that chamber that you blasted there? A. It was a little wider than the race.

Q. A little wider than the race? A. Yes, but just in feet, I cannot tell.

Q. A little wider than the race, but just in feet you cannot tell me—then how far did it extend. A. That extended to the back edge of the wheel pit. 10

Q. To the back edge of the wheel pit? Where would the back edge of the wheel pit be in connection with the north wall of the mill proper? A. Well it was well inside of it, but just how much in feet and inches I cannot tell, well inside.

Q. And outside of that would be the tail race? A. The tail race.

Q. And did you do any work on the tail race? A. Yes, we did some work there.

Q. At the same time? A. At the same time.

Q. Well, we will come to that later, do these curves in this plan represent the walls of the chamber that you blasted out? You see here is your—? 20

A. May I look at this?

Q. Yes. I want to know what these lines represent?

A. Yes, generally.

Q. It was not straight? A. It was not straight.

Q. What is that line there (indicating on linen plan). Do you know?

A. A dimension line.

Q. The dotted line indicates the line of the race and chamber? A. I should think, generally, yes.

Q. And the turbines are marked in there? A. The turbines were in.

Q. Then in your blasting did you do anything to the floor of the race, 30 under the train shed? A. None whatever.

Q. None whatever? A. No, we were very careful to protect it.

Q. Then did you do anything with the walls of the chamber that you blasted out, or did they remain as they were? A. No, they shattered.

Q. They shattered? A. Yes.

Q. Did you put retaining walls in? A. Yes, and back filled behind them.

Q. Back-filled behind them? A. Yes, sir, with rock and cement.

Q. And did you do the same just as is illustrated on this? A. Yes, just about as illustrated on this sketch. 40

Q. "A," "B" and "C" on this plan? A. Yes.

Q. So you put retaining walls on the whole length of the channel which you worked on and back-filled in behind. A. Yes, sir.

Q. And then did you have trestles outside of that again—were there trestles, outside of the wall as indicated here, or was that only under the train shed? A. Only under the train shed. There might have been some mill posts down there at some point, we had some other posts in.

Q. Then your blasting would start just north of the south wall of the mill building and was continued through that chamber? A. Yes, and went down.

Q. Was it a sheer drop? A. Yes, but in blasting it went down in a slope, but we put a vertical wall and filled in behind with cement.

Q. To make it vertical? A. In fact it had a slight overhang and then came back to the vertical to take the eddy out.

Q. So you had a smooth wall with a smooth bottom and a perfectly vertical drop of about forty feet? A. Yes.

10 Q. Now was there any wheel pit there before you started your work—what was the condition of the race when you started your work under the building there? A. I never saw that cleaned out.

Q. You never saw it cleaned out? A. No, there was water in it the first time I was there.

Q. Yes? A. Then, when I was there again the operation of moving the building was going on.

Q. Yes? A. But I have a right to assume there was a wheel pit there, and the race ran into it—of course I know there was a hole there of some kind, but yet of the details of that pit I have no knowledge.

20 Q. Of the details of the pit you have no knowledge?

A. Of the old pit, I do not know whether it was wood or stone.

Q. But you do know there was a perfectly level floor and with jagged walls under the train shed? A. Yes.

Q. And then where did the old wheel pit commence, do you remember?

A. It must have been back near the centre of the flour mill.

Q. Did you see where the old wheel pit commenced?

A. It would run into that, our line would run into that, our wheel pits will run into these old wheel pits to some extent, whatever they may have done I do not know, and also the tail race.

30 Q. Now did you follow the old tail race?

A. No, it could not have been followed.

MR. TILLEY : A little louder, please.

HIS LORDSHIP : He says, "No, it could not have been followed."

WITNESS : It was an indefinite line, very irregular, and I think there were some islands in it.

MR. TILLEY : What? A. Some islands, I mean rocks breaking here and there, it sprawled out there, it was not a definite line at all.

MR. MCCARTHY : Q. It was not a definite line at all? A. No.

Q. Was there any debris there? A. Yes, sir.

40 Q. What was the condition? A. Well, as I said before, it was slabs and sawdust from the mill.

Q. Yes? A. And the remains of the discard from this stamp mill thrown out there.

Q. Thrown out there—then you say you did not altogether follow the old line of the tail race because it was a sort of an indefinite—? A. It would cover so much ground, we concentrated our operation there and took the

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rough stone and put a sort of a riprap wall there, and back-filled in a way and got a definite line down through there.

Q. You got a definite line down through there ?

A. The old race was very irregular.

Q. It was very irregular ? A. It looked in a way as though it had just happened so; no doubt there was blasting also done, but the surface was not—

Q. Then you did not work south, that is on the Lake of the Woods side, of the building line of the train shed ?

A. Our last permanent work was at the south side of the train shed.

Q. Yes. Then the answer, you did no work ? A. Nothing beyond 10 that, nothing south of that.

Q. And I understood you to say you made no change in the elevation of the floor under the train shed ? A. No.

Q. And what change you made in the elevation of the pit you are not in a position to say ? A. No.

Q. But when your work was completed ? A. The wheel pit, we went down lower for the draught tubes to discharge.

Q. Then you spoke of dressing down some of the points that projected ?

A. Excuse me.

Q. I say, you spoke of dressing down some of the points that projected 20 in the walls ? A. I judge it would be, but there would be no blasting, there might have been some pounding.

HIS LORDSHIP : With a hammer ? A. With a sledge and a point.

MR. McCARTHY : Q. What was the minimum thickness of concrete that you wanted for your wall ? A. Well, the minimum thickness of that wall, I have no way of knowing without reference back, twenty years is a long time to remember that, but we did have six inches, over the face of rock, I do remember that, but the wall was very much thicker, I think two feet at least, there was a good thick wall all right.

HIS LORDSHIP : Where did you put your coffer-dam ?

30

A. On the south side of the C.P.R. bridge.

Q. At the south side ? A. At the south side.

Q. On that Lake side of the bridge is where you put your coffer dam ?

A. Yes, I used the curve of the intake for buttresses, to hook on to with the coffer dam.

HIS LORDSHIP : You used the curve of the intake to hook on to with the coffer-dam—that is where it curved in from the Lake to the intake—you put your coffer dam across there ? A. Using that arc there as a shoulder for the coffer dam.

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CROSS-EXAMINED by MR. TILLEY :

40

Q. And the width there was what—what was the width at that point ?

A. Well, I would estimate it thirty feet now, because we were outside of the regular channel.

Q. Outside of the regular channel—the regular channel would be about how wide ? A. Oh, at the top probably—

Q. The top near the mill ? A. I mean the surface; on the surface,

I judge it would be four—probably the very extreme would be thirty feet in width and the narrowest point would probably be twenty or twenty-four, maybe.

Q. Twenty to twenty-four? A. It averaged something like that.

Q. The narrowest point in the thing? A. Down at the bottom, I am talking about now, and it sloped off at the top.

Q. And it sloped off at the top from twenty to twenty-four feet at the bottom, to thirty feet at the top? A. A general flaring out.

MR. McCARTHY : I did not get this.

10 MR. TILLEY : He says the bottom would be 20 to 24 feet and flared out to 30 feet.

WITNESS : But a very irregular outline.

Q. Now was that condition you have described of 20 to 24 feet wide at the bottom and flaring out to 30 feet wide at the top, was that uniform?

A. No, sir.

Q. Now will you describe the extent to which it was not uniform? A. It defies all description.

Q. You say it defies description? A. Yes, it was every way.

20 Q. It was not a finished job? A. It was as though it might have happened that way, it showed a lot of rough blasting and people using it that way.

Q. And leaving it that way. A. It was extremely bad rock to blast in every way.

Q. Why? A. It was so dense, and very hard.

Q. Yes? A. And it broke wrong, it had no seams, only on the horizontal plane.

Q. Now, Mr. Stinson, taking the narrowest point in that raceway as distinct from the average, I daresay it would be hard to get the average, but the narrowest point might be how narrow between the Lake and the end?

30 A. I guess that would baffle—I do not think I could tell you, because it might be, right opposite a projection here, there might be a depression here (indicating on plan) or vice versa; it was so rough.

MR. TILLEY : Q. There might be two projections opposite one another or there might be a depression opposite a projection? A. Yes.

Q. And it would be impossible to say what width the controlling points would be? A. But you could only arrive at it in this way that we did no blasting, and we put concrete over the points—six inches was our minimum.

Q. Yes? A. Over the farthest projection.

40 Q. Yes? A. So we have a right to assume we have, if I remember the width there, it was somewhere about twenty feet, the finished width.

Q. The finished width? A. Yes, and it was formed nearly all the way behind, I mean retaining walls put in to hold the concrete out of these panels or spaces, between the saw teeth we put in forms in there, much of it it we did was not taken out.

Q. Were you working on the basis of a lump sum contract? A. Absolutely, iron clad.

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Q. And you had to put in the retaining wall, and I suppose you would get the retaining wall as straight as you could? A. No, we made them straight.

Q. I am not suggesting to the contrary? A. Pardon me, I misunderstood your question.

Q. But it would be your purpose to have it as close to the back rock as you could get it, would it not, so as to have as little fill as possible? A. We had space enough to get straight lines through there without any blasting or perhaps a point knocked off with a hammer.

Q. Some places you would take a hammer and knock off a point? A. Possibly, I would not say.

Q. From what you saw that would likely happen—that is what you mean? A. I think so.

Q. Now just to finish that first—with walls like that the water would not run through as readily as with your smooth finished walls, although they are closer together? A. That would be a problem for a hydraulic engineer, I think.

Q. That would be the purpose of it, to have a smooth finished surface for the water to run through? A. I think the purpose of it was to make a job of it.

Q. And the job from the standpoint of a mill race would require a smooth surface, I suppose? A. I would say so.

Q. Otherwise, you would have eddies, you would have the condition of eddying waters? A. I really had to have this wall in there, there were other conditions that required this wall.

Q. Apart from the other conditions that would be so, that condition of rough surface causing eddies, it was almost essential from that standpoint to have a smooth wall, was it not, to have a satisfactory race-way? A. I would say so, but as to its capacity I would not wager.

Q. You are not giving an expert opinion on that? A. No.

Q. That would be for experts, then? A. Yes.

Q. Now did you have plans for this work? Were you furnished with plans and the contract? A. Well, when I went there—

Q. Do not let us digress, because I am told you want to catch a train?

A. No, I do not care whether I catch a train—if I am not here I would be somewhere else, I suppose. I have got all the time there is, that is all we have got.

Q. Did you have a contract and plans and specifications? A. We made some of the plans ourselves.

Q. Have you got them yet? A. I think they are out of existence.

Q. Have you looked for them? A. Yes.

Q. Cannot you find any? A. No, I cannot find one I wanted to find, I found one of detail of a rack, but no building plans, and they were left with MacDonald Engineering Company, or someone else, and they were lost, they were not preserved.

Q. Now we will just pass that by—and you say the mill stood how far—I mean the old mill, now? A. The stamp mill?

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- Q. The stamp mill? It stood how far from the C.P.R. bridge north?
 A. In fact?
 Q. I do not want it exactly? A. Well, I would say seventy-five to one hundred feet, the nearest point, that is memory on it.
 Q. And was that about the high point on the ridge? A. I think the high point went right through it.
 Q. You think the high point? A. Went right through under that mill, that is my memory of it.
 Q. Was the mill situated at the high point? A. We naturally would
 10 put it there.
 Q. And then how far was the stamp mill from Darlington Bay, or the water to the north? A. The north water?
 Q. Yes? A. I think about two hundred feet would be a good guess.
 Q. And did it slope down toward the north water? A. The rock itself, you mean?
 Q. Yes? A. Some slope as I remember.
 Q. It was not just a steep drop? A. No, it was this sort of a step condition.
 Q. Then you say you continued your walls right straight under the train
 20 shed, did you? A. Yes, sir, to the south wall.
 Q. And then under the train shed you did not do any blasting? A. No, I did not do any blasting.
 Q. But you had these walls at the side? A. Yes.
 Q. Continued right up to the mill building? A. And a part of it, I think.
 Q. And a part of the mill building? A. I think that I built right under with it, that is my memory.
 Q. Now when you reached that point, you commenced blasting again?
 A. Yes, sir.
 30 Q. And so far as evidence of former power development there, you cannot remember much now, at the present time? A. I never knew it.
 Q. Not much? A. No.
 Q. But if there was any, but if there was any drop for the wheels before that it must have been very slight? A. As I say I do not know much.
 Q. You do not know much? A. I just say so, I had no knowledge of the old conditions.
 Q. Of the old conditions—then when you say you did blasting there, will you tell me how much blasting you did? That would be almost new work, there was no channel to fill at that point, was there? A. In a way, yes, I
 40 would say that was new work, we ran the lines there for I ran the line myself for it in the centre line.
 Q. What I want to get at is this—where did the old blasting stop?
 A. I would say down at the lower Bay where it intersected—where the floor of the tail race intersected with the rock bottom to the north, as that sloped down for deep water, it seemed to run out to that.
 Q. That is where your blasting stopped? A. That is where our blasting stopped.

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Q. Where did the original blasting stop going north from Portage Bay or the Lake of the Woods? A. We stopped just about the same place.

Q. I thought you came to a point where you saw practically no evidence of original blasting? A. Well, whether it was blasting or bared, I cannot say whether there was ever a shot fired there, from my own knowledge, it was so rambling.

Q. To the south it was quite plain there was blasting there? A. Yes, there was blasting there.

Q. Now where did evidence of the original blasting appear? I mean?

HIS LORDSHIP: These irregular walls, he means? 10

A. I am just thinking—I was trying to get at—well, there was not a great deal of it showing down that tail race, there was so much stuff piled in there.

MR. TILLEY: Q. It had been out of use for a long time? A. I judge it had, it was new to me.

Q. It was new to you, but it was out of use for some time? A. It looked to me as though it and I were about the same age.

Q. But you had been in use more recently? A. Well, it was in use for water was running through it. Likewise with me.

Q. Well, at any rate you commenced—water was not running there 20 when you came there, was it, actually running there? A. In the new tail race?

Q. Through the old? A. There was a little leaking through there.

Q. Not to be called——? A. There was a leak but no active water operations going on, no sir.

Q. Then I would like you to tell us what size you excavated to under the mill, because I do not quite know the width and the depth and the length?

A. About forty feet below the mill.

Q. What do you mean by forty feet—deep? A. As I remember it, forty feet below the floor—I have not refreshed my memory on these measure- 30 ments at all.

Q. Would that be below the level of the floor, speaking of the level of the original blasting? A. The floor of the mill. Our work line.

Q. Your work line? A. Yes, the floor of the mill.

Q. Now, I want to know how far you went below the old floor of the raceway, the original raceway—this irregular thing? A. Our drop, this drop we dug out that vertical drop below the natural floor of the old tail race?

Q. Yes? A. To the best of my memory it was about twelve feet.

Q. Twelve feet? A. Just about that, is my memory of the matter.

HIS LORDSHIP: That is in these wheel pits? 40

A. That was for the bottom of the wheel pit.

MR. TILLEY: Q. And then from that point you blasted for the tail race? Did you? A. No, from that point we blasted for the wheel pits, and then the tail race followed the wheel pits.

Q. Did you blast out further to get the tail race or were you down?

A. No, we cleaned out that tail race and made a channel of it, using what

we removed in some respects for our riprap side wall, which was laid up dry without mortar or anything of that kind.

Q. Then was that tail race sloping down towards the water line? A. Some, not very much.

Q. What was the incline of it? A. Are you speaking of the vertical wall now or the floor?

Q. I am speaking of the floor? A. The floor of the tail race sloped out toward the lower bay.

Q. Toward? A. Toward the lower water.

10 Q. I do not follow you—the slope on the tail race was from the mill down toward the north water, wasn't it? A. No, it was out. What do you mean?

Q. It sloped out—the tail race sloped out? A. Well, I will—

HIS LORDSHIP: Tell me this. See if I can get to understand you—you excavated the wheel pit to a point about twelve feet below the floor of the tail race? A. Yes.

Q. And when you got there, to the point where your wheel pits were finished, and you wanted to get rid of that water, did you go on to the same level with the tail race? A. It sloped up.

20 Q. And there was a different level to the floor of the wheel pits and of the tail race? A. There was a different grade from the floor—the floor of the wheel pit might be construed as the place where the wheel stands—I am speaking of the extreme bottom of the wheel pit, and it raised then to the discharge entrance.

Q. It went on to the discharge entrance? A. Yes, and the deep hole under the wheels was for draught tubes and to get rid of certain bubbles and currents which happen behind wheels, and it went back to about the old position in the Lake where it discharged.

MR. TILLEY: Q. Now then what was the width of that wheel pit?

30 A. What was the width?

Q. The same width? A. It was wider than the intake.

Q. How much? A. Oh, a guess, I would say possibly ten feet, and I do not have to exceed it though, in any way.

HIS LORDSHIP: Ten feet wider than the intake?

A. At least that I should think ten feet and that was dead water.

MR. TILLEY: Q. You made a distinct channel, at any rate from the wheel pit towards Darlington Bay? A. Yes, we made a channel.

Q. Which you say sloped up? A. It sloped up because of the great depth.

40 Q. You had gone down, naturally? A. It sloped up just about twelve degrees.

Q. It sloped up twelve degrees? A. It sloped up about twelve degrees, some little digressions about it.

Q. Are you still with the MacDonald Company? A. No, I am President of the L. A. Stinson Company. I incorporated my own company a number of years ago.

Q. Now, I am told the plans for this work were in existence not long ago,

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but that when we asked for them that we were refused them, and we assumed that because your Company was retained by the defendants—is that so?

A. I did not get all parts of your question perfectly clear—the latter part of it again, please?

Q. Was the MacDonald Company retained by the defendants? A. I have no means of knowing that. I have not seen one of them.

Q. Did you know that they refused to let us have the plans? A. I did not.

Q. Have you enquired whether they existed? A. No, I did not enquire, I know nothing about that. 10

Q. Do you know a Mr. Martin, to whom they were loaned and then taken back by the MacDonald Company? A. No, sir.

Q. Did you hear of that? A. No, sir, that is all news to me.

Q. You did not hear of anything? A. Yes, the MacDonald Engineering Company, during the time I was with them, we used to keep the records about fifteen years.

Q. Yes? A. And that was the practice except with grain elevators, and they were enjoined to be returned to the owners at the end of fifteen years.

Q. Were there any stop logs there when you first came on this work?

A. I do not remember any stop logs there. 20

Q. No stop logs? A. I do not remember of anything of that kind. I went up on some rubbish there, and I had a healthy ice bath on the strength of it, and I do not think there were any stop logs, and where I moved around there for a few minutes, a pretty heavy current there.

Q. No stop logs? A. There was some current there.

Q. Where was that? A. At the intake.

Q. Out in front of the C.P.R. bridge? A. Yes, across from the C.P.R. bridge to this pier that was there, I had a plank across.

Q. Which pier? A. The pier to carry the end of the aerial tramway that removed the stuff from the Lake over to the Stamp Mill. 30

Q. Was it north of the C.P.R. bridge or south? A. South.

HIS LORDSHIP: Standing out in the water.

MR. TILLEY: There—you mean some place out from the C.P.R. bridge?

A. There, just in the intake, right there, in that locality.

Q. And the current that was there would be a current going in to the "A" Mill—that is to the Mill to the west—was there a mill to the west of this mill, this stamp mill, was there a mill there? A. A little to the west of it the present Lake of the Woods flour mill was there.

Q. And at the point where you were, there was a current to the raceway of that mill? A. Well, my action— 40

Q. To the Lake of the Woods? A. My action when I hit in there was towards the intake.

HIS LORDSHIP: Which intake? A. The old intake.

HIS LORDSHIP: The old intake of which mill?

A. To the abandoned, to the old stamp mill.

HIS LORDSHIP: What we call this Mill "C"? A. To the stamp mill, yes.

MR. TILLEY : I thought you told me there was no discharge of water from that raceway except possibly a little leakage ? A. Leakage, yes.

Q. So that could not be much current, that leakage ?

A. You could not tell, because it was covered with ice and snow, but through some openings I did see quite a flow of water.

Q. Where ? A. Through the old race.

Q. How much ? A. I was looking through a hole and I did not know the area at that time, now what was the middle, hardly.

Q. You what ? A. I could not tell where the edges were or how far
10 out this current went. I only knew there was a current there.

Q. Where you were swimming ? A. There was a current right at that intake.

Q. There is another intake right at the same place, or near the same ?

A. Not so very near.

Q. How far away ? A. An eighth of a mile, good.

Q. A good eighth of a mile ? A. I should say so.

Q. And there was no current at that intake from that point that you know of ? A. Not that I know of.

Q. All you know is you experienced a current there, it was cold ? A.
20 Reasonably cold.

Q. And you know of no stop logs ? You know of no wheels ? A. Yes, I know of wheels.

Q. Where ? A. I know of shafts coming up from them.

Q. Where ? A. In the old stamp mill.

Q. Did you see them there ? A. I saw them.

Q. But you did not see the wheels ? A. No, they were down, I suppose, under the water. I think after I saw the wheels sitting up on the ground, but on that point I cannot say, though.

MR. TILLEY : That is all, thank you.

30 RE-EXAMINED :

BY MR. MCCARTHY.

Q. You told my learned friend, just now, that you saw some shafts?

A. Yes.

Q. Where did you see the shafts? A. In the stamp mill.

Q. What part of the stamp mill? A. Directly over the water wheels,
as it was vertically, the vertical shafts from the water wheels.

Q. Where would they be as compared with the wheel pit that you blasted? A. They would be farther to the north, I would judge.

Q. They would be farther north? A. They would be farther north,
40 yes.

Q. Then I think you told my learned friend you could not see the wheels because they were under water? A. I judged so, there was so much over them, the timbers and stuff, I did not see the wheels at that time.

Q. But you saw the shafts, the vertical shafts? A. I saw some shafts showing but it was all to come out and I really did not pay any attention to it.

Q. Then where was it you noticed the current, just at the intake?

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A. It was at the intake.

Q. North or south of the C.P.R. bridge?

A. South of the C.P.R. bridge.

Q. That is where you fell in? A. And I further saw a current down through these innumerable islands on the discharge. I saw open water there, there was quite a bit of open water there and showed some current and some little backwater, flowing water. I saw some of both out there.

Q. Did you see any water in the race under the train shed or before you built the train shed, or was it all dammed back? A. No, there was water there, I rodded that to get the survey. 10

Q. You rodded that to get your survey? A. Yes.

Q. Can you give us any idea of the water there? A. Not very much. It is too much guess, I am afraid.

Q. Too much to guess? A. If I had to guess, I would guess twelve feet.

Q. Twelve feet? A. From the point I stood on.

Q. And what point did you stand on? A. Rock and stone and ice and most everything you could think of.

Q. Everything except the "burning deck?" A. And then I took a good guess—I found a rail on the C.P.R.

Q. When I said "point" I did not mean point of rock, I meant what position were you standing in when you made the soundings? A. Just on the edge of this slope. 20

Q. Can you tell me about where you were? A. I do not think I could very well, for I did not know myself, so much snow and ice in there, there was no chance of arriving at it.

HIS LORDSHIP : This place——?

A. It was at least south of the bridge.

Q. This place where you were speaking of about twelve feet of water, it was south of the railway bridge? A. Just directly south of the railway bridge, yes, I think just very close by. 30

HIS LORDSHIP : He thinks the point where he found twelve feet of water was just south of the railway bridge?

A. For the snow had drifted in there and I got a very good place to stand, that is immediately in the middle there—just twelve feet there.

MR. TILLEY : Q. That was what month of the year? What month of the year was that? A. In December, or January, but right about Christmas time.

MR. TILLEY : That is all, thank you.

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JAMES ALEXANDER :

CROSS-EXAMINATION CONTINUED BY MR. TILLEY. 40

Q. Now, Mr. Alexander——

HIS LORDSHIP : You were talking about the stop logs, and the openings ; he said there was a clear opening of about twenty feet two inches in each.

MR. TILLEY : Q. Now, the work that Mr. Stinson was referring to was all done before you got there? A. Oh, yes.

Q. Now then, will you just tell us what changes were made after you arrived at Keewatin, Mr. Alexander, what changes in the raceway or the power machinery, wheels, or anything since you got there, Mill "C"? A. Up to the present?

Q. Yes, right to the present day, and let us have it in years? A. You are speaking of the power?

Q. Yes, the raceway and the power plant? A. There was a little excavation done on the tail race, at the Lake end in 1911.

HIS LORDSHIP : At the Lake end?

10 A. Yes.

Q. That is what we have been calling? A. Not at the tail race, down at the Darlington Bay.

HIS LORDSHIP : You said on the Lake end?

A. On the Darlington Bay end.

MR. TILLEY : Q. What was done there in 1911? A. The Lake was very low in that year.

Q. Yes? A. And at the tail of the raceway was above the water in the Lake.

20 Q. Yes? A. And when the mill was running, there was a pool there, and this rock was taken out to try and ease that.

Q. With what result? A. A little improvement, not a great deal because the rock was at the same level as the bottom of our draught tubes.

Q. Yes? A. And we did not want to unseal the draught tubes at any time.

HIS LORDSHIP : They were to be kept full of water all the time?

A. Yes, it was very high at the end of the raceway.

MR. TILLEY : Q. Does that describe everything you did in 1911?

A. So far as the tail race is concerned it is.

30 Q. What else did you do in 1911? A. We added sixty-eight machines to the mill.

Q. What machines did you add? A. They are what we call centrifugals.

HIS LORDSHIP : 1911? A. Yes, sir.

MR. TILLEY : That is still 1911, "C" mill? A. Yes, I think 1911—1910, I am wrong in the year.

Q. And you call them centrifugal machines, what are they? A. They are for rebolting the flour.

HIS LORDSHIP : You said before, it was 1910 these centrifugals were put in?

40 A. I think that is correct, starting in 1911, I might have made a mistake of one year, as I think it was 1910.

Q. 1910 or 1911? A. It was the year I was married, I remember that, so it was a kind of a milestone.

Q. A milestone is very good—did they use much power? A. No, they are only light machines, I presume three h.p. each possibly.

Q. Anything else done that time, or about that time? A. No, nothing that I remember in 1910.

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- Q. Now then, what is the next thing that was done after 1910 or 1911?
A. I think that takes us up to the power change.
Q. Takes you up to the power changes? A. Yes.
Q. When was that? A. That was in 1925.
Q. Now, do you say from 1910 or 1911, there was no change in the power plant, or in the raceway? A. No.
Q. Until 1925? A. There was a little change in the tailrace in 1922.
Q. That you have spoken of? A. Yes, but the power change took place in 1925.
Q. Now, what change took place in 1925? A. We took out two tur- 10
bines that were there, and put in new ones.
Q. Did you say in 1922 there was a little change? A. Yes, we tried to take a little more at the lower end.
Q. Did you do it? A. We took a little off.
Q. For what purpose again? A. To try and help out the wheels again.
Q. To help out the wheels? A. There was a loss of head, there was about two feet of a loss of head in the tailrace, and we tried to help that.
Q. What did you do? A. We took a little rock off one side.
Q. How much? A. It was a V shape, it went down in a kind of taper, I think it would be about ten feet wide at the widest point, and it was just cut 20
off in a taper.
HIS LORDSHIP : On which side?
A. On the east side.
MR. TILLEY : Q. On the east side? A. Down at Darlington Bay.
Q. How many yards? A. Oh, I would say between ninety and one hundred yards possibly.
HIS LORDSHIP : Cubic yards?
A. Cubic yards, of course most of it was up out of the water. The excavation in the water was very little, because I did not unwater it. We tried to take it out when the water was running. 30
Q. Now, what happened in 1925? A. The change in the power plant.
Q. What was it? A. We took out two of the turbines that were there and put in new ones.
Q. What ones did you take out? A. We took out two fifty-six inch units.
Q. That is two doubles? A. Yes, they are twins, two runners on each shaft.
Q. Two runners on each shaft? A. Yes.
Q. And they were what? A. Fifty-six inch.
Q. And had they been in since 1906? A. They had been put in in 40
1906, yes.
Q. And what make? A. They were William Hamilton, made in Peterboro. Sampson is the designer of the turbine of the wheel.
Q. And do you know what the capacity of these wheels was? A. In horse-power?
Q. Yes? A. They were 750 h.p. at sixteen feet head.
Q. At sixteen feet head? A. Yes.

- HIS LORDSHIP : What do you say?
 A. 750 h.p. each.
 HIS LORDSHIP : That is each unit of two units?
 A. Yes, each unit.
 HIS LORDSHIP : At a sixteen foot head?
 A. Yes, a sixteen foot head.
 MR. TILLEY : Q. And what discharge? A. 551 cubic feet each, I think was the discharge.
 Q. 551 cubic feet each? A. Yes.
 10 Q. Per second? A. Per second.
 Q. And those were the only wheels that had been in from 1906?
 A. There was a third wheel in there.
 Q. What was the third wheel? A. The third wheel was the forty-five inch, the same design.
 Q. The same design, and same make? A. Yes.
 Q. What have you to say about that wheel as to discharge?
 MR. MCCARTHY : What do you know?
 A. No, that remained there, the discharge is 300 feet at sixteen foot head.
 MR. TILLEY : Q. Yes? A. And I think the horse-power is 450, some-
 20 thing like that.
 Q. Now, those were the three wheels that were in there in 1906?
 A. Yes, the original wheels.
 Q. You took out the two and left in the third? A. It was not changed.
 Q. Have you the third one still there? A. It is still there.
 Q. Now, what did you replace the two with? A. We replaced the two units with runners sixty-six inches, two runners on each shaft.
 Q. Two runners on each shaft? A. Yes, horizontal wheels.
 Q. Now, what was the discharge of those? A. It is 630 feet at a seven-
 teen foot head.
 30 Q. Six hundred and what? A. 630 cubic feet.
 Q. And what do you mean, 630? A. There are the two units, the discharge would be twice that amount.
 Q. That is the discharge less than for the ones you took out? A. Oh no, it is more.
 Q. I thought you said 700? A. No, I said 551. Of course they are both doubles.
 Q. And the horse-power? A. 1,000 each.
 HIS LORDSHIP : Let me get that, these two new ones, that replaced the old ones in 1925 were what?
 40 A. Sixty-six inch runners.
 Q. And the horse-power? A. 1,000 h.p.
 Q. Each? A. Each.
 Q. And the discharge? A. 630 cubic feet.
 Q. Second feet? A. Second feet each.
 Q. Yes, at? A. At seventeen foot head.
 MR. TILLEY : Q. That horse-power you gave of these new wheels, was at what head? A. Seventeen feet, seventeen foot head.

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Q. And what make of wheel? A. They were made by the Boring Hydraulic and Engineering Company, Lindsay, Ont.

Q. And does that fully describe them? A. The wheels?

Q. Yes? A. Yes, I think so, that would describe them.

Q. And anything else done at that time? A. These wheels were lower —they were on the lower level than the original wheels.

Q. How much were they lowered? A. From the centre of the shaft to the centre of the shaft, I think it was four feet six.

Q. From the centre of the shaft to the centre? A. But of course the floor was lowered too, the floor was lowered about five feet, two and one-half 10 or two-tenths.

Q. That is the floor was lowered more than the wheel? A. Yes.

Q. And the floor was lowered? A. Five feet two and one-half or two-tenths.

HIS LORDSHIP : What floor?

A. The floor the wheels set on, the floor of the wheel pit.

Q. And it was lowered how much? A. Five feet two and two-tenths inches.

MR. TILLEY : Q. What was the effect of that? A. The original wheels were set too high. At low water they were not properly sealed, and to have 20 better power, we lowered them down.

Q. Not only lowered the wheels, but lowered the floor? A. Yes, we had to lower the floor to lower the wheels.

Q. Did you lower the floor more than the wheels? A. Well, the centre was different from the two turbines ; the one turbine is ten inches bigger than the other, and that alters the centre of the shaft.

Q. Anything else done at that time? A. The excavation of the floor was done.

Q. You have told us that? A. And the tail race was excavated, too.

Q. The tail race was excavated again? A. Yes. 30

Q. To what extent this time? A. The tail race, as I said before, came up on a slant.

Q. Yes? A. And it started about forty feet behind the mill.

Q. Yes? A. And the channel, as I remember it was ten feet wide, we started in like at a sharp point, and up at the Darlington Bay end, and we deepened it nine feet six inches, it started there like a wedge, down to nine feet six inches, and I think I am safe in saying it was fifty feet, the cut.

Q. They took out how much, could you say? A. Something like 1,500, that is the estimate.

Q. And the reason for that was what? A. To improve conditions. 40

HIS LORDSHIP : And you deepened the discharge end at the Darlington Bay how much?

A. Nine feet six inches.

MR. TILLEY : Q. Now, will you tell me what other installation had been made in the mill since 1906, instead of these six or nine centrifugals you spoke of mill machinery? A. There has been very little mill machinery added to that mill.

—continued

Q. How much? A. There have been no rolls added.

HIS LORDSHIP : Since when?

MR. TILLEY : Since 1906? A. No, the rolls are the same as they were then.

Q. You have a great deal more capacity in the mill? A. Yes, that is so.

Q. Due to what? A. Well, to remodelling it somewhat, respouting it, and changing the machines somewhat.

Q. And improving the power? A. Yes, there has been very little increase in the machinery.

10 Q. But it was increase in power? A. Yes, increase in power.

MR. TILLEY : That is all, thank you.

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MR. MCCARTHY : I do not want my friend to be misled. Your Lordship will remember I called Mr. Cherry on Mill "A" and my friend asked him some questions which he said he could not answer, but that Mr. Alexander could answer. Now, I have called Mr. Alexander on "C" which prevents my friend perhaps getting information which he might have got from Cherry, and I do not want to shut him off. If he wants to cross-examine Mr. Alexander as to those cuts, and the turning of a corner after that, I admit that they are removed, because they were done after 1916, but if he wants to ask Mr. Alexander about cutting off that corner of the mill race of "A", or below the
20 bridge, if my friend wants to—

HIS LORDSHIP : In other words the ruling that I gave that the witness called in regard to one mill could not be examined on the other?

MR. MCCARTHY : I am waiving that as to that, they call Mr. Cherry, and he said he could not tell, but this man would.

CROSS-EXAMINATION :

BY MR. TILLEY. (*Continued*).

Q. Now, what changes have been made in the raceway at Mill "A"?

30 A. In my day, I have only been associated with Mill "A" after 1912, the first time I was there was when the new wheels were being installed, that is the present five wheels.

Q. Why was it that you would not be at Mill "A"? A. I would stay at Mill "C".

Q. Do you not know what was done before 1912, at Mill "A"? A. Do I not know what was done?

Q. Yes? A. What I have heard of, because I only took "A" in hand in 1906—six years previous to that.

40 Q. Now, what changes were made in Mill "A" that you have a personal knowledge of—Mill "A"? A. Yes. Mill "A", 1910 is the first I remember of.

Q. 1910, what took place in 1910? A. They took in some of what is known as Bolters.

Q. That is mill machinery? A. Yes.

Q. Do they take up a great deal of power? A. No, most of the mill machinery runs very light outside of the rolls.

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Q. Have they put in any rolls while you have been there? A. Yes, they put in rolls in 1916, I think.

Q. In 1916? A. Or 1917.

Q. What time in 1916, were they put in, do you know? A. What time?

Q. Yes? A. Well, I do not just remember, they were operated in 1917, we put them in in 1916, and I think operated them in 1917.

Q. How many rolls were put in? A. There were eight stands.

Q. Eight stands? A. Yes.

Q. And how many were there before in the old mill? A. The total 10 number?

Q. The total number, before you put in the eight? A. I do not know just the exact number.

Q. What power would those eight require? A. Probably from eight to ten h.p.

Q. For the eight? A. Each.

Q. Now then, anything else put in in your day that you know of? A. At that same time there were four more of these sifters put in.

Q. Of what? A. Of these bolters, put in at the same time.

Q. At the same time? A. Yes.

Q. Anything else? A. I am just trying to think of the year 1918.

Q. 1918? A. Yes.

Q. What? A. There were four more rolls put in, smaller rolls, and another sifter for a small mill we have inside the large mill.

Q. What power would they require? A. The smaller rolls, they would probably require about eight.

Q. About eight? A. Yes, about eight.

Q. Eight h.p. each? A. Yes.

Q. And how many? A. Four.

Q. And what else? A. One sifter, and one small roll.

Q. And what else was done? Anything else? A. I do not think we have added any milling machinery since then, I feel quite sure.

Q. Now, what was done with the raceway, to your knowledge?

A. Well, in 1924 the corners were taken off.

Q. The corners were taken off, yes? A. Up at the intake gates.

Q. Up where? A. At the intake in Portage Bay.

Q. At Portage Bay? A. Yes.

Q. That is south of the C.P.R.? A. South of the C.P.R.

Q. What was done there? A. The corners were taken off.

Q. That was 1924? A. Yes.

Q. On which side? A. On each side.

Q. To what extent? A. I only can give it from memory, I have no record of it, but I will try and give it as correct as I can. On the east side, which was the widest point, I think would be about eight feet.

Q. Eight feet? A. Eight feet.

Q. And tapered? A. Yes, it came down on a taper, not quite down to the bridge.

20

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40

Q. And extending how far south of the bridge? A. I think we stopped the taper, probably two feet or three feet from the bridge and it would extend up somewhere in the neighbourhood, on a slope.

Q. Fifteen feet? A. Yes.

Q. How much yardage on the slope? A. I did not calculate the yardage, it was up, out of the water, it was difficult to calculate.

Q. Did that make it conform more to the spread, of the outside?

A. Yes.

Q. But took off the corner? A. Yes, it came out to meet the other new
10 abutments that we put there in 1912.

HIS LORDSHIP : That was south of the bridge?

MR. MCCARTHY : Here is the plan, I think the red marks show it.

MR. TILLEY : Is this the plan of it? A. It is just rough, marked on here, yes, here is the mark here (indicating) this side (indicating) was not quite so much, it was about four feet.

Q. On the west side? A. About four feet.

Q. Tapering off to the bridge? A. Not quite to the bridge, about three feet away from the bridge.

Q. Will you let His Lordship see that, cutting it off here and here (in-
20 dicating)? A. Yes.

Q. That work was done when? A. In 1924, August.

Q. And you say it was to make the side coincide with the side where you had extended the stop logs? A. Yes.

Q. In 1912? A. Yes.

Q. How far out did you carry these stop logs in 1912? A. Well, I did not work on the stop logs.

Q. You can tell? A. Well, about ten feet, this abutment here is the line of the old stop logs, which is approximately ten feet further south, just the width of the bridge.

Q. You say the abutments? A. Or piers, these are the abutments,
30 and these are the piers in the middle.

Q. Are these the new ones? A. Yes.

Q. You said "old ones," you meant new ones? A. Yes, they were there in 1912.

Q. Well, then, did you direct that to be done, that work to be done?

A. Yes, I was working at it.

Q. And did that extend up as far as where the old stop logs were, did it take in? A. Yes, oh yes.

Q. Took in that very location in which they sat?

40 A. Yes.

Q. And beyond? A. Not far beyond.

Q. How far would that cutting extend? A. That is towards the rail-
way?

Q. Yes, beyond the old stop logs? A. Yes, ten feet nearly.

Q. Then on the location of the old stop logs, how much wider is the opening now that the old stop logs were there? A. At the location of the old stop logs?

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Q. Yes? A. Well, the logs—well, the logs were gone when I got there, it was somewhat wider.

Q. But you cannot fix the amount? A. Yes, somewhat wider.

Q. Several feet wider? A. Yes, the logs were all gone.

Q. How wide are the stop logs, is the place where the stop logs are now?

A. It is fourteen feet, five and one-half or five and one-quarter clear in each place.

Q. 14.5? A. Yes.

Q. And there are three of them? A. Yes.

Q. And what was it in the old location? A. Only from what I have 10 been told. I have been told there were eighteen feet.

Q. And two of them? A. That is quite so.

Q. So you have got how much more than—how much more does that make? A. 43 against 36.

MR. TILLEY : About seven.

HIS LORDSHIP : Three gates now of fourteen?

A. Five and a quarter or five and a half, I am not just sure of the frac-
tion.

HIS LORDSHIP : Instead of two at 18? A. Yes.

MR. TILLEY : Q. Now then, Mr. Alexander, why was that work done? 20

A. Why was it done?

Q. Yes? A. To improve conditions in the head race here.

Q. What was wrong, what bad effect were you getting? A. It inter-
fered with the water, that was one reason, and another reason—

Q. One reason, the projections interfered with the run of the water?

A. Yes.

Q. Yes? A. And owing to the way our rock is here, the different
heads, old logs in the lake would come in here, and stick on them corners, and
it was difficult for us to keep the logs away from there, sometimes they would
cut our water down on account of the logs laying there. 30

Q. On account of the obstructions? A. Yes, the logs would catch.

Q. But the main reason, from a practical standpoint, you got better re-
sults for your power? A. Yes.

Q. And a better flow of water? A. Yes.

Q. Is the narrow point at the bridge still there? A. Yes, it is still
there, there was no change made there.

Q. And therefore you improved conditions in that way? A. Oh, yes.

Q. And then when was the corner taken off that you say? A. At the
same time.

HIS LORDSHIP : That is ¹⁹²⁴ ~~24~~?

A. Yes. 40

HIS LORDSHIP : That is north of the C.P.R. bridge?

A. At the turn.

MR. TILLEY : Q. And what was taken off? A. As I remember it,
this was about eight feet six.

Q. The deepest point was about eight feet six? A. Yes, and it ex-

tended around here, quite a ways, probably twenty-five or thirty, we tried to make it on a curve.

Q. The new line on a curve? A. Yes.

Q. Did you take off the point? A. Yes.

Q. And at the point? A. I would say eight feet six.

Q. And it tapered each way? A. Yes, just sort of tapered off, it was more or less loose on the rock.

Q. Why was that done? A. It was the same, the conditions, to improve the water in the head race and the flow.

10 Q. But what difficulties were you experiencing? A. Well, we were experiencing low water.

Q. Low water? A. And quite a drop in the raceway, if I remember it was something like fourteen inches from the fore-bay here to the fore-bay at the wheel.

Q. From the fore-bay at the entrance to the fore-bay at the wheel?

A. Yes, or something like fourteen inches.

Q. With the turbines running full? A. Full gate, yes.

Q. With a full gate? A. Well no, we could not run full gate, because when our gate was full, why it had a tendency to empty the penstock.

20 Q. Yes? A. And we had better power with about three-quarters gate than we had with the full gate, because the full gate would certainly draw much heavier, that was the experience we found there, that it was better for us to close the gate a little than to run it wide open.

HIS LORDSHIP : Witness, you are turning your back to me, and every now and then I miss something.

If you stand up, facing out—you said something about a drop of fourteen inches, and I could not hear enough to understand what it was?

A. That was the drop from the fore-bay there, from the stop logs.

MR. TILLEY : The stop logs at the entrance to the raceway?

30 A. Down to the mill.

HIS LORDSHIP : You mean the stop logs down at the C.P.R. bridge?

A. Yes.

Q. A drop of fourteen inches? A. Yes.

Q. In the floor of the headrace? A. No, on the level of the water.

Q. That is the water down at your penstock opening was fourteen inches lower than up here? A. Yes, I think that is the correct number of inches.

MR. TILLEY : Q. Lower than it was at the stop logs south of the C.P.R.?

A. Yes, there was a considerable drop, it might have varied from day to day, I think one day especially it was something like fourteen inches.

40 Q. When you had low water conditions, what was the condition then?

A. In 1924?

Q. Something like fourteen inches—What was the condition when you had low water conditions? A. In 1924?

Q. No, at the time you had been noticing this from 1911 on, hadn't you?

A. Oh yes, it was always noticeable under low water conditions, in high water it was perfectly all right.

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Q. But in low water conditions it was quite noticeable? A. Yes, we had the low period in 1911 and 1924 was a low period.

Q. And then when you made these changes you had a better head?

A. Oh yes, yes.

Q. Because it was kept up to level at the wheels? A. Yes, that was the idea.

Q. And then you could operate with your wheels full open? A. I do not think we ever was able to keep them full open.

Q. You could get them——? A. Well, we had better power.

Q. You had a larger opening? A. We had better power. 10

Q. You had better power? A. Yes.

Q. And you could open your wheels more? A. This type of wheel, we have found that in low water, like this, it does not keep as good power if it is wide open, if it is probably say ninety per cent., I do not know why, but that is the peculiarity of the wheel, we had better power.

Q. You had better power, too, with the points taken off, as you have described, you had a better head? A. Yes.

Q. And to the extent to which you had a better head, you obviate this low water effect? A. Not altogether.

Q. But to the extent to which you got benefit of that? A. Certainly. 20

Q. You obviated the low water effect? A. Yes.

Q. And when you obviated the low water effect, although you might not open them up full, you could open them up more? A. Slightly.

Q. And a bit more water? A. If necessary.

Q. And the water that did go through was under greater pressure?

A. Under better control.

Q. Not only control, but under greater pressure? A. Yes, because it had slightly more head.

MR. TILLEY : Q. Did I ask you whether the power plant—when I mention the power plant, I mean any part of the machinery connected with the development of power was changed at the time you made these changes, or while you were there at Mill "A"? A. No, there were no changes in the power plant at that time, it was just to improve conditions there. 30

Q. How long have the present wheels been in, back to 1912, I believe?

A. Yes.

MR. MCCARTHY : I did not mean my friend to cross-examine him on things that Mr. Cherry could tell him.

MR. TILLEY : He could not tell me. I think he got his information about the five machines?'

A. I do not know, I am supposed to know everything. 40

Q. That change was made in 1912? A. Yes.

Q. At the same time that you carried the stop logs out? A. No, I did not carry the stop logs out.

Q. At the same time they were carried out to the south of the C.P.R. bridge? A. Yes, that was at the same time.

Q. Which certainly improved your water conditions? A. Yes.

Q. That would be beyond question that carrying them out in that way to this wider spot would improve your water? A. It certainly did not do it any harm.

Q. It improved it? A. Yes.

Q. At the same time the Voith Machines were installed? A. Yes.

Q. Which are wheels that have considerably greater capacity than the former wheels that were there? A. Oh yes.

Q. How would you compare them? A. With the discharge?

Q. Yes? The Voith with the former wheels? A. The Voith is a very
10 much more efficient wheel, the original was a vertical wheel, and the Voith is a horizontal wheel with four runners on the one shaft.

Q. And how would you compare the discharge from that, that is from the old installation, and the present installation? A. The discharge?

Q. Yes? A. The discharge of the Voith wheels at sixteen foot head, as I remember it, is 1352 or 1354.

Q. Is that sixteen foot head? A. Sixteen foot head, I think, I am not sure about that.

Q. Sixteen foot head? A. Yes, I think, the old wheels, the rating of them was at 20 foot head.

Q. And their discharge was? A. I think there was a sixty inch, I
20 never had anything to do with those wheels.

Q. I would like to clear that up, because I think you have corrected the error already, the sixty inch wheel? A. The sixty inch wheel, if I remember, had a discharge of 209 anyway.

HIS LORDSHIP : The Voith turbines, the other witness said the Voith turbines, four wheels, 338 each, a total of 1352 cubic feet per second? A. Yes, I think that is correct.

HIS LORDSHIP : That is based on a twenty foot head? A. Yes.

MR. McCARTHY : I really am not waiving my friend's right to cross-
30 examine on these points at all.

MR. TILLEY : I submit my friend has.

MR. McCARTHY : What I waived was only in regard to questions Mr. Cherry could not answer.

HIS LORDSHIP : Cherry gave you that information.

MR. TILLEY : What information?

HIS LORDSHIP : About the Voith turbines, and it was the exact discharge.

MR. TILLEY : Would your Lordship read it.

HIS LORDSHIP : The Voith turbines had four runners on the one shaft,
338 each, a total of 1352 cubic feet per second ; and he says he is confident
40 that was based on a twenty foot head.

MR. TILLEY : Q. You say it was based on sixteen foot? A. I am sure it was sixteen foot, I feel quite certain of that.

HIS LORDSHIP : Alexander corrects that.

MR. McCARTHY : That does not get over that. I am not agreeing at all to have my friend cross-examine this witness.

HIS LORDSHIP : The idea was this, Mr. McCarthy, it was just on that point when this other man, whatever his name was, was weakening saying

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that Alexander had had mechanical charge since 1907, and the information he had he had gotten from him, and so on, and it was just on that point that he quit giving any information so that I think insofar as this point is concerned—

MR. McCARTHY : My friend has travelled far beyond that and other matters too, it seems to be interminable. What I really had in mind was what Mr. Cherry said, he did not know—that was the gates.

HIS LORDSHIP : Cherry would not undertake to speak of his own knowledge as to the head.

MR. McCARTHY : My friend asked him, it was not me. I did not tender 10
the evidence. It would not be admissible if I had, it is my friend's cross-examination.

MR. TILLEY : That is all, Mr. Alexander.

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RE-EXAMINED :

BY MR. McCARTHY.

Q. Just a few questions. You spoke of improved conditions at Mill "C" in 1924 and 1925? A. Yes.

Q. And my friend suggested, I do not know if you assented to it or not, that it was entirely due to increased power? A. To increased power.

Q. My friend suggested to you that the only improvement in the condi- 20
tion was in the output? A. I did not mention anything about output, there was no question of improvement—

Q. My friend said to you conditions have improved very much in regard to production? A. No, the production was not any greater, we made almost as much with the old ones as with the new ones, within seventy barrels, there was no question of production.

Q. I am not saying what the increases were in so much, I am referring to the question you were asked—you said the conditions were improved in the mill due entirely to increase in power? A. No, I did not understand the question that way. 30

Q. I did not think you did either, but you answered that way—if conditions were improved, what were they due to? A. Conditions in the mill.

Q. Conditions in Mill "C"? A. Were improved.

Q. My friend asked you if they were very much improved, and you said they were, and he said, "Was it not entirely due to increase in power?"

A. The improvement was in the type of wheels, the wheels are much more efficient than the old ones were.

MR. McCARTHY : That had better go in as an Exhibit.

MR. TILLEY : I have not seen it.

MR. McCARTHY : You were just examining on it. 40

HIS LORDSHIP : I have not seen it, if I may.

MR. TILLEY : I will have to see what it is.

MR. McCARTHY : You can tear off that other part you do not like.

MR. TILLEY : I will look at it. There are a lot of figures on it. I do not know what they all mean.

MR. McCARTHY : You can cut off that portion, I just thought it would help you to understand the rock cut, it does not make any difference whether it goes in or not.

MR. TILLEY : Do you say these figures are all right, are the figures by him?

MR. McCARTHY : If you do not want it, I do not care. I thought it would help to illustrate where the rock cut was.

MR. TILLEY : Is this your plan? A. No, what is it?

MR. McCARTHY : It is somebody else's plan, but he made the red marks.

MR. TILLEY : The plan is put in to show where the cuttings were taken.

10 MR. McCARTHY : Yes, that is the only purpose.

Q. I just wanted to ask you about one point, I see on this plan, where is the narrowest point between the stop logs and the——? A. Just at the bridge here.

MR. TILLEY : The C.P.R. bridge? A. Yes.

EXHIBIT No. 105. Blue Print, Winnipeg River Power survey, Lake of the Woods, Keewatin outlet, Lake of the Woods Milling Company, by F. F. Scoville, dated February, 1914.

RE-CROSS-EXAMINED :

BY MR. TILLEY.

20 Q. Mr. Alexander, this Exhibit ¹⁰³ 3, this photograph, Exhibit ¹⁰³ 2, on the right hand is Mill "C"? A. Yes, that is Mill "C", the elevator.

Q. The elevator for this mill? A. Yes.

Q. Then you spoke of capacity, I see on this building is put, "daily capacity 12,000 barrels"? A. Yes, that is the plants, the two plants are included in that.

Q. And have they a daily capacity of 12,000 barrels? A. No, we never made that.

Q. How high have you got? A. Something over 10,000, a little over 5,000 at each plant.

30 Q. Each plant has a capacity of about 5,000 barrels? A. Yes, about that.

Q. You have about 5,000 at each plant? A. Yes, we have turned out about 5,000 at each plant.

HIS LORDSHIP : What Exhibit is that?

MR. TILLEY : Exhibit No. ¹⁰³ 3, Photograph, my Lord.

HIS LORDSHIP : I want to know where this last blue print Mr. Alexander was explaining is, when was this taken, what time I mean—you have been referring to this, and I have not seen it. I want to know as to what time is this blue print.

40 MR. McCARTHY : I think it is dated at the bottom.

MR. ROBINSON : I think it is dated 1914, my Lord.

HIS LORDSHIP : Is that it, witness? A. Yes, sir.

HIS LORDSHIP : I just wanted something to identify it by. I suppose it is hardly worth while to try to get in anything more today.

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MR. MCCARTHY : I do not think so, my Lord.

HIS LORDSHIP : Any other witness you have will require some time, no doubt.

Will Counsel start on Monday at 10.30 again.

—continued.

Court resumed 10.30 a.m., Monday, May 23, 1927.

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MR. ROBINSON : Mr. McCarthy is engaged in the Custom Enquiry for a time.

We have, however, come to an understanding as to Exhibit 101, that it may go in. We are quite content these should go in, whatever part my learned friend wants to refer to, subject to a statement where the measurements were made to which we have agreed, and if your Lordship would let me state it, by reference to Exhibit 5, your Lordship will see in Number 4 of these Departmental Reports, which is the first one, at page 65, the statement that the section, that is the section at which the measurements were taken first is located on the head race was on the upstream side, at the foot bridge across the channel. 10

HIS LORDSHIP : That is Number 4 of these reports?

MR. ROBINSON : Yes, my Lord, at page 65, and we agree that that foot bridge is the foot bridge shown upon the blue print plan, Exhibit 105, the lower of the two foot bridges, that is the foot bridge further down stream of the two shown on that plan. 20

HIS LORDSHIP : It is agreed that the foot bridge—

MR. ROBINSON : Is the foot bridge furthest down stream of the two foot bridges shown on the plan as crossing the headrace of Mill "A"?

Then your Lordship will see at page 65, it goes on to say, later on that measurement was changed, and the position just above the intake rack of the head race at Mill "C", that we are agreed is across here, between the point C-1 and C-1 up stream from a line between these two points. We cannot, I think, get it any more closely than that.

HIS LORDSHIP : That is the discharge. 30

MR. ROBINSON : That is the discharge from this raceway. That is the point mentioned on page 65 as being just above the intake racks of the power house.

HIS LORDSHIP : I will tell you what I wish you would do, Mr. Robinson, to make sure I will make no mistake, hand me in a memo for my own use.

MR. TILLEY : For your Lordship's own use.

HIS LORDSHIP : By reference to the Exhibit, showing me exactly what these agreed on points are. Then I will have it.

MR. TILLEY : It can be put in in red ink, with a circle and date and written on the blue print. 40

HIS LORDSHIP : That would be first-rate.

MR. ROBINSON : Then, I need not go on with it now.

MR. TILLEY : They can be marked upon the Exhibit 105.

HIS LORDSHIP : If you would do that, then I would be sure not to be confused.

MR. ROBINSON : I do not think there is any difficulty about that Exhibit. Your Lordship will see the widths at that point, and I wanted to establish clearly what these points are.

MR. TILLEY : I am not sure that I follow the memorandum to show where the extracts we have agreed upon—I have prepared a memo with references to pages, might I put that in as Exhibit 101A. I do not think I need comment on it. It is just certain pages my friend has checked up.

HIS LORDSHIP : That will be Exhibit 101A.

MR. TILLEY : There are certain items that I understand have been taken out, called "gauge records" but I understand it is because they are already included in the entry above, so it is not eliminating them, but because it is unnecessary to have them specially referred to.

I will put in the ten volumes, marked Exhibit 101 and the sheet of references will be Exhibit 101A as a list of the extracts from Exhibit 101.

EXHIBIT No. 101. Ten volumes, progress reports of the Manitoba Hydro metric survey for the year 1912, Department of the Interior, Canada, Dominion Waterworks Power Branch, commencing at Number 4, October.

EXHIBIT No. 101A. List of extracts agreed upon by Counsel as referred to in Exhibit 101, ten volumes water resource papers, Exhibit No. 101.

HIS LORDSHIP : I think we finished with the witness who was in the box on Friday.

Have you another witness, Mr. McCarthy?

MR. MCCARTHY : I think so, my Lord.

First, I was going to read the Examination *de bene esse* of a man called Harding Rideout, taken at Kenora on the 8th April, 1927.

HIS LORDSHIP : You will put this in as an Exhibit.

EXHIBIT No. 106. Examination *de bene esse* of Harding Rideout, at Kenora, 8th April, 1927.

HIS LORDSHIP : His evidence generally bears upon what aspect?

MR. MCCARTHY : He is one of the old inhabitants, as to the conditions.

"Examination *de bene esse* of Harding Rideout, taken before me this 8th day of April, 1927, in pursuance of an Order of the Master in Chambers herein, dated the 4th day of April, 1927—Mr. H. P. Cooke, Counsel for the Plaintiffs, and Mr. J. A. Kinney, Counsel for the Defendants.

It is agreed between Counsel that Examination of the said Harding Rideout, shall be read and made use of where applicable, in the case of Keewatin Power Company, Limited, *vs.* Lake of the Woods Milling Company, Limited, as fully and effectually as if it had been taken in that matter.

Stenographer, Marguerite Rose, sworn.

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Supreme
Court of
Ontario.

Defendants'
Evidence.
No. 22.
Discussion
as to
Exhibits.
23rd May,
1927.

—continued.

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Evidence.
No. 23.
Harding
Rideout,
examination
taken *de bene
esse*—read.
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—continued.

“The above named Harding Rideout, having been duly sworn, testified as follows : (examined by Mr. Cooke).

“1. Q. Mr. Rideout, when did you come to Kenora, or Rat Portage as it was then? A. About '82, I am sure it was.

“2. Q. And this has been your home ever since? A. Nearly all the time,—yes.

“3. Q. I understand that you were engaged in contracting and building during the early part of your life after coming to Kenora? A. Yes, I was contracting and building.

“4. Q. I also understand that you had something to do with hydraulic and engineering construction during those early years? A. Yes, I developed the first water power here for the town,—the Citizens' Company. 10

“5. Q. When did you become acquainted with the Lake of the Woods Mills at Keewatin, and their water powers? A. I cannot say—I presume it would be shortly after they were installed, but I could not say as to the year.

“6. Q. I am advised that in the year 1882 (?1892) there was what is known as the “A” mill of the Lake of the Woods Milling Company, in operation, and that where the site of their present Mill, which is known as Mill “C”, is, there was a saw-mill operating? A. Yes, there was a saw-mill operated at that site, known as the Dick & Banning Mill. 20

“7. Q. At the site of Mill “C”? A. Yes, at the site of Mill “C”.

“8. Q. Both those mills were operated by water power? A. Yes.

“9. Q. Were the channels through which the water was conducted artificial or natural? A. At the Dick & Banning? I don't know as to any work that was done on it, but I presume there must have been something done. I don't know.

“10. Q. Do you know how long the Dick & Banning Mill operated?

A. No, I could not give the length of time. I simply know it was operated.

“11. Q. Do you know whether it was ever closed down or not? 30

A. Yes, it was closed down.

“12. Q. About when? A. Well, in '94, the Citizens' Telephone and Electric Company hired the old Dick & Banning Mill which was idle at the time, had been idle for some years.

“13. Q. You hired that from whom? A. From the Combines, through D. C. Cameron, whatever Company he represented—in 1894.

“14. Q. You say the Mill was idle at that time, had been idle for some years? A. Yes, it was in bad condition, such bad condition that we had to remove the dynamo, as we could not use the mill. The wheel pits were not safe because the first wheel that we hitched on to settled eight inches, and anyone that understands a wheel pit knows that it would not be safe to run a mill under those conditions. 40

“15. Q. Subsequently there was an action commenced against the Citizens' Telephone and Electric Company for rent, by the Ontario and Western Lumber Company? A. Yes.

“16. Q. At the time you rented it, Mr. Rideout, was there any water

whatever going through the raceway? A. Well, I don't know whether there was any overflow or not.

"17. Q. Before you started to use the Mill, was there any constant flow of water going through the raceway? A. I cannot say.

"18. Q. Were the stop logs all in place? A. I think they were.

"19. Q. At the time you rented it, Mr. Rideout, was water being used through that raceway to operate any machinery whatever? A. No.

"20. Q. Then, from the time your lease ran out, sometime subsequent to 1894, was the plant used, after you left it? A. The plant was not used until there was a stamp mill built there by—I don't know the name of the company.

"21. Q. I am advised that it was the Ottawa Gold Mining and Milling Company, Limited— A. Yes, the Dick & Banning mill wasn't used until they commenced operations.

"22. Q. Do you know the time that was commenced? A. I couldn't say exactly, but I know it was commenced about 1900, but I couldn't give dates as to actual commencement, but it was about that time I remember, that some men I had brought in some ore from the Golden Horn Mine.

"23. Q. They were operating an ore reduction works, Mr. Rideout? A. Yes, reducing ore.

"24. Q. Did they stay in business very long? A. I don't think they did, I could not say.

"25. Q. From the time they quit business, was the power used until the present "C" mill of the Lake of the Woods Milling Company was constructed, to your knowledge? A. As near as I have any knowledge of it, it was not used until the present construction.

"26. Q. And the wheels were not turning, nor the water going through the raceway? A. No.

"27. Q. Can you give me any idea as to the size of the raceway that existed at the time you first came to Kenora? (Mr. Kinney objects to question).

"27. Q. Can you give me any idea as to the size of the raceway?

"A. No, I could not. I know there were three wheels in the mill, but as to the size of the raceway, I have no idea.

"28. Q. How many wheels were in the Dick & Banning Mill when you rented it? A. Three.

"29. Q. Do you remember their size? A. No, not now. They were the old wheels, the one we hitched on to was probably what you would call a 70 or 80 inch wheel, I would judge.

"30. Q. When you rented the mill, Mr. Rideout, was there any machinery other than the water wheels there? A. I don't think there was, but I couldn't say for certain." (No cross-examination).

"I, J. N. Ladouceur, of the Town of Kenora, do hereby certify that the foregoing are the depositions of Harding Rideout, taken before me in shorthand upon his examination *de bene esse* herein, on the 8th day of April, 1927.

"(Sgd.) J. N. Ladouceur."

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“I, Marguerite Rose, of the Town of Kenora, in the District of Kenora, hereby certify that the foregoing are the true questions and answers as taken by me in shorthand at the Examination *de bene esse* in this action, of Harding Rideout, taken on the date stated.

“(Sgd.) Marguerite Rose.”

MR. MCCARTHY : That is our defence, my Lord.

HIS LORDSHIP : Now, Mr. Tilley?

MR. TILLEY : I will call Mr. Minor.

REPLY

JOHN ALBERT MINOR : sworn

10

EXAMINED BY MR. TILLEY.

Q. Mr. Minor, where do you reside? A. Keewatin, Ont.

Q. And how long have you resided there? A. I came to Keewatin on the 16th of August, 1891.

Q. And have you been there, constantly there since? A. Oh, I have been away at times.

Q. I mean have you been residing there? A. Yes, my home has been there ever since.

Q. Then, are you familiar with these mill properties, “A” and “C”?

A. I have a fair idea of the construction of them.

20

Q. And you know the raceways that we have been talking about here?

A. I have some knowledge of them.

Q. Some knowledge of them? A. Yes.

Q. Now, Mr. Stinson was describing, on Friday last, certain work that he did, or his company did in 1905 and 1906, and then he said there was other work done by the Lake of the Woods Milling Company—now, would you tell His Lordship what work was done at that time in regard to the raceways, was the flume made any wider, the chute or the flume—

MR. TILLEY : My Lord, possibly it would be well to take them this way—what was the size after the work was completed, the work that was done in 1905 or 1906?

HIS LORDSHIP : This is with respect to Mill “C”?

MR. TILLEY : With respect to Mill “C”? A. Do I understand this is with reference to work done by the Macdonald Engineering Company?

Q. Yes, or by the Lake of the Woods Milling Company—what condition was it in when the work was all completed—I suppose it is in the same condition now so far as the raceway, is it? A. The raceway is the same now as when finished by the Macdonald Engineering Company, and the Lake of the Woods Milling Company.

Q. Now, just describe that condition? A. I have reference to the up- 40 stream portion of the raceway.

Q. That is towards Portage Bay, Lake of the Woods? A. Yes, from the south wall of the train shed to Portage Bay.

Q. Just wait, the south wall of the train shed to Portage Bay—now just describe that point? A. I started to work for the Macdonald Engineering Company, about the middle of November, 1905.

Q. Yes? A. We were working on the train shed at that time.

Q. On the train shed at that time? A. Yes, and the excavation in the tail race from the train shed to Darlington Bay was going on then.

Q. The excavation was going on then of the tail race, and from the tail race, I suppose? A. To Darlington Bay.

10 Q. Now, will you describe, possibly it would be better to describe what was done there? A. They deepened the raceway, I do not know to a foot—

Q. Are you speaking about the upper part, to Portage Bay? A. No.

Q. You are speaking at the train shed? A. Under the train shed and towards Darlington Bay.

Q. Yes? A. I should judge they went down, straight down to a depth of nearly fifty feet.

Q. Straight down? A. Yes.

Q. Fifty feet from where? A. From the bottom of the train shed.

Q. From the bottom of the train shed, do you mean the floor of the train shed? A. Yes.

20 Q. Fifty feet below that? A. Yes, to near fifty.

Q. Yes? A. And the entrance to that part was, I would say, twenty-four feet wide.

Q. Was it twenty-four feet wide when they were finished with it, after they were finished with it? A. Yes, and fourteen feet deep.

HIS LORDSHIP : That is the raceway, under the train shed before this excavation that went down to fifty feet, is that what you mean?

A. After that was completed.

MR. TILLEY : Q. After that was completed—

HIS LORDSHIP : You mean for the downstream—

30 MR. TILLEY : No, the result was they got below the old levels by what he has mentioned?

A. Yes.

Q. How much below? A. Below the old upstream level?

Q. Yes? A. I do not know that I am quite clear just on this, what you want or not?

Q. You are describing some work under the train shed, and you say they went fifty feet below the floor of the train shed, didn't you? A. Yes.

Q. Was that all new excavation, the fifty feet? A. No, there would be about, the old excavation, I would say would take twelve feet off of that.

40 Q. Then, was the balance of it new excavation? A. Yes.

Q. So that part of it had been excavated before? A. Yes.

Q. Then that was the deepening of it, did they widen it or extend it any other way? A. Yes, they widened it clear through to Darlington Bay.

Q. That is the tail race? A. Yes.

Q. How wide did they make it? A. Oh, it was twenty-four feet wide where it entered the flume, that is at the south wall of the train shed.

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Q. At the south wall of the train shed, twenty-four feet, yes? A. It carried that width clear across the mill.

Q. Yes? A. That would be about one hundred feet.

Q. One hundred feet from the south side of the train shed? A. To the north.

Q. To the north side of the mill, one hundred feet? A. Yes.

Q. They carried it through twenty-four feet wide, and what? A. It got wider then, and not so deep, it gradually sloped towards Darlington Bay and gradually down.

Q. And it gradually sloped up, as it went towards Darlington Bay? 10

A. And it got wider.

Q. Can you say how wide? A. I would say fifty feet at Darlington Bay.

Q. Now then, just keeping to that part of the work first, how wide was it, or was there excavation for the raceway at Darlington Bay, before that work was done, or was that the first time there had been any blasting or opening up there? A. Well, I understand there was blasting——

MR. MCCARTHY : Not what you understood.

MR. TILLEY : Q. What width was it, or describe the conditions as best you can before they did that work up to Darlington Bay, the old tail race? 20

A. I would say the channel was ten feet wide there.

HIS LORDSHIP : Where? A. Where the channel entered Darlington Bay.

MR. TILLEY : Where the channel came to Darlington Bay.

HIS LORDSHIP : Did you see it when it was in that condition?

A. Yes, I saw it.

HIS LORDSHIP : And then you said it widened out to what?

A. Fifty feet.

HIS LORDSHIP : What depth would it be there?

A. Not more than three feet deep. 30

MR. TILLEY : Not more than three feet deep at Darlington Bay.

HIS LORDSHIP : Before they made the change or after?

A. Before the Macdonald Company?

MR. TILLEY : No? A. After.

HIS LORDSHIP : It was only three feet deep at that end?

A. Yes.

MR. TILLEY : Q. What was it before the Macdonald Company did the work? A. I do not think there was anything, I do not think it was ever deepened any there.

Q. You do not think it was deepened there? A. No. 40

Q. And then three feet after they did the work and it sloped back to the bottom of this excavation you said they made? A. Yes.

HIS LORDSHIP : Now, was that a gradual slope from this excavation that you said was fifty feet below the bottom of the train shed? Was it a gradual slope there or termination of the cutting from the Darlington Bay opening?

A. Yes.

Q. To where the train shed was? A. Yes.

MR. TILLEY : Just to make that clear, you said that this excavation was made from the south side, at the south side of the train shed, but then you said it extended about one hundred feet to the north wall of the mill?

A. Yes.

Q. And there it commenced to rise?

HIS LORDSHIP : That excavation, as I understood you before, continued more or less uniform throughout the depth of the mill building?

A. Yes, my Lord.

Q. And then, when it got to the north wall of the mill building, it then
10 gradually sloped up, diminishing to three feet in depth at Darlington Bay?

A. That is right.

Q. And what width was it through the mill wall—I did not get that before, though you stated it? A. Twenty-four feet.

HIS LORDSHIP : Under the mill it was twenty-four feet? A. Yes, my Lord.

Q. After it left the mill, did it continue that width? A. No, it got wider.

Q. Gradually wider, or wider quickly, or widened out at Darlington Bay? A. I am not sure whether I am getting you right, I understand you
20 are enquiring where this extra width started.

Q. Take it this way, you told me that underneath the mill they excavated down to say about fifty feet below the floor of the train shed, that was the wheel pit, is that right? A. Yes, my Lord.

Q. And that fifty feet in depth was continued practically to the north wall of the mill? A. That is right.

Q. And that was, underneath there, about twenty-four feet in width?

A. Yes.

Q. Then you said, from that north wall of the mill, the depth gradually diminished? A. Yes.

Q. Until it got to Darlington Bay, where it was only about three feet?
30 A. That is right.

Q. And at that north wall of the mill, you said it was about twenty-four feet wide? A. Yes.

Q. Now, what was the width between the north wall of the mill and Darlington Bay? A. The distance?

Q. No, the width of the raceway, of the tail race, from that point was it uniform twenty-four feet in width all that way, or was it wider than twenty-four feet, or narrower? A. Why, it widened out until it got fifty feet at Darlington Bay.

Q. Where did it widen out? A. Gradually.

Q. It was twenty-four feet at the mill, and when it got to Darlington Bay, it was fifty feet wide? A. Yes, that is right.

MR. TILLEY : Q. And I think you gave the width of the old work under the building as ten feet? A. Ten feet.

Q. Now then, taking the part of the south of the train shed, and extending from there up to Portage Bay or the Lake of the Woods, going south, where

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were the old stop logs in that? A. The old stop logs were very close to where the new ones are.

Q. Where the new ones are? A. Yes, probably.

Q. And how far would that be from the south wall? A. I would say thirty feet.

Q. About thirty feet, and while there may be some change in the location, it is not very great? A. No.

Q. Now, how wide are the new stop logs? A. The new stop logs are in two sections, they are twenty feet openings.

MR. McCARTHY : Q. What? 10

MR. TILLEY : Twenty feet openings? A. And there are two openings.

Q. That is the new stop logs? A. Yes.

MR. TILLEY : Q. Twenty feet wide? A. Yes, forty feet across.

Q. Forty feet across? A. Yes.

Q. Now, how wide was the old? A. They were much narrower.

Q. How much, what would be the width there, where the old logs were?

A. They were constructed the same as the new ones, that is the same, in two sections.

Q. In two sections? A. But they were five feet sections.

Q. Five feet sections? A. Yes. 20

Q. Five feet wide? A. Yes, making ten feet of opening.

MR. McCARTHY : Speak out so we can hear you.

MR. TILLEY : Q. Now, when was that change made, or who made it?

A. That was made in 1906.

Q. By whom? A. By the Lake of the Woods Milling Company.

Q. How do you know it was the Lake of the Woods Milling Company?

A. I was working close by there, and often used to be around.

Q. Yes? A. And knew some of the men.

Q. Now, the men—were the men Lake of the Woods men from the Lake of the Woods Company mill? A. Yes. 30

HIS LORDSHIP : These stop logs were located where? You said it before?

MR. TILLEY : About thirty feet south of the train shed.

HIS LORDSHIP : Just south?

MR. TILLEY : Yes, my Lord.

Q. Now, you say that is the way it was widened at that point, was there any other change made, were they deeper, or how did they compare in depth?

A. The new stop logs had twelve feet of water over the bottom.

Q. Yes? A. And the old had six feet.

Q. That is to say—?

HIS LORDSHIP : Over what, over the sills? 40

A. Over the bottom.

MR. McCARTHY : Q. What, over the sills, speak out, I cannot hear you, you just mumble.

MR. TILLEY : Q. Now, you have referred to the change in the width, and the change in the depth at that point—now, was that change continuous, or was it just at that point, or what? Did that extend from the train shed

down to the Lake of the Woods, or how was it? A. It was a gradual widening from the entrance to the flume at the south side of the train shed, to the stop logs.

Q. It was a gradual widening from the entrance of the flume? A. As far as the stop logs.

HIS LORDSHIP: That is about thirty feet? A. Thirty feet.

MR. TILLEY: Q. Then, from the stop logs down to the Lake of the Woods, what about it? A. It gradually gets wider.

Q. Towards the Lake of the Woods? A. Towards the Lake of the Woods.

Q. Now then, how was that part before the change made by the Lake of the Woods? A. The only thing that I know of that was done there, was to take out some old piling out.

MR. MCCARTHY: Q. What? A. Some old pilings and obstructions of that kind.

MR. TILLEY: Obstructions, that is between the stop logs and the Lake of the Woods? A. Yes, sir.

Q. Was there any blasting that you remember?

A. I do not know of any blasting being done there.

Q. Can you say whether there was or not, you do not remember?

A. I do not know.

Q. Then that was all—do you know whether it was deepened in that part? A. I do not know about that.

MR. TILLEY: That is all, thank you.

HIS LORDSHIP: Now, Mr. McCarthy, you will have at least twenty minutes or so with this witness?

MR. TILLEY: There is one point that I should mention, my Lord, now, and that is that we have one witness, that is ill, and confined to his bed. He was ill on Friday and Thursday—we had expected to have him here to-day, and under the doctor's orders he went out yesterday thinking it would be of benefit to him. Instead of that he tired himself and apparently is not in such good condition to-day as he had hoped to be, and I think the doctor says he will be all right for Wednesday,—my evidence will be complete other than that, I think this afternoon.

Now then the question arises whether your Lordship proposes to complete the evidence this afternoon, and have any argument to-morrow, or whether you propose it to stand until Wednesday, if your Lordship is not going to sit to-morrow for the argument, I would prefer to have the witness here.

HIS LORDSHIP: I would rather hear the witness.

MR. TILLEY: If the argument is going to go on to-morrow I can possibly have him here to-morrow.

MR. MCCARTHY: To-morrow is a holiday.

MR. TILLEY: To-morrow is a holiday, but you do not observe it.

HIS LORDSHIP: I have been working pretty hard and pretty closely, and I do not want to sit to-morrow unless it is necessary. I do not want to have the Court officials here, and I would rather not have to work myself unless it

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is necessary. At the same time, I do not want to block what there may be to follow. I think that if your witness will not be long probably.

MR. TILLEY : No, my Lord.

HIS LORDSHIP : Well, would we not be able to assume he is available for Wednesday morning, and be able to take his evidence, and doubtless finish the argument on Wednesday.

MR. TILLEY : Your Lordship would not think I was asking you to sit to-morrow, it was only because of a remark, and I was only trying to shape it in order that the evidence should get in in the best way .

HIS LORDSHIP : I think what we had better do is to go on and sit to-day, 10 and get through with the evidence if we can, all except this one witness, and even if necessary let us sit a little earlier on Wednesday morning.

MR. TILLEY : I think we would be able to clean it up on Wednesday, that is the only witness left, I do not anticipate there would be much difficulty about that.

HIS LORDSHIP : Anyway, I will not arrange to have this evidence taken this afternoon, we will try and get on some other way.

MR. MCCARTHY : Have you finished with the witness ?

MR. TILLEY : Yes.

MR. MCCARTHY : I have no questions to ask him. 20

Court adjourned until two o'clock p.m.

MR. TILLEY : If your Lordship will pardon me, just a moment.

HIS LORDSHIP : In your reply, Mr. Tilley, will you, as far as possible distinguish—this witness just completed gave evidence as to Mill "C." Would you as far as possible complete the evidence in respect to the one mill that I may have it together.

MR. TILLEY : My evidence on that will not be very extensive, my Lord.

I assume that having regard to the various facts that will have to be discussed before your Lordship can reach a conclusion as to the proper basis on which to deal with the matter, I mean, there are so many contingencies, I 30 presume that so far as the trial is concerned, your Lordship will declare what the true basis is, if it is a case for declaration rather than seek to establish on actual figures what that basis would result in.

HIS LORDSHIP : You mean—I am not sure I grasp just what you have in mind.

MR. TILLEY : I notice that is the way it has been done in some cases, a reference to work out—that is assume that your Lordship declares that the defendant has no rights.

HIS LORDSHIP : Or have exceeded their rights.

MR. TILLEY : No rights, of course, there would be little difficulty about 40 the judgment, then if they have exceeded their rights I presume your Lordship would declare what rights they have and if your Lordship is going to declare any right in either party, your Lordship would declare the basis, and direct a reference to have ascertained what it would result in—that is to say, if it is on the basis of the water they got at a certain time, or the capacity of

the installed machinery, or the capacity of the mill—whatever the true basis is, I suppose that would have to be a matter for reference. The defendants have not supplied any evidence in regard to these matters, and it is quite impossible for us to deal with it unless we get further information from them—if there are rights in the plaintiffs, and rights in the defendants I assume that would be declared, and then the proper basis set out, and any necessary reference.

10 HIS LORDSHIP : When you speak of a proper basis, you mean basis as defined to be a determination by me that their rights consisted of such rights as were enjoyed by certain persons at a certain time.

MR. TILLEY : Were exercised or enjoyed.

HIS LORDSHIP : And then, is it your idea I should go on and say what rights a certain person did enjoy at a certain time ?

MR. TILLEY : I thought perhaps your Lordship would say that is difficult to determine, and your Lordship would not go into it until we know what is the basis that should govern. I do not know how one could be fixed if it depends on the amount of water used or the amount of installed machinery, or the capacity of the mill.

20 HIS LORDSHIP : I will tell you frankly, Mr. Tilley, there has been so much material put in in such a short space of time, and so much of the material that has been put in is in the form of documents or written matter, that it has been impossible for me to assimilate it or to array it mentally, so that I would not be prepared to say, without having an opportunity, probably after argument, having an opportunity to go through the documentary evidence and the material to see just how far I would be prepared to go in my findings.

MR. TILLEY : We will have to leave that for development.

HIS LORDSHIP : I think you will rather have to leave it to see what the effect may be when I get it all sorted out in my mind.

30 I think it is advisable in the interest of everybody that I should go as far as I think I safely can on the material before me.

MR. TILLEY : Your Lordship will remember my learned friend put in a good deal of correspondence from the Department in Ontario, and the Department at Ottawa, and that it was put in subject to my objection.

HIS LORDSHIP : Yes.

MR. TILLEY : There is one document, Exhibit No. 71, that refers to an enclosure—

HIS LORDSHIP : That is the letter from Mather to the late Honourable A. S. Hardy ?

40 MR. TILLEY : Yes, and it is the letter, my Lord, it is the letter that enclosed a letter, and I do not want to depart from the stand I took with regard to the correspondence. The letter needs the enclosure to explain what it means, and in that view I want to enclose the letter attached to Exhibit 71. It is a letter from Mr. Mather to Mr. Pardee, and of course the letter that is already filed, is really not complete without the enclosure.

HIS LORDSHIP : Will you give me the particulars of that, Mr. Tilley ?

MR. TILLEY : Of the original letter ?

HIS LORDSHIP : Of the letter that you are putting in now.

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MR. TILLEY : It is a letter from Mr. John Mather to the Honourable Mr. Pardee, dated 17th February, 1888, and it reads : "I hereby again take the liberty as a large sum of money will be wanted."

HIS LORDSHIP : That might be attached to Exhibit 71.

MR. TILLEY : That is the reply, my Lord.

HIS LORDSHIP : Then are Counsel prepared to go on with the argument now ?

MR. TILLEY : It would take the most of the rest of the afternoon.

MR. MCCARTHY : I suppose it will.

HIS LORDSHIP : This other witness, Mr. Tilley, you are not intending to call ? 10

MR. TILLEY : No, my Lord, I will just close my case.

HIS LORDSHIP : It is the closing of your case, because I said I would hear your other witness.

MR. TILLEY : Your Lordship was good enough, but he is in line as the last witness, and he was not cross-examined, and I take it there is no controversy.

HIS LORDSHIP : I just wanted it clear.

Perhaps Counsel would be prepared to argue one matter that in a sense is preliminary to the argument of the rest of the case, and that is the case of the admissibility or non-admissibility of correspondence, and so on, and what effect, if any, it should have and so on. 20

MR. TILLEY : Perhaps it would be convenient to do that now.

HIS LORDSHIP : If that could be done, it would perhaps clear the way for me to take the rest of the argument. I would like, whether that is to be done this afternoon, or done on Wednesday, I should like to have that preliminary question kept separate from the general argument of the case.

MR. MCCARTHY : I do not think that can be done.

MR. TILLEY : I do not assume your Lordship means no person could say a word about it afterwards ? 30

HIS LORDSHIP : No, no. Perhaps I did not make myself clear. One question which arises, and which is a bone of contention is as to whether or not the Patents and the actual position in law of the respective parties can be affected by what is in the correspondence. Mr. Tilley takes the position that it cannot. Now, while I have no intention of dealing with the matter in any off-hand fashion, I mean then the admissibility of correspondence, or non-admissibility—yet, for my purpose, in considering the matter afterwards, it would be a distinct advantage to me, to be able to decide for myself as a preliminary question whether or not the correspondence should be taken into consideration to aid me in coming to a conclusion on the general case, and for that reason, I would like to be able to have the argument as to admissibility or non-admissibility considered separate from the rest, and then when you come to argue your case, you will argue, of course, assuming that I am admitting, and am going to avail myself of what is in the correspondence, as I may see fit in that regard, referring to it as much or as little as you like. 40

MR. TILLEY : Your Lordship will not pass on it ?

MR. McCARTHY : I think it would be difficult to argue the whole question without some reference to the correspondence.

HIS LORDSHIP : Quite so, but you will doubtless be citing to me authorities bearing on the admissibility of that correspondence. I would like to have these authorities by themselves, so I would not have to go through a mass of authorities in order to settle in my own mind whether or not I should receive the correspondence, and I should like to have that more or less preliminary, because it seems to me now that I must decide that if I am going to accept the correspondence or I am not. It seems to me I must do that, otherwise, I will
10 be hopelessly involved. If you, Mr. McCarthy, are prepared to present your argument now, as to the admissibility of the correspondence, and Mr. Tilley answer you, all right—if Counsel say they do not wish to argue it this afternoon, it still does not matter.

MR. TILLEY : It is such a splendid day to work.

MR. McCARTHY : I do not see how I can argue that without giving a long argument, which will be my main argument, to say the correspondence cannot be considered without considering what it is and the nature of the correspondence and what it is all leading up, we say, to the meaning of the parties—I would have to refer to the correspondence in many of my cases.

HIS LORDSHIP : You will at least facilitate me as far as you can.

MR. McCARTHY : As the argument progresses, I will, certainly.

HIS LORDSHIP : I do not want to interfere with the course of your argument at all, but I want all the assistance the argument will give me. I want to deal with the matter at as early a date as I can, and I have no doubt Counsel, in presenting their argument will not put me to any more work, I mean work on matter that may not be material to the actual decision of the issue.

MR. TILLEY : Does your Lordship think of adjourning ?

HIS LORDSHIP : There is nothing else I can do, unless you can get your other case—your people will not be ready for it.

30 MR. McCARTHY : I am quite ready to go on with the main argument. I do not know if my friend is.

Argument commenced : continued on May 25th, and concluded on March 26th, 1927.

HIS LORDSHIP : I noticed quite early in the course of the trial that the parties had taken from 1916 down to 1927 to take the case to trial. I suppose if I do not take any longer time, you will be quite reconciled.

Judgment reserved.

Certified to be a correct transcript.

J. E. HENDERSON,

C.S.R., Official Reporter, S.C.O.

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<p>S. C. O. KEEWATIN POWER CO. LTD. v. KEEWATIN FLOUR MILLS LTD. AND KEEWATIN POWER CO. LTD. v. LAKE OF THE WOODS MILLING CO. LTD.</p>	}	<p>Copy of Judgment of Grant, J. A., delivered 11th November, 1927.</p> <p>W. N. TILLEY, K.C., H. P. COOKE, K.C., and C. F. H. CARSON,</p> <p style="text-align: right;"><i>for Plaintiffs.</i></p> <p>D. L. McCARTHY, K.C., C. S. MACINNES, K.C., and C.C.ROBINSON, K.C.)</p> <p style="text-align: right;"><i>for Defendants.</i> 10</p>
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These two actions were tried together before me, without a jury, at Toronto, on the 16th to 20th May, inclusive, and completed on May 23rd, 25th and 26th, 1927.

The plaintiff is the owner of a certain water power on the west branch of the Winnipeg River, one of the outlets of the Lake of the Woods in the District of Keewatin, which water power it has developed, and made available by means of the Norman dam, and power plant connected therewith.

The defendant Keewatin Flour Mills, Limited, is the owner and operator of certain flour mills, situate upon the more easterly portion of a narrow ridge or neck of land lying between Portage Bay (Lake of the Woods) on the south and an expansion of the Winnipeg River (also called Winnipeg Bay on some of the plans) on the north. The waters of the river are upon a lower level than those of the lake, and at the present time a channel exists between the two, and upon this the Keewatin Flour Mills are situated, the channel serving the function of a mill-race. At a more westerly point upon this same ridge, between the Lake of the Woods (Portage Bay) and the Winnipeg River, stand the mills and plant of The Lake of the Woods Milling Co. Ltd., upon and adjoining another similar channel, which also serves as a mill-race for that Company. 20 30

As the owner of the water power on the west branch of the Winnipeg River, the natural outlet of the Lake of the Woods, the plaintiff, as against these defendants, claims to be entitled to all the power which can be developed from all the water which would come down the west branch of the river, in a natural state; it alleges that the channels used by the defendants as mill-races, are artificial; that the defendants did not obtain, and do not possess, any grants of waterpowers; and that the use of the mill-races and enjoyment of water-powers thereby, are in the nature of a trespass against the plaintiff, and a wrongful deprivation, *pro tanto*, of its rights in respect of its water-power. An injunction, an account, and damages are claimed. 40

The defences set up by the two defendants are identical. They deny plaintiff's alleged rights; affirm their own rights to do what they did and are doing; recite certain conditions and limitations to which, they allege, the plaintiff's power rights are subject; they narrate certain proceedings and steps, had and taken by the then Government of Canada, in the exercise of a

supposed jurisdiction over that district, and which were later adopted and acted upon by the Government of Ontario when the jurisdiction of the latter had been established; they set up the grant of mill locations, by the Province, with a right to use the waters of the lake, through the mill-races as water powers; they allege knowledge and acquiescence of the plaintiff and plead estoppel; set up a claim of easement by lapse of time and the operation of The Limitations Act, or, in the alternative by lost grant; and they deny that the plaintiff has suffered any damage.

By way of counterclaim, in case it should be held that the defendants' grant from the Province, did not confer upon them the right to take water from the lake, for the operation of their mills, then, in the alternative, the defendants plead that it should be declared that the grant by the Crown to the plaintiff and the title of the latter, are subject to such a right in favour of the defendants.

A Crown Grant to Dick and Banning (Ex. 12) dated the 5th January, 1891, executed by the Commissioner of Crown Lands of Ontario, for \$5.00 consideration, conveys certain lands, described as a parcel containing 27 acres, more or less and known as "Dick, Banning and Co's. Mill Location—shewn on plan of Survey of said Municipality (Keewatin) by E. Stewart, Provincial Land Surveyor, dated the 20th December, 1889," etc.

There follows a description of the parcel, by metes and bounds, and an inspection of Stewart's Plan, filed as Ex. 28, discloses the fact that all the data given in this description, are to be found upon the plan. One of the boundary lines of the property conveyed is given as being twenty feet in perpendicular distance "from the edge of the Mill Race constructed by The Lake of the Woods Milling Company, Limited," which is also clearly shewn upon the Plan (Ex. 28). There also appears on this Plan, a clearly defined water-way, from Portage Bay (Lake of the Woods) through the centre of Dick and Banning's location as described, to Winnipeg Bay on the other side, and upon this water-way, is shown the Dick and Banning Mill. By certain intermediate transfers, Keewatin Flour Mills, Limited, became the owner of the material portion of this property, the conveyance to it bearing date April 19th, 1905. This defendant company was incorporated by Dominion Letters Patent (Ex. 11) of date January 23rd, 1904, and John Mather (of whom more hereafter), was the first named of the Incorporators and Provisional Directors.

The defendant The Lake of the Woods Milling Company, Limited, was incorporated by Dominion Letters Patent, under date May 21st, 1887 (Ex. 19) the said John Mather being, in the case of this company also, the first named of the Incorporators and Provisional Directors. Under date the 10th of May, 1892, the Commissioner of Crown Lands for Ontario, executed a Crown Grant (Ex. 20) to this defendant, of certain lands therein described, and as shewn on plan prepared by Edmund Seager, on file in that Department, dated March 10th, 1892 (Ex. 21). In this Grant, several references are made in the course of the description to "the mill-race made by the Lake of the Woods Milling Company, Limited"; and the plan shews a portion of the mill-race, colored blue.

By transfer (Ex. 22) dated March 9th, 1897, The Rat Portage Lumber

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Company, Limited, conveyed to The Lake of the Woods Milling Co., Ltd., a parcel shewn colored red on the plan attached to the transfer, and containing 4 8/10 acres, lying immediately east of the one and three-quarters acres parcel covered by the Crown Grant last above mentioned (Ex. 20).

By Special Grant (Ex. 23) dated March 29th, 1904, in the name of His Majesty, Edward VII, in right of the Dominion of Canada there were conveyed to the Canadian Pacific Railway Company, certain lands, including station grounds at Keewatin. In the description of one parcel reference is made to a plan dated Dec. 20th, 1889, made by E. Stewart, and of record in the Crown Lands Department of Ontario (Ex. 29). On this plan the water channels or mill-races of The Lake of the Woods Milling Co. and of Dick and Banning are both shewn, and in the description of another parcel, express provision is made for preserving to the latter their use of the lands, on which their mill-race is situate, passing under and across the right of way of the Railway for the purposes of the Mill of the said Company, such use to be the same as it was on and prior to June 3rd, 1897, but so as not to damage the Railway property, and not to extend or enlarge the mill-race beyond its capacity on June 3rd, 1897, without the consent of the Railway Company. By deed (Ex. 25), dated June 2nd, 1902, the C.P.R. conveyed to The Lake of the Woods Milling Co. certain portions of their Station Grounds as shewn colored red on the plan attached to the document upon which plan the mill-race of the defendant is shown crossing the right-of-way, and it is also referred to in the description of the lands conveyed. 10 20

By the above-mentioned conveyances the defendant The Lake of the Woods Milling Co. became the owner of all the lands upon and through which its mill-race runs, excepting that portion of it which passes through and under the right-of-way of the Railway Company.

It will be noted that the Crown grants to the defendants, or their respective predecessors in title, do not, in express words, confer upon them water power rights. On behalf of the defendants, it is contended that it was manifestly intended, and was clearly understood by all interested parties (including the plaintiff and its predecessors) that the defendants (and/or their predecessors) should have such power rights, and that the plaintiff's rights were and are subject thereto or modified thereby, and the defendants claimed to be entitled to adduce extrinsic evidence to establish their lawful title to such power rights. As the decision of this question of the admissibility (or the reverse) of such extrinsic evidence, must result in the inclusion or exclusion of a considerable body of material, this appears to be the most convenient stage at which to consider that point. 30

Before dealing with the question of evidence, one feature of the matters is of interest. One John Mather, a pioneer of 1877 or 1878 in that district, was actively interested in all three companies involved in this litigation, or in their predecessors. It is not overstating the facts, to say that he was the moving spirit in all three. He died in 1906 or 1907, and occupied the position of President, or Vice-President and General Manager of the plaintiff Company, as well as positions of like authority in the two defendant companies, up to the time of his death. His shares in the plaintiff company, were afterward 40

acquired by their present holders, the company went under the control of persons who were not associated with the defendant companies, and, subsequently, the right of the latter to the enjoyment of any water power was contested by the former in this litigation. If knowledge or actual notice of the facts, and of what each of the parties was doing, and how the several properties were occupied and used, and that the defendants (or their predecessors), were using the mill-races to operate their mills, has any bearing upon or is a deciding factor in the solution of the problem before me, the solution would not be difficult, because John Mather appears to have occupied
 10 a prominent executive position in all three companies, and to have been actively engaged in them all. Actually, what the three were doing, John Mather was doing for them.

That evidence *aliunde* may be adduced to shew what was intended, in cases in which the material instrument contains an ambiguity, has been clearly established by a long line of decisions. The authorities upon the point were reviewed by the Judicial Committee in *Watchman v. Atty.-Gen. of East Africa Protectorate*, 1919 A.C. 533, where it was laid down that this principle applies to a modern as well as to an ancient instrument, and where
 20 the ambiguity is patent, as well as where it is latent. In that case, their Lordships held that evidence was admissible to shew both possession and user, there being a variance between the stated acreage and the area as described by physical boundaries.

It has also been laid down as a guiding principle of construction that “no parol evidence can be used to add to or detract from the description in the deed, or to alter it in any respect, but such evidence is always admissible to shew the condition of every part of the property, and all other circumstances necessary to place the Court, when it construes an instrument, in the position of the parties to it, so as to enable it to judge of the meaning of the instrument,” *vide* Lord Wensleydale in *Baird v. Fortune* (1861), 4 Macq. 127,
 30 at p. 149.

The above passage was quoted with approval by Osler, J.A., in his reasons for judgment in *Brady v. Sadler* (1890) 17 A.R. 365, at p. 376. In the latter case the description of lands conveyed by a Crown Patent was “‘all that parcel of land containing by admeasurement sixty acres, be the same more or less, being composed of lot number nine, exclusive of the lands covered by the waters of the S. River’. Lot nine included, by metes and bounds, two hundred acres, but the S. River ran through it. At the time of, and for some time previous to, the issue of the patent of the waters of the S. River at this place were penned back by a dam : Held, that the words ‘the waters of the S.
 40 River’ did not mean the waters of that river flowing in its natural channel merely, or the waters at the height at which they might happen to be on the day of the issue of the patent, but had the effect of reserving from the grant that portion of the lot liable to be covered, owing to the existence of the dam, by the waters of the river, at their natural height at any time during the ordinary changes of the seasons. Held, also, that extrinsic evidence was admissible for the purpose of explaining the language of this description, and that upon that evidence, the land in question had not passed under the grant.”

At p. 377, the late learned Justice of Appeal uses the following language :

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“Evidence was therefore properly admitted of the surrounding circumstances, and of the surveys, plans and reports and applications preceding the patent, for the purpose of explaining this ambiguity, and of shewing what was really meant by the exception, and when admitted it shewed, I think, conclusively that the exception meant and referred to the land drowned or overflowed in consequence of the existence of the dam.”

The ambiguity referred to by the learned Justice of Appeal, was disclosed or brought to light, when the exception or reservation was applied to the lands described.

In the Crown Grant to the Lake of the Woods Milling Co. (Ex. 20) 10 several references are made, in the course of the description of lands, to the mill-race made by that Company.

The property covered by the description in this patent, includes the westerly portion of the mill-race (colored blue on Seager's Plan referred to in the description), *i.e.* the bed and banks thereof extending from the C.P.R. station grounds westerly to and including the shores of Winnipeg River or Bay as it is called on the plans. In the Crown Grant (Ex. 12) to Dick and Banning, the predecessors in title of the Keewatin Flour Mills Ltd., the property granted was referred to as shewn on Stewart's Plan (Ex. 28) which plan shows the mill-race of Dick and Banning and their mill located thereon. 20 The nature and purpose of mill-races are matters of common knowledge. The importance of plans attached to or otherwise by reference incorporated in the description of the property conveyed by an instrument, is clearly shewn in many decided cases. For example, in *Gordon-Cumming v. Houldsworth*, 1910 A.C. 537, the House of Lords held that the plan overrode the particulars of description. So also in *Eastwood v. Ashton*, 1915 A.C. 900, the same Court held that the description by reference to the plan ought to prevail.

There is another aspect of these cases, which appears to me to be of importance in considering the question of the admissibility of extrinsic evidence. In a case where a man buys a property through which runs a natural 30 watercourse; in the absence of special restrictions or enlargements of his rights (either as disclosed by the registered title or acquired by prescription) his rights as a riparian owner are clearly defined by law. In the absence of any notice to the contrary, he would at once know (or be presumed to know) just what rights and privileges he would enjoy or be entitled to, as a riparian owner, which rights and privileges would accrue to him simply because he had become the owner of lands, through or along which the natural watercourse was running.

The position is otherwise in the case of a purchaser of lands through or upon which lies an artificial watercourse. His rights are not defined by law, 40 and by extrinsic evidence only, can they be shewn or established. The very existence upon or along his lands, of an artificial watercourse, calls for evidence *aliunde* to shew whether or not, and if so to what extent, the usual common law rights of a riparian owner on a natural stream are his.

A review of the law as to the rights of such owners, will be found in *Rameshur Pershad Narain Singh v. Koonj Behari Pattuk* (1878), 4 A.C. 121 at pp. 126-7-8. The Judicial Committee quote with approval statements of

the law to be found in certain reported cases, *inter alia*, the following, in the case of *Sutcliffe v. Booth* (1863), 32 L.J. Q.B. 136, viz. :

“Although it may have been an artificial watercourse, it may still have been originally made under such circumstances, and have been so used as to give all the rights that the riparian proprietors would have had, had it been a natural stream.”

The question of the rights acquired in respect of artificial water-courses, and the principle to be applied in the consideration thereof are dealt with by Lord Justice Stirling in *Baily and Co. v. Clark, Son and Morland* (1902) 10 1 Ch. 649, at p. 668, where he states :—

“In dealing with this claim we have to inquire, first, on what principle are rights of this kind to be ascertained. The principle has been laid down in various cases, of which I may mention *Wood. v. Waud* (1849), 3 Ex. 748; *Sutcliffe v. Booth*, 32 L.J. Q.B. 136, and *Rameshur Pershad Narain Singh v. Koonj Behari Pattuk*, 4 A.C. 121. It appears, I think, from those authorities that you must take into account, first the character of the watercourse, whether it is temporary or permanent; secondly, the circumstances under which it was presumably created; and, thirdly, the mode in which it has been in fact used and enjoyed. This watercourse is obviously of a permanent character, and there is no question that rights and easements may be acquired in it.”

One of the earlier cases upon the general question of the admissibility of extrinsic evidence, as to user and possession, as aids to the proper interpretation of a deed, which has since been frequently cited and followed, in Ontario as well as in the English Courts, is *Waterpark v. Fennell* (1859) 7 House of Lords Cases, 650. At pages 683 and 684, Lord Wensleydale states :—

“In the course of the long and elaborate discussion which this case underwent in the Irish Court, some observations were incidentally made which are liable to be misunderstood as to the limits within which parol evidence is receivable to explain deeds, as if it could be done only in cases of doubt. Some observations were also made to the effect that what was intended by the grantor might be always submitted to the jury when parol evidence was receivable. Whether parcel or not is often said, but not with strict propriety, to be a question for the jury, I apprehend that the true rule is perfectly well settled, and is fully explained in Sir James Wigram’s excellent treatise on the subject. The construction of a deed is always for the Court; but, in order to apply its provisions, evidence is in every case admissible of all material facts existing at the time of the execution of the deed, so as to place the Court in the situation of the grantor. In deeds, as well as wills, the state of the subject at the time of execution may always be inquired into; and, as with respect to ancient deeds, the state of the subject at their date can seldom, if ever, be proved by direct evidence, modern usage and enjoyment for a number of years is evidence to raise a presumption that the same course was adopted from an earlier period, and so to prove contemporaneous usage and enjoyment, at the date of the deed.”

In *Van Diemen’s Land Company v. Table Cape Marine Board* (1906), A.C. 92 at p. 98, Lord Halsbury, delivering the judgment states that “The circumstances under which modern user may be proved to explain a written

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instrument, are treated of with great precision by the learned Judges who advised the House of Lords in *Waterpark v. Fennell*.”

A recent decision of the Judicial Committee of the Privy Council which has some bearing upon the question of the admissibility of extrinsic evidence to shew the intention of the parties, will be found in *Price Bros & Company, Limited v. The King* (1926), 3 D.L.R. 642. The deed to be interpreted was a grant made by King Louis XIV of France in 1693, of the seigniorship of Lake Metis and the surrounding area extending to one French league in depth. Modern surveys had established that there existed a chain of three lakes, connected by streams or channels, and the Privy Council decided that all three were included in the grant. No previously decided cases are cited in the Judgment, which was delivered by Lord Salvesen. The contention by the Crown, was that the description included only the one (upper) lake and not all three bodies of water, and this view was upheld in the Supreme Court of Canada, Duff, J., dissenting. At p. 644, Lord Salvesen uses the following language :

“This question must be determined, not by reference to accurate geographical conditions as they have now been ascertained, but on a construction of the grant itself as applied to the knowledge of the locality which was then available. This question is by no means free from difficulty, as is evidenced by the great diversity of opinion in the courts below and can only be determined on a consideration of the terms of the grant itself and of the presumable intention of the grantor in so far as this can be derived from the information as to the locality which was then available. At this date, this can only be conjectured from plans and other documents of which a large number have been produced with a view to elucidating the question at issue.”

The language of the grant itself was simple, but the difficulty was met when the attempt was made to fit the description to the subject of the grant. This is the difficulty which confronted the Court in *Waterpark v. Fennell*, in *Brady v. Sadler*, and in a host of other reported cases.

Under the circumstances of the present case, in the light of the law as above stated, it seems to me clear that extrinsic evidence must be admitted to shew the circumstances under which the artificial channels were cut ; by what authority, under what agreement or arrangement, for what purpose they were constructed, and to what use they were put. Such evidence would not be to enlarge or restrict the effect of the Crown Grant, nor to vary or alter the meaning of its language. Having in view the condition of the property, the subject matter of the Grant, the evidence would be directed to shewing the rights of the grantee in respect of the artificial watercourse referred to in the Grant and/or shewn on the plan incorporated therewith, which rights are neither set out in the grant itself, nor are they defined by law.

Against the admission of extrinsic evidence, Counsel for the plaintiff has cited the decisions in *Wyatt v. Attorney-General of Quebec*, 1911, A.C. 489, and *Hunter v. Richards*, 1912, 26 O.L.R. 458, affirmed on appeal in 1913, 28 O.L.R. 267, where, however, this point is not mentioned.

In the *Wyatt* case, the appellants were grantees of lands on both sides of a river which was both navigable and floatable, at such locality, and from thence

to its mouth. The appellants claimed exclusive fishing rights in the river opposite their lands (having no right or title to the bed of the stream) and sought to support their claim by evidence of previous and subsequent correspondence as enlarging the terms of their grants, and that they had exercised such fishing rights continuously from the date of the patents without hindrance or interference.

It was held that as the letters patent were plain and unambiguous in their terms, and did not specifically grant rights of fishing, the patentees could not by such correspondence and subsequent exercise of fishing rights, so enlarge
10 the plain terms of their grants.

In that case there was clearly no ambiguity, either latent or patent.

In the cases at bar, the Crown grants convey to the defendants (or their predecessors) lands containing artificial water-courses, referred to as mill-races, which had previously been, and were then being used for that purpose, in the operation of their mills ; the patents are silent as to the rights, in respect of such artificial watercourses or mill-races, which were intended to be conferred. As already stated, such rights are not defined by law, and can only be shewn by extrinsic evidence, unless indeed the right to use them as mill-races, should be inferred from the fact of their very existence upon and through
20 the lands conveyed, an inference which would be favourable to the defendants.

In *Hunter v. Richards*, the plaintiff and defendant respectively had water powers and saw mills on the same stream, the mill of the plaintiff being down-stream from that of defendant.

The plaintiff complained that the defendant was polluting the stream by throwing saw-dust therein. Defendant claimed the right to do so, by Crown Grant and also by prescription. Although the defendant's lots were sold in 1855 to his predecessor in title, for a water power and to run a saw-mill and grist-mill, yet when the patent issued in 1859, it contained no reference to the waterpower or to the mill. The Divisional Court (by a majority,
30 Riddell, J., dissenting) held that the defendant had no right to pollute the stream, and that extrinsic evidence was not admissible to shew that such right was intended to be conferred. A perusal of the reasons for the decision makes it quite clear that the defendant was seeking to shew, by evidence to be obtained from correspondence, etc., in the Crown Lands Department, not only that it was intended that a saw-mill should be erected and operated by the water-power, but also that it should be inferred therefrom that he should have the right to throw his sawdust in the stream, and thereby pollute the same. The refusal of extrinsic evidence was based upon the *Wyatt* decision, which had been received after the argument and before judgment was pro-
40 nounced. The water-power right was not denied by the Court, but merely the right of pollution.

Riddell, J., dissenting, was of opinion that it was necessary and proper to look at the records of the Crown Lands Department, in order to determine the rights and position of the parties, and referred to *Brady v. Sadler* (*supra*).

In the *Hunter* case, the lands lay along a natural water course, and the defendant desired not merely to establish his right to a water-power, but also that the Court should infer a right to pollute the stream with saw-dust,

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because the property was acquired for saw-mill purposes. An injunction was granted to restrain the pollution, but the defendant's claim to the water-power was not interfered with. It seems manifest that the defendant was not merely attempting to add something to the terms of his grant. As a riparian owner, he was, by well-settled law, expressly prohibited from fouling the stream. Yet he sought to have the Court infer in his favour a right of pollution, in direct conflict with this well-settled law. There was no ambiguity either latent or patent, yet be it noted that Riddell, J. (now J.A.) expressed the opinion (which he supported by authorities) that the Court should consider the condition of the property, the fact of the erection of a mill pursuant to agreement with the Crown Lands Department, and the intention of the parties as evidenced by the condition of the property and the user thereof, as well as by the Departmental records. 10

The district, in which lay the lands and waters in question in these actions, was, for some years, the subject of a dispute between the Dominion and Provincial authorities, which terminated in what was publicly called the Boundary Award, by which the provincial claims were sustained.

A considerable volume of material, consisting of Orders-in-Council, both Dominion and Provincial, maps and plans, reports, documents and correspondence, was put in evidence, all of which would be of interest to the student, but to portions only do I deem it necessary to refer. 20

In or about the month of June, 1874, an arrangement was consummated between the Dominion and Provincial authorities, duly ratified by Orders-in-Council, by which a conventional boundary for the Province of Ontario at the north and west limits thereof was agreed upon, accompanied by an agreement between the two Governments that, pending the authoritative establishment of the true limits of the province, any grants or leases which might be made by one or other of the two governments on either side of the conventional boundary so agreed upon, would, after the fixing of the true boundary be ratified by the other government if it should then be found that the lands so dealt with were within the jurisdiction of such latter government. Exhibit 32 will be found to contain particulars of the agreement entered into between the Governments of the Dominion and Province respectively. 30

In the year 1881, acting under instructions from the Surveyor-General of Canada, one John McLatchie, D.L.S., made a survey of the district in which these lands are situate, Exhibits 34 and 35 being certified copies of the instructions given to him and of his report respectively. A large plan was prepared by McLatchie which will be found on file as Exhibit 33. On this plan will be found outlined, a canal on McAulay's mill-site running through from Portage Bay in the Lake of the Woods to Winnipeg Bay, which is a portion of the Winnipeg River. It will be noted that this is shewn coloured blue as indicating the existence of water in a channel between the two bodies of water. There will also be noted upon this plan, in a position westerly from MacAulay's mill-site, the words "Mill-site," close to a bay or indentation from Winnipeg Bay with the capital letter "A" placed thereon or immediately adjoining thereto. What is marked on this plan as MacAulay's mill-site apparently afterward became in turn Dick and Banning's mill-site and ultimately the 40

mill-site and mill-race of Keewatin Flour Mills Limited, one of the defendants. The other mill-site to the west marked on McLatchie's plan with the letter "A" ultimately became (approximately) the mill-site of the other defendant, Lake of the Woods Milling Co. Ltd., and the canal or artificial channel which now forms this defendant's mill-race was excavated from an indentation on the north shore of Portage Bay near the capital letter "B" on this plan, running from that point northwesterly and westerly to the indentation above referred to from Winnipeg Bay near the capital letter "A" on the plan. It is interesting to note on Exhibit 35, McLatchie's report, that in his opinion the construction of a canal at "A" would not be very expensive, and he refers to its suitability for the development of a water power. He refers also to "the canal already made by W. J. MacAulay where he is about erecting a sawmill." Upon this plan also are shown the premises of the Keewatin Lumbering and Manufacturing Company, the predecessor of the plaintiff company in these actions.

In the same year, 1881, John Mather (already mentioned above), being then an officer of Keewatin Lumbering and Manufacturing Co. Ltd., had some correspondence with the Deputy Minister of the Interior of Canada in regard to what Mather calls in Exhibit 36 "a comprehensive scheme as to what arrangements would in my opinion best utilize to the fullest extent the undeveloped water power" and he goes on to state that he "will mark on the plan you have sent as nearly as I can the different positions and localities where the water may be used as a motive power, and will refer to them in my report. Meantime Mr. McLatchie is noting in his survey the exact position, and when his plan is made up there will be no difficulty in mapping out the different water powers." The promised report by John Mather will be found in Exhibit 38, dated the 27th April, 1881.

As previously stated, John Mather was actively interested and engaged as an executive in the company which acquired and developed the water power subsequently transferred to the plaintiff company, and was also occupying an executive position in the two defendant companies. It is of interest to note that Mather in this report, Exhibit 38, deals with the water power on the west branch of the Winnipeg River and also the development of water powers by the construction of canals or artificial channels from Portage Bay to Winnipeg Bay which water powers would be available for the operation of mills to be established thereon.

MacAulay's canal or channel had, apparently, already been cut or excavated, and, as McLatchie states in his report, MacAulay was at that time engaged in building his mill. This man MacAulay in 1874, had acquired a licence from the Dominion Government for the cutting of timber over a considerable area in this district. Exhibits 39 and 40 refer to this, the latter being a copy of a letter written by MacAulay to the late Sir John A. Macdonald seeking to have an opening through the Canadian Pacific Railway bank for his water channel to serve his mill. That was in 1878. This opening was left in the railway bank in accordance with his request, and a trestle bridge constructed over the channel, which was used for floating in logs to his mill erected thereon. Exhibit 41 is a copy of a letter written by Mr. Davidson,

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the Land Surveyor, to the Minister of Crown Lands under date of November 23, 1880, wherein he reports having made the survey of land at Keewatin for MacAulay for "a water power, mill yard, and piling ground." In this letter the writer states that the water power was by canal from a bay of the Lake of the Woods to the Winnipeg River, between which there was stated to be a fall of about sixteen feet with an unlimited supply of water. Exhibit 42 is the survey made by Mr. Davidson "for water power and mill grounds." In 1881 MacAulay sold and conveyed the lands which he had acquired from the Minister of the Interior of Canada, together with his mill, mill privilege for waterpower, logs and chattels, etc, unto Dick and Banning (Exhibit 43). To acquire what he apparently thought would be a satisfactory title to the property including water-power and mill-site, MacAulay presented a petition, Exhibit 46, to the Minister of the Interior, re-stating the facts leading up to the then existing state of affairs and requesting a formal lease for twenty-one years renewable. His request in this regard was apparently approved by order-in-council, a copy of which was filed as Exhibit 47, and Exhibit 48 is a grant from the Department of the Interior to MacAulay of the lands in question, and to this document is attached a tracing referred to therein upon which is shown the canal or artificial watercourse running through the mill-site from Portage Bay to Winnipeg Bay. This grant is dated the 19th May, 1884.

Exhibit 49 is a certified copy of the report of a committee of the Privy Council of Canada, dated April 5th, 1887. This recites the receipt of a petition shewing the lowering of the waters of the Lake of the Woods and the interference with lumbering and other manufacturing interests resulting therefrom; and further referring to the narrow neck of land dividing the Lake of the Woods from the Winnipeg River and the fact that manufacturers and others who had already established themselves and were operating their mills thereon were compelled, owing to the lowness of the water, to run their mills at half-time only, and that at small expense the outlets from the Lake of the Woods to the Winnipeg River could be dammed in order to raise and hold the level of the waters, and that John Mather had offered to build a dam to the satisfaction of the appropriate Ministers for a sum stated, and it was recommended that his offer be accepted and that the dam be erected.

Pursuant to the above, what was afterward known as the Roller Dam was erected by John Mather and his associates. It is to be noted that this dam was erected for the purpose of conserving the waters for the benefit of the lumbermen and manufacturers who were already or might thereafter be established upon the narrow neck of land between the Lake of the Woods and the Winnipeg River. The MacAulay Mill afterward acquired by Dick and Banning was one of those then established, and the defendant Keewatin Flour Mills Limited now has its mill and plant erected approximately upon the site at that time occupied by the MacAulay or Dick and Banning mill, and having the water flowing through the canal or artificial channel excavated by MacAulay, though whether or not such channel remains unaltered since that time has yet to be considered.

In 1885, the boundary award having established the rights of the Province

of Ontario in respect of these lands, Dick and Banning applied to the Crown Lands Department for a piece of land lying to the west of the twenty-seven acres which they had acquired from MacAulay. In 1887 the Lake of the Woods Milling Co. Ltd., for which John Mather, as its Vice-President, was acting, applied for certain lands lying north of the C.P.R. station grounds at Keewatin and extending to the shores of the Winnipeg River together with certain Islands in that vicinity. The application was dated May 3rd, 1887, and a copy is filed as Exhibit 52. The intention of the company to erect a large flouring mill and other necessary buildings was expressed therein.

- 10 Another letter to the then Minister of Crown Lands was written by Mather on the same date, in which he states that the company is almost ready to begin building and that it wishes to get title to the lands before it spends its money. This application by the defendant Lake of the Woods Milling Co. came in conflict with the prior application made by Dick and Banning in 1885 for a portion of the lands, and correspondence ensued between the Department and the two applicants, Mitchell, the President, and John Mather, the Vice-President, conducting the correspondence on behalf of the Lake of the Woods Milling Co. Reference is made in various letters to the water power and it was made very clear that this defendant company was endeavouring to acquire this site (which it did ultimately acquire) for the express purpose of being enabled to utilize the water-power by the construction of an artificial channel or water course between Portage Bay in the Lake of the Woods and the Winnipeg River, a portion of which proposed channel, as appears from the correspondence, followed or was intended to follow the line of a natural ravine running in from Portage Bay. Mather's letter of May 30th, 1887 (Exhibit 58), addressed to the Assistant Commissioner of Crown Lands of Toronto, goes into the matter in some detail. Considerable correspondence passed, in the course of which the claims of other persons for improvements, etc., were brought to the attention of the defendant company and all of these, with the exception of the claim of Dick, Banning & Co., were amicably adjusted, the defendant company making payments to these other persons by arrangement with the Commissioner of Crown Lands. With Dick, Banning & Co., they were unable to make any settlement, and at the suggestion of the Commissioner of Crown Lands the matter was submitted to arbitrators. In the meantime George B. Kirkpatrick, an official of the Crown Lands Department, made an examination on the ground, and on July 23rd, 1887, he made a report to the Commissioner (Exhibit 66).

- 40 The arbitration for a portion of the property desired by the Lake of the Woods Milling Co., and for which Dick, Banning & Co. were making claim, was not concluded until some time in 1890, when the arbitrators by their award (Exhibit 79) fixed the amount to be paid to Dick, Banning & Co. at \$1,375. This amount was ultimately paid and a receipt therefor given under date of October 6, 1890, forming part of Exhibit 83. As a result of the tentative agreement between the Lake of the Woods Milling Co. and the Commissioner of Crown Lands, which was reached apparently in 1887, but which could not then be carried to completion by the execution of documents owing to differences to be adjusted with other parties as already mentioned, the

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Milling Co. proceeded to the cutting of the mill-race or channel by which the water power between Portage Bay and Winnipeg River would be made available for its mill. Exhibit 69 is a copy of a letter written by the Assistant Commissioner to the President of the Milling Company which refers to the obstruction of the road-way by the cutting of the mill-race, and the reply to this, written by John Mather as Vice-President of the Milling Company, will be found in Exhibit 70.

On the 16th May, 1889, John Mather wrote to the Honourable A. S. Hardy, then Commissioner of Crown Lands for Ontario, enclosing a copy of a letter which he had previously written on the same subject on the 17th February, 1888, to the Honourable T. B. Pardee (the former Commissioner) regarding the position and rights of the Keewatin Lumbering and Manufacturing Co. in respect of their lease of certain lands and islands in the Lake of the Woods which that company had acquired in 1879 from Messrs. Fuller & Co. (Exhibit 89), who in turn had acquired it from the Minister of the Interior for Canada. These letters refer to what is now known as Tunnel Island, which lies in the Winnipeg River at the outlet of the Lake of the Woods, dividing that river into its east and west branches. Upon the west branch are now erected the dam and power plant of the plaintiff company. The lease to Fuller, Ross and Dennis, dated July 22nd, 1875, and made by the Minister of the Interior for Canada, is filed as Exhibit 88. This document appears to have been both a lease and a licence to cut timber.

In 1889 by Order-in-Council (Exhibit 72) Mr. Kirkpatrick was formally appointed a Commissioner to examine into all the applications by various parties for mining locations, mill-sites, lands and building lots in the vicinity of Rat Portage, Keewatin and adjoining part of the Lake of the Woods, and to settle differences, etc., and Exhibit 73 contains a copy of his report bearing date November 23rd, 1889.

In 1890 further correspondence took place between the Commissioner of Crown Lands and the Lake of the Woods Milling Co. and Dick and Banning regarding the three and one-half acres (approximately), claimed by the latter, which terminated in the arbitration and the award, after which, and the amicable adjustment of certain claims of other persons as above referred to, was acquired a Crown grant of the lands which had been occupied and utilized as a mill-site and mill privilege by the Lake of the Woods Milling Co. since 1888. On October 11th, 1890, John Mather as Vice-President of the Company, wrote the Commissioner of Crown Lands enclosing the receipt of Dick, Banning & Co. for the payment to them of the amount awarded by the arbitrators and also a tracing signed by Dick, Banning & Co. shewing the parcel as to which the latter had released their claim. Copies of the letter, the receipt, and the tracing produced from the Department of Crown Lands are filed as Exhibit 83. The parcel as to which Dick, Banning & Co.'s claim was released appears on the tracing enclosed in lines shaded pink, which will be found to include a substantial portion of the mill-race as the tracing clearly indicates.

Under date of May 10th, 1892, the Crown Grant (Exhibit 20) was made by the Commissioner of Crown Lands to the Lake of the Woods Milling Co. Ltd.

Reference has already been made to this grant and to other conveyances by which this defendant, the Lake of the Woods Milling Co. Ltd., acquired all the lands, including the banks and bed of the artificial channel or water-course which serves the purpose of its mill-race, from Portage Bay through to Winnipeg River, saving and excepting only the lands owned by the Canadian Pacific Railway Co., as part of their Keewatin station grounds and railway right-of-way.

Reverting to a consideration of the rights and position of the plaintiff company, Exhibit 87 will be found to consist of a copy certified from the
 10 Surveys Branch of the Department of Crown Lands of an agreement dated November 4th, 1891, between the Keewatin Lumbering and Manufacturing Co. Ltd. and Her Majesty as represented by the Province of Ontario. This agreement recites that Her Majesty had agreed to sell and the company had agreed to purchase Tunnel Island (excepting the right of way and other rights of the C.P.R. the colonization road and certain other lands to the south of the railway), and also to purchase 23 acres of land on the south shore of the west branch of the Winnipeg River *inter alia*. The company undertook to expend in the construction of works for the purpose of creating water power the sum of \$250,000, of which at least \$150,000 was to be expended within a
 20 period of three years from the date of the agreement, the work to be begun within one year from the said date, and not less than one-fourth of the last-mentioned sum to be expended within one year from the commencement of the work. The remainder of the total sum was to be expended when the Lieutenant-Governor in Council should so direct. Plans for the work were to be submitted in detail and had to be approved by an engineer appointed by the Government before being acted upon. The company gave further covenants regarding the supply of power to any parties requiring the same at rates to be determined by an engineer appointed by the Lieutenant-Governor in Council, who should take into account the expenditures made by the
 30 company and difficulties, etc., encountered by them in making the water power efficient, etc. The document goes on to recite that the company, as assignee of Richard Fuller and others, held a lease from the Government of Canada of certain islands in the Lake of the Woods and of certain lands on the mainland for the term of twenty-one years and had agreed to surrender the islands. The company thereupon surrendered the said islands and all the land on shore contained in or covered by such lease, in consideration whereof Her Majesty agreed to grant to the company yearly licences to cut timber upon certain of such islands. The company was required to give a bond in the penal sum of \$40,000 by way of security for the faithful performance of the
 40 agreement. The document is executed with the seal of the company by the hands of Alfred Fuller, President, and John Mather, Acting Secretary, and also by the late Mr. Hardy, the then Commissioner of Crown Lands.

The plaintiff contends that, as this agreement was entered into with the Commissioner of Crown Lands by the plaintiff's predecessor in title, prior to the actual Crown grant (Exhibit 20) to the Lake of the Woods Milling Co. Limited, which was dated May 10th, 1892, although the Crown grant to the plaintiff (Exhibit 1) was not made until April 13th, 1894, by virtue of relation

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back to the Agreement (Exhibit 87) the plaintiff's rights are prior in time to the rights of the Lake of the Woods Milling Co. Limited. It should be noted that the Crown grant (Exhibit 12), to Dick & Banning, the predecessors in title of the defendant the Keewatin Flour Mills Limited, was dated January 5th, 1891, and therefore was prior in time even to the agreement (Exhibit 87) upon which the plaintiff relies.

On April 11th, 1892, Keewatin Lumbering and Manufacturing Co. Ltd. wrote to the Commissioner of Crown Lands a letter, of which a copy is filed as Exhibit 91, which letter is signed by John Mather as manager. It is stated in the letter that work was proceeding with surveys and plans for the improve- 10
ments in connection with the water power on Tunnel Island and a request is made for the inclusion in the grant to the company of a small island near the north side of Tunnel Island to enable the company to utilize the water. Exhibit 92 is a copy of the assignment dated September 22nd, 1893, by the Keewatin Lumbering and Manufacturing Company Ltd., to the Keewatin Power Company, Ltd., of the agreement of the 24th November, 1891, between the former company and Her Majesty (Exhibit 87). The assignment was executed with the corporate seals of the two companies, Richard Fuller signing as president of both companies. Apparently the Keewatin Power Company Limited was incorporated to take over and handle the development of the 20
water power, and by this assignment the new company was invested with the rights of the old company under the said agreement.

Under date of October 17th, 1913, the then Minister of Lands, Forests and Mines for Ontario released the plaintiff company from any further expenditure of money under the agreement of November 24th, 1891 (Exhibit 87) and released and discharged the obligation under the bond for \$40,000 above referred to.

The above being a summary of the earlier history of the matter, it is necessary more closely to investigate the foundation for the plaintiff's claims 30
against these defendants. By Crown grant (Exhibit 1) dated April 13th, 1894, certain lands were conveyed to the plaintiff company. The lands described included, *inter alia*, Tunnel Island, the land opposite thereto on the other shore of the west branch of the River, and also "(e) all those islets or reefs of rocks and the land under water in said West branch of Winnipeg River between Tunnel Island and the last described block of land together with the water power adjoining thereto on the West branch or outlet of the said Winni-
peg River."

The following is a later paragraph in the document : "SUBJECT never-
theless to the performance by the said THE KEEWATIN POWER COM-
PANY LIMITED of all the terms and conditions of the hereinbefore in part 40
recited agreement of the Twenty-fourth day of November in the year of our Lord one thousand eight hundred and ninety-one and subject also to the condition and understanding that nothing herein contained shall be construed as conferring upon the grantees exclusive rights elsewhere upon the said Lake of the Woods or upon other streams flowing into or out of said Lake, or shall confer upon said Company power or authority to interfere with or in any way restrict any powers or privileges heretofore enjoyed by us or which may here-

after be granted or demised to any other person or company in respect of any other water power on the said Lake of the Woods or on any other stream flowing out of or into the said Lake.”

This latter paragraph provides for exceptions and reservations from the operation of the grant, which were not mentioned or provided for in the recited agreement (Exhibit 87), which the plaintiff contends this deed was intended to implement. It is further to be noted that all the terms and conditions imposed upon the plaintiff by Exhibit 87, had not been fulfilled in their entirety. The Crown, apparently, was willing to forego its right to require
 10 complete and absolute fulfilment in all respects. Apparently an arrangement, new in part, but in general, based upon the previous agreement, was agreed upon, and a patent issued, with some new or additional conditions or subject to certain reservations.

Having in mind that both defendant companies, at the time of plaintiff's Crown grant, were and had been for some years (in the case of Keewatin Flour Mills Ltd. and its predecessors, for many years), enjoying water privileges or water-powers, through their artificial channels or watercourses “elsewhere upon the said Lake of the Woods” or “flowing out of said Lake,”
 20 were it necessary to the decision, there would seem to be some ground for holding that the defendant's water privileges or water-powers might be brought within a reasonable interpretation of the language of this paragraph.

I prefer, however, to rest my decision upon other grounds.

Dealing first with the position of the Keewatin Flour Mills Ltd., it appears that the original excavation of the water channel was made by MacAulay, about or prior to 1881, in which year he was erecting his saw-mill. MacAulay's claim or title was based upon his lease from the Dominion Government, acting under the convention or temporary arrangement made with the Government of Ontario, by which a conventional boundary of the Province was agreed upon, pending the ultimate determination of the true boundary.
 30 Subsequently Dick & Banning acquired MacAulay's rights and obtained a patent from the Dominion, and the Commissioner of Crown Lands recognized such rights so acquired, on two occasions; once when he gave Dick & Banning a patent (Exhibit 12) for the lands now held by this defendant, and secondly when he required the defendant, the Lake of the Woods Milling Co., to pay Dick & Banning \$1,375.00, the amount awarded by arbitrators, before he gave that defendant a grant of some two or three acres to which Dick & Banning claimed to be entitled. It is also worthy of note, that the so-called “gentlemen's agreement” between the Dominion and the Province was recognized by the statute of the Province, in chap. 4 of the R.S.O. 1887,
 40 “An Act respecting the northerly and westerly boundaries of Ontario” (*vide* recital at foot of p. 14). It is not without significance that, in a grant of twenty-seven acres, the expressed consideration was the sum of five dollars (Exhibit 12).

The inference appears to me to be irresistible that this Crown grant by the Province was in fulfilment (*pro tanto*) of the agreement between the Ontario and Dominion Governments, providing recognition by each of grants previously made by the other, in respect of lands on one side or the other of

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the conventional boundary. However that may be, it seems clear to me that the Provincial Government recognized the rights of this defendant's predecessors in title and possession, including the title to and use of the water privilege through the artificial channel, prior to any grant of a water-power to the plaintiff's predecessors, in respect of the west branch of the Winnipeg River. Whether the arrangement between the two Governments was or was not binding, the Provincial Government apparently (as was to be expected) chose to treat it as one to be honourably carried out, and, in my opinion, under the circumstances, the plaintiff is not in a position which enables it to question its validity or binding effect. 10

If one looks at the records and correspondence, it seems to my mind abundantly clear that both of these defendants were intended to have and enjoy the water-powers, through the respective mill-races, for the operation of their mills.

The Dick & Banning mill, as to the one channel, and the Lake of the Woods Company's mill, as to the other, were erected in their respective locations, for the express purpose of enabling them to be operated by the water-powers which the channels provided. The provincial authorities were at all times fully aware of the facts, and shewed their active approval of the construction and use of the "mill-races" by the plans prepared by the depart- 20
mental surveyors, and the references made to such mill-races in the descriptions of lands conveyed by Crown grants, apart altogether from the evidence of departmental co-operation spread all through the correspondence and other records.

But, even if it should be determined that not all the material put in, subject to objection, is admissible, I am still of opinion that ample evidence is furnished by applications, correspondence, and other documents together with the surrounding circumstances coming within the classes of admissible evidence as stated by Osler J.A., in *Brady v. Sadler (supra)*, to establish clearly the intention on the part of the Crown that the two defendants should have 30
and utilize the water powers.

The facts of these cases are such, as, in my opinion, to bring them within the second class of cases referred to by Lord Parker in his reasons for judgment in *Pwllback Colliery Company, Ltd. v. Woodman (1915)*, A.C. 634, at pp. 646-7, where he uses these words:—

"The second class of cases in which easements may impliedly be created depends not upon the terms of the grant itself, but upon the circumstances under which the grant was made. The law will readily imply the grant or reservation of such easements as may be necessary to give effect to the common intention of the parties to a grant of real property, with reference to the 40
manner or purposes in and for which the land granted or some land retained by the grantor is to be used. See *Jones v. Pritchard (1908)*, 1 Ch. 630, and *Lyttelton Times Co., Ltd., v. Warners Ltd. (1907)* A.C. 476. But it is essential for this purpose that the parties should intend that the subject of the grant or the land retained by the grantor should be used in some definite and particular manner. It is not enough that the subject of the grant or the land retained should be intended to be used in a manner which may or may not

involve this definite and particular use." Again at the top of page 648, the learned Law Lord states:-

"It is true that a demise of an existing brewery or an existing mill would probably connote a common intention that the brewery or mill should be worked in the manner in which it had been worked prior to the demise, and therefore that if so worked it caused a nuisance to the lessor, he could not be heard to complain."

Another aspect of the same question is brought into view by the application of the principle that no one can be allowed to derogate from his own
10 grant.

This maxim is very fully explained and clearly illustrated by Parker, J., in *Browne v. Flower* (1911), 1 Ch. 219, beginning at the foot of p. 224, whence the following quotation is taken:—

"The plaintiffs next relied on the maxim that no one can be allowed to derogate from his own grant. This maxim is generally quoted as explaining certain implications which may arise from the fact that, or the circumstances under which, an owner of land grants or demises part of it, retaining the remainder in his own hands. The real difficulty is in each case to ascertain how far such implications extend. It is well settled that such a grant or
20 demise will (unless there be something in the terms of the grant or demise or in the circumstances of the particular case rebutting the implication) impliedly confer on the grantee or lessee, as appurtenant to the land granted or demised to him, easements over the land retained corresponding to the continuous or apparent quasi-easements enjoyed at the time of the grant or demise by the property granted or demised over the property retained. For example, if the owner of a house with windows overlooking vacant land of the same owner grant or demise the house, the grant or demise will in general by implication confer on the grantee or lessee easements of light and support over or by the vacant land. The terms of the grant or demise or the special circumstances
30 of the case may, however, rebut the implication. Further, the circumstances of the case may be such that though at the time of the grant or demise, there be no continuous or apparent quasi-easements enjoyed by the property granted or demised over the property retained, yet easements over the property retained may be impliedly created and become appurtenant to the property granted or demised. Thus, if the grant or demise be for the purpose of erecting a building with defined windows overlooking other land of the grantor or lessor, an easement of light to such windows over such other land will be created, and similarly there will be created an easement of support by the land retained for the building to be built. But again these implications
40 may be rebutted by the special circumstances of the case.

* * * * *

"But the implications usually explained by the maxim that no one can derogate from his own grant do not stop short with easements. Under certain circumstances there will be implied on the part of the grantor or lessor obligations which restrict the user of the land retained by him further than can be explained by the implication of any easement known to the law. Thus, if the grant or demise be made for a particular purpose, the grantor or lessor comes

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under an obligation not to use the land retained by him in such a way as to render the land granted or demised unfit or materially less fit for the particular purpose for which the grant or demise was made. In *Aldin v. Latimer Clark, Muirhead & Co.* (1894) 2 Ch. 437, land having been demised for the purpose of carrying on the business of a timber merchant, the lessor came under an obligation not to build on land retained by him so as to interrupt the access of air to sheds on the demised property used for drying timber, although the law does not recognize any easement of air unless it comes through or to some defined passage or aperture.”

The above exposition of the law was approved by the Court of Appeal in 10 England in the case of *Harmer v. Jumbil (Nigeria) Tin Areas Ltd.* (1921), 1 Ch. 200, at pp. 217, 220-1-2. At p. 226, Younger, L.J., makes the following statement :—

“If, for instance, the purpose of a grant would in a particular case be frustrated by some act of the lessor on his own land which, while involving no physical interference with the enjoyment of the demised property, would yet be completely effective to stop or render unlawful its continued user for the purpose for which alone it was let, I can see no reason at all in principle why *ut res magis valcat quam pereat*, that act should not be prohibited, just as clearly as an act which, though less completely effective in its result, achieved 20 it by some physical interference.”

A review of the authorities upon this question will be found in the 10th edition of *Gale on Easements*, beginning at p. 117.

In the cases at bar, adopting and applying the principles above enunciated, the Crown would not be free to frustrate the purpose for which grants had been made to the defendants, namely, the operation of their mills by the use of the water-powers through the existing mill-races, nor could the plaintiff acquire from the Crown any greater or stronger right in that regard.

That being so, and both artificial channels having been in use for some years before even the agreement of the plaintiff's predecessors had been 30 entered into (and longer before the plaintiff's patent issued), and the Crown having granted patents to the defendants of the lands upon and through which the mill-races were then in existence and operation, and the said mill-races having been recognized in such patents, either by express reference thereto in the description of lands, or by being shewn on the plans incorporated with the deeds, I am fully convinced that defendants' rights to the use of the water-powers cannot be successfully attacked by the plaintiff. What is the extent or what the limits of such water privileges, is another question, still to be decided.

Before passing to consideration of that question, it is expedient that I 40 should, at least, refer to other grounds of defence set up in these actions. It is said that the plaintiff did not spend all the money, nor did it fulfil all the terms and conditions of the agreement (Exhibit 87) made by the Crown with its predecessors and that it is therefore limited, as to its power rights and as to the time of their origin, to its grant from the Crown (Exhibit 1). That Crown grant was undoubtedly the outcome of an arrangement new in part, but also based upon the original agreement (Exhibit 87).

It is true that the Crown was, apparently, not compellable to issue the patent to the plaintiff, because the latter had admittedly not fulfilled all the terms and conditions of the original agreement, so as to be able to force the issue of the patent. I am of opinion that this objection to the plaintiff's position and claims in these actions, may serve to this extent, namely, that it may deprive the plaintiff of the priority as to time which might have been afforded it by an earlier agreement completely fulfilled, instead of a new agreement based upon the old. This, of course, has no bearing upon the case of Keewatin Flour Mills Ltd. to whose predecessor in title a Crown grant had
 10 been made before the plaintiff's original agreement (Exhibit 87) was entered into. However, in my opinion, the point is too narrow to afford any safe or satisfactory ground for a decision.

Defendants set up also that the plaintiff and its predecessors had full knowledge of and acquiesced in what was being done by the defendants; that the plaintiff stood by and assented to the development of the water-power through the canals, and the erection and equipment of huge mills and elevators to be operated by water-powers so developed, the whole involving the expenditure of several million dollars, and that the plaintiff is now estopped
 20 from questioning the defendants' rights to do as they have done in the honest belief that they were lawfully entitled to the use of the water-powers. As has been stated above, John Mather was the moving spirit in all three companies who are parties to this litigation.

He was the executive head of the Keewatin Lumbering Co. which acquired the water-power rights on the west branch of the river, the Crown grant for which was taken in the name of the plaintiff company, of which company also he was an incorporator and occupied an executive position therein. He had joined in the incorporation of the defendant The Lake of the Woods Milling Co. and occupied an executive position in that company also. He conducted the negotiations and the correspondence with the Commis-
 30 sioner of Crown Lands, which led up to the Crown grant to that company of part of the lands which it now owns, including the bed and banks of the artificial watercourse, and, upon receiving assurance that a patent would issue, he proceeded with the erection of the company's mill, which was intended to be and was operated by the water-power for several years before the issue of the Crown grant to the plaintiff company, of which he was, during that period, the chief executive. It is of interest to note, in this connection, that some of Mather's letters, written in the interest of the defendant company, were so written upon the letter paper of The Keewatin Lumbering Co., the predecessor of the plaintiff.

40 It is also interesting to note that, as late as 1911, the plaintiff company contributed to the Lake of the Woods Milling Co. one-third of the expense incurred in closing up the leak in the dam of the latter company (*vide* Exhibit 95).

The defendant The Keewatin Flour Mills Ltd. was incorporated in 1904 and John Mather, who was still at the head of the plaintiff company, was also one of the incorporators of this defendant, and remained in an executive position therein until the time of his death.

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This defendant acquired the property and rights which had formerly been held by Dick & Banning, and proceeded to erect a large mill for the express purpose of utilizing the water-power which was made available by the artificial channel constructed many years before the plaintiff's predecessors had acquired any water-power rights.

That the plaintiff company, or its predecessors, had full knowledge of what was being done by both defendants, and acquiesced therein, and recognized their right to do what they were doing, seems to me to be incontestable.

As I apprehend the circumstances, the three companies were working along in a friendly manner, without any dispute or difference and without any question being raised as to the defendants' rights, until control of the plaintiff company passed into other hands. 10

It was not until 1916, apparently, that the defendants' rights to water-power were seriously questioned, and then the writs were issued in these actions, which have been brought to trial eleven years later.

In my opinion, there was such an acquiescence on the part of the plaintiff as would make it inequitable for the Court to give effect to its claim that the defendants are not entitled to the use and enjoyment of water-powers through the respective artificial channels.

In respect of the action against the Lake of the Woods Milling Co., I am also of opinion that a good defence, to a limited extent, has been established, upon the ground of prescription. Such a defence would avail only to the extent to which it could be shewn that this defendant had used and enjoyed the water-power for at least twenty years prior to the date of the issue of the writ in this action, namely, the 22nd day of February, 1916 ; *Bealey v. Shaw* (1805), 6 East 208. 20

The authorities were reviewed by Mr. Justice Hodgins in *Cardwell v. Breckenridge* (1913), 4 O.W.N., 1295, 24 O.W.R. 569, at pp. 581-2-3. The measure of the right is determined by the extent of the actual user and enjoyment. This measure, in the present case, would be more limited than the measure to be applied if my conclusion (above stated) be correct, that this defendant was originally intended to have, and did acquire, the right to the use of the water-power by the common intention of the parties. In the latter case, in my opinion, this defendant would be entitled to the use, in the operation of its mill and plant, of such water-power as could be developed from the artificial channel as it existed at the time when the plaintiff's patent was issued. The right, being in the nature of an easement, would be for the purpose intended, namely, the development of power for the operation of mill and plant and would not carry with it any right wilfully to waste the supply of water. On the other hand, the extent of the right would be limited by the then capacity of the channel, and the user contemplated by the common intention. The channel might be cleaned out but could not be enlarged so as to permit any greater quantity of water to be carried through it. The right would not depend upon, nor would it be limited to, the actual user and enjoyment. This statement of the rights acquired, by reason of the common intention of the parties, is applicable also to the case of the *Keewatin Flour Mills Limited*. The evidence of actual user and enjoyment by the latter defendant 40

does not appear to support a defence based upon prescription, and this I understood Mr. Robinson to concede.

Evidence was adduced to shew that some alterations were made to the two channels, more extensive in the case of Keewatin Flour Mills Limited, and since the Crown grant to the plaintiff (Exhibit 1). It may be that some of such alterations, in the case of the Lake of the Woods Milling Co. were made prior to the twenty-year prescriptive period, and would therefore not be open to objection when the writ was issued. The evidence as to the alterations made, was extensive, but I do not feel competent to determine, upon
 10 such evidence as is upon the record, whether or not the alterations would and did have the effect of actually increasing the volume of water taken from the Lake of the Woods, and also of affecting injuriously the plaintiff's power rights.

For this, expert testimony would appear to be necessary. As I view the matter, the onus of establishing clearly that injury has been caused, and the extent or amount of the damage suffered, is upon the plaintiffs. If the plaintiff so elects in writing, within thirty days, by notice delivered and filed, it may have a reference to the Master, at its own risk as to costs, for the purpose of shewing the nature and extent of alterations alleged to have been made to the channels since the date of the plaintiff's patent (Exhibit 1), and
 20 prior to the issue of the writs, and the effect thereof upon the plaintiff's power-rights, and the amount of damage occasioned to the plaintiff thereby.

Damages, if any, sustained by the plaintiff, by reason of any such alterations of the channels, made prior to the issue of the writs, may be assessed down to the time of the assessment. These fall within the operation of Rule 260. *Vide* Hole v. Chard Union (1894) 1 Ch. 293-296. If the defendants made alterations to the mill-races after the issue of the writs, the damages, if any, suffered by the plaintiff in consequence of such further alterations, would have to be recovered in another action.

In the event of such reference being taken, further directions and costs
 30 will be reserved. If the plaintiff does not so elect within the time above limited, the actions will stand dismissed with costs.

There will be a stay of thirty days.

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No. 26.

Supplementary Reasons for Judgment of Grant, J.A.

S. C. O. KEEWATIN POWER CO. LTD. v. KEEWATIN FLOUR MILLS LTD. KEEWATIN POWER CO. LTD. v. LAKE OF THE WOODS MILLING CO. LTD.	}	Copy of Judgment of Grant, J.A. delivered 25th January, 1928. W. N. TILLEY, K.C., and C. F. H. CARSON, D. L. MCCARTHY, K.C., and C. S. MACINNES, K.C.,	} } <i>for Plaintiffs.</i> } <i>for Defendants.</i> 10
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Upon the settlement of the minutes of the formal judgment in these actions, pursuant to reasons for judgment delivered November 11th, 1927, counsel discussed the question as to the rights and liabilities of the parties in respect of the alleged increased volume of water flowing through the artificial channels of the defendants' mills in consequence of the raising of the level of the waters of the Lake of the Woods by the erection and maintenance of the plaintiffs' power dam in the west branch of the Winnipeg River. At my request the point was further argued on Monday, January 23rd, 1928, and is now to be disposed of, together with certain questions arising as to the formal judgment. 20

Before dealing with the above matters I desire to amend an expression used in the Reasons for Judgment, as to which there might be some misunderstanding or confusion. Toward the end of the Reasons for Judgment, when referring to alterations in the artificial channels of the Lake of the Woods Milling Company, Ltd., a sentence was made to read as though the making of the alterations prior to the twenty year prescriptive period would give a right by prescription. The sentence in question, in order that it may properly convey my meaning, should read as follows, and the following sentence is to be substituted : "It may be that some of such alterations in the case of the Lake of the Woods Milling Company, Ltd., were made, and the user and enjoyment of the increased volume of water were commenced, prior to the twenty year prescriptive period and would therefore not be open to objection when the writs were issued." 30

Dealing with the minutes of the formal judgment, after further consideration I am still not convinced that it is satisfactorily established by the evidence upon the Record that any alterations which were made in their respective artificial channels by the defendants had the effect of increasing materially the flow of water. I am still of opinion that the plaintiffs should be put to the exercise of the opinion given them to take a reference, if they think it advisable so to do, and that unless such option be exercised and the reference taken, the actions should be dismissed with costs. As the matter has been under consideration for some time, I direct that the plaintiffs shall have the period of thirty days from this date, within which to exercise the option of taking a reference. The purpose and terms of the reference shall be as set out in the draft minutes of judgment herewith. 40

In regard to the question of onus of proof upon such reference, while primarily the onus rests upon the plaintiffs to shew that alterations were made in the artificial channels, yet it is my intention and I direct that the Master shall be free to determine in the reference upon which party and to what extent the onus may lie, and the formal judgment is not to contain any directions in regard to onus upon the reference.

As I have already stated in the course of the discussion, the plaintiffs' right of appeal is not to be prejudiced or affected in any way by the taking of a reference, it being my intention that the plaintiffs shall be quite free to exercise the option with respect to a reference and also be free to appeal from my judgment without embarrassment by the reference.

If the clause which I am inserting in the Minutes of Judgment does not sufficiently protect the plaintiffs in this regard, such clause may be amended as counsel may advise.

It has appeared upon the further argument that the regulation of the level of the waters of the Lake of the Woods has been placed in the hands and under the control of a special Board or Boards, in so far as Canada is concerned, by virtue of the Canadian Statute of 1921, cap. 10; the question appears also to be affected by the provisions of a Convention, a copy of which is to be found in the Canadian Statutes of 1926 in the prefix on page xv. *et seq.* It appears further that in the year 1925, an appropriation of \$800,000 was made by the Parliament of Canada for the purpose of enlarging the outlet of the Lake of the Woods and to provide facilities for the regulation of the water levels of that Lake.

In so far as the level of the Lake waters may be raised by reason of the control exercised by a Government or International Board, I do not think the defendants could reasonably be held answerable to the plaintiffs for accepting the benefit of any increased volume of water thereby caused to flow through their respective channels. The raising or lowering of the level of the waters of the lake and the increase or decrease in the volume of the water sent into the artificial channels, by reason of the exercise, directly or indirectly, by such a controlling Board, of its statutory or treaty powers, are matters entirely beyond the control of the defendants and for which, in my opinion, they cannot be held responsible even if it should be held that they are not entitled lawfully to claim as of right the benefit of the water at any level to which it may be raised by any cause. I am not to be understood as denying the existence of such a right on the part of the defendants. I merely go to this length, namely: I think that the defendants, by merely using the increased volume of water sent into their channels by the raising of the level of the waters of the Lake, are not doing or permitting anything to be done, for which they should be liable in damages, or against which they ought to be enjoined.

In so far as levels of the waters of the Lake may have been raised by the erection or operation of the plaintiffs' (?) dam and power plant, in my view of the matter the defendants ought not to be called upon to take active measures to prevent any increased flow of water down their respective artificial channels, so long as they have not increased or did not increase the dimensions

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and capacity of the channels. In the exercise of my discretion, I would not grant the injunction sought by the plaintiffs in that regard, nor should the plaintiffs in my opinion, be allowed any damages upon the reference in respect thereof, except to the extent (if any) that any increased flow may be shewn to be or have been due to alterations made by the defendants in their respective artificial channels after the issue of the plaintiffs' Crown Grant. To the extent of the capacity of the channels as they existed at that time, the defendants are entitled to the use of the water which may flow into and through the same from the Lake of the Woods; and if the plaintiffs, by building a dam at the west branch of the Winnipeg River and thereby raising the level of the waters in the Lake, caused an increased volume of water to flow into the defendants' channels, I do not see any good reason either in law or upon the merits, to justify my penalizing the defendants in respect thereof either by injunction or by the payment of damages. 10

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IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE } Wednesday, the 25th day of
MR. JUSTICE GRANT. } January, 1928. 20

BETWEEN :

THE KEEWATIN POWER COMPANY, LIMITED,

Plaintiffs,

AND

LAKE OF THE WOODS MILLING COMPANY, LIMITED,

Defendants.

This action coming on for trial at the Non-Jury Sittings at Toronto on the 16th, 17th, 18th, 19th, 20th, 23rd, 25th and 26th days of May, 1927, in the presence of Counsel for both parties, upon hearing read the pleadings and the evidence adduced and upon hearing what was alleged by Counsel afore-
said, and this Court having been pleased to direct that this action should stand over for judgment, 30

1. THIS COURT DOTHT DECLARE that the Defendants are entitled to use in the operation of their mill and plant at Keewatin all the water that may pass through the artificial channel in question herein, as the dimensions of the said channel existed on the 13th day of April, 1894, and doth order and adjudge the same accordingly.

2. AND THIS COURT DOTHT FURTHER ORDER AND ADJUDGE that if the Plaintiffs so elect within 30 days from the date hereof it shall be referred

to the Master of the Supreme Court of Ontario to determine :

- (a) The dimensions of the said channel as they existed on the 13th day of April, 1894;
- (b) Whether the dimensions of the said channel were increased between the 13th day of April, 1894, and the 22nd of February, 1916;
- (c) The nature and extent of any such increase in the size of the said channel;
- (d) In the event of any such increase in the dimensions of the said channel having been established, then (1) whether and to what extent the Defendants have thereby diverted water in excess of their rights through the said channel so increased; and (2) the damages, if any, suffered by the Plaintiffs by reason of any such excess diversion, such damages, if any, to be assessed down to the date of the assessment.

10

3. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said reference shall be at the Plaintiffs' own risk as to costs.

4. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that if the Plaintiffs elect to take a reference as aforesaid further directions and costs of the action and reference shall be, and the same are hereby, reserved until
20 after the said Master shall have made his report upon the said reference.

5. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the taking of such reference by the plaintiffs, in the exercise of the option given to them, shall be without prejudice to, and shall not affect the plaintiffs' rights of appeal, from this judgment.

6. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that if the Plaintiffs do not elect within the time above limited to take a reference as aforesaid this action be and the same is hereby dismissed, and that in that event the Plaintiffs do pay to the Defendants the Defendants' costs of this action and of the Defendants' counterclaim forthwith after taxation thereof.

30 "Settled Feb. 11th, 1928.

E. HARLEY,

Senior Registrar, S.C.O."

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IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE } Wednesday, the 25th day of
MR. JUSTICE GRANT. } January, 1928.

BETWEEN :

THE KEEWATIN POWER COMPANY, LIMITED,

Plaintiffs, 10

AND

THE KEEWATIN FLOUR MILLS COMPANY, LIMITED,

Defendants.

This action coming on for trial at the Non-Jury Sittings at Toronto on the 16th, 17th, 18th, 19th, 20th, 23rd, 25th and 26th days of May, 1927, in the presence of Counsel for both parties, upon hearing read the pleadings and the evidence adduced, and upon hearing what was alleged by Counsel aforesaid, and this Court having been pleased to direct that this action should stand over for judgment, 20

1. THIS COURT DOTH DECLARE that the Defendants are entitled to use in the operation of their mill and plant at Keewatin all the water that may pass through the artificial channel in question herein, as the dimensions of the said channel existed on the 13th day of April, 1894, and doth order and adjudge the same accordingly.

2. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that if the Plaintiffs so elect within 30 days from the date hereof it shall be referred to the Master of the Supreme Court of Ontario to determine :

- (a) The dimensions of the said channel as they existed on the 13th day of April, 1894 ; 30
- (b) Whether the dimensions of the said channel were increased between the 13th day of April, 1894, and the 29th of March, 1916 ;
- (c) The nature and extent of any such increase in the size of the said channel ;
- (d) In the event of any such increase in the dimensions of the said channel having been established, then (1) whether and to what extent the Defendants have thereby diverted water in excess of their rights through the said channel so increased ; and (2) the damages, if any, suffered by the Plaintiffs by reason of any such excess diversion, such damages, if any, to be assessed down to the date of the assessment. 40

3. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said reference shall be at the Plaintiff's own risk as to costs.

4. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that if the Plaintiffs elect to take a reference as aforesaid further directions and costs of the action and reference shall be, and the same are hereby, reserved until

after the said Master shall have made his report upon the said reference.

5. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the taking of such reference by the Plaintiffs, in the exercise of the option given to them, shall be without prejudice to, and shall not affect the plaintiffs' rights of appeal from this judgment.

6. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that if the Plaintiffs do not elect within the time above limited to take a reference as aforesaid this action be and the same is hereby dismissed, and that in that event the Plaintiffs do pay to the Defendants the Defendants' costs of this
10 action and of the Defendants' counterclaim forthwith after taxation thereof.

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Settled Feby. 11th, 1928.

E. HARLEY,
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Notice of Appeal.
(Lake of the Woods Action.)

IN THE SUPREME COURT OF ONTARIO.

No. 29.
Notice of
Appeal
(Lake of the
Woods
Action) 7th
February,
1928.

BETWEEN :

THE KEEWATIN POWER COMPANY, LIMITED,

Plaintiffs,

20

AND

LAKE OF THE WOODS MILLING COMPANY, LIMITED,

Defendants.

TAKE NOTICE that the plaintiffs appeal to a Divisional Court from the judgment pronounced by the Honourable Mr. Justice Grant on the 25th day of January, 1928, on the following, amongst other grounds :

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

2. The plaintiffs are entitled to have the waters of the Lake of the
30 Woods flow to their lands without diversion by the defendants and the judgment should have so declared.

3. The plaintiffs are entitled to the full benefit of their power development at the Norman Dam and the judgment should have so declared.

4. The defendants are as against the plaintiff wrongfully diverting water and the plaintiffs are entitled to an injunction restraining such diversion.

5. If the defendants have rights to divert water they are limited rights only and are to be enjoyed in common with others and they are not entitled to divert or use water as declared in said judgment.

6. Because of the wrongful admission and rejection of evidence as
40 own in the notes of evidence.

*In the
Supreme
Court of
Ontario.*

No. 29.
Notice of
Appeal
(Lake of the
Woods
Action), 7th
February,
1928.

—continued.

7. Because the defendants were from time to time altering the race way, the water wheels and the flow of water, claiming to be entitled to do so as of right and on the evidence adduced the plaintiffs should have been granted relief as claimed with costs.

DATED at Toronto this 7th day of February, 1928.

TILLEY, JOHNSTON, THOMSON & PARMENTER,
Solicitors for the Plaintiffs.

To CHRISTOPHER C. ROBINSON, ESQ., K.C.,
Solicitor for the Defendants.

10

No. 30.
Notice of
Appeal
(Keewatin
Flour Mills
Action), 7th
February,
1928.

No. 30.
Notice of Appeal.
(Keewatin Flour Mills Action.)

IN THE SUPREME COURT OF ONTARIO.

20

BETWEEN :

THE KEEWATIN POWER COMPANY, LIMITED,

Plaintiffs,

AND

THE KEEWATIN FLOUR MILLS COMPANY, LIMITED,

Defendants.

30

TAKE NOTICE that the plaintiffs appeal to a Divisional Court from the judgment pronounced by the Honourable Mr. Justice Grant on the 25th day of January, 1928, on the following, amongst other grounds :

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

2. The plaintiffs are entitled to have the waters of the Lake of the Woods flow to their lands without diversion by the defendants and the judgment should have so declared.

3. The plaintiffs are entitled to the full benefit of their power development at the Norman Dam and the judgment should have so declared.

40

4. The defendants are as against the plaintiffs wrongfully diverting water and the plaintiffs are entitled to an injunction restraining such diversion.

5. If the defendants have rights to divert water they are limited rights only and are to be enjoyed in common with others and they are not entitled to divert or use water as declared in said judgment.

6. Because of the wrongful admission and rejection of evidence as shewn in the notes of evidence.

7. Because the defendants were from time to time altering the race way, the water wheels and the flow of water, claiming to be entitled to do so as of right and on the evidence adduced the plaintiffs should have been granted relief as claimed with costs.

DATED at Toronto this 7th day of February, 1928.

TILLEY, JOHNSTON, THOMSON & PARMENTER,

Solicitors for the Plaintiffs.

To CHRISTOPHER C. ROBINSON, Esq., K.C.,

Solicitor for the Defendants.

*In the
Supreme
Court of
Ontario.*

No. 30.
Notice of
Appeal
(Keewatin
Flour Mills
Action) 7th
February,
1928.

—continued.

10

No. 31.
Notice of Cross-Appeal.
(Lake of the Woods Action.)

IN THE SUPREME COURT OF ONTARIO.

BETWEEN :

KEEWATIN POWER COMPANY, LIMITED,

Plaintiff,

AND

LAKE OF THE WOODS MILLING COMPANY, LIMITED,

Defendant.

20 TAKE NOTICE that the Defendant (Respondent) intends upon the argument of the appeal herein to contend that the decision of the Court below should be varied by dismissing this action with costs.

DATED this 30th day of October, 1928.

CHRISTOPHER C. ROBINSON,

Solicitor for the Defendant.

To MESSRS. TILLEY, JOHNSTON, THOMSON & PARMENTER,

Solicitors for the Plaintiff.

No. 31.
Notice of
Cross-
Appeal
(Lake of the
Woods
Action) 30th
October,
1928.

30

No. 32.
Notice of Cross-Appeal.
(Keewatin Flour Mills Action.)

IN THE SUPREME COURT OF ONTARIO,

BETWEEN :

KEEWATIN POWER COMPANY, LIMITED,

Plaintiff,

AND

KEEWATIN FLOUR MILLS, LIMITED,

Defendant.

40 TAKE NOTICE that the Defendant (Respondent) intends upon the argument of the appeal herein to contend that the decision of the Court below should be varied by dismissing this action with costs.

DATED this 30th day of October, 1928.

CHRISTOPHER C. ROBINSON, *Solicitor for the Defendant.*

To MESSRS. TILLEY, JOHNSTON, THOMSON & PARMENTER,

Solicitors for the Plaintiff.

No. 32.
Notice of
Cross-
Appeal
(Keewatin
Flour Mills
Action) 30th
October,
1928.

In the
Supreme
Court of
Ontario.

No. 33.

Reasons for Judgment of Second Divisional Court.

No. 33.
Reasons for
Judgment of
Second Divi-
sional Court
—Latchford,
C.J.
11th Novem-
ber, 1928.

<p>KEEWATIN POWER CO. LTD. vs. LAKE OF THE WOODS MILLING CO. LTD. AND KEEWATIN POWER CO. LTD. vs. KEEWATIN FLOUR MILLS LTD.</p>	}	<p>TILLEY, W. N., K.C., and CARSON, C.F.H., <i>for Plaintiffs (Appellants),</i> McCARTHY, D. L., K.C., ROBINSON, C.C., K.C., and McINNES, C. S., K.C., <i>for Defendants (Respondents).</i></p>
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LATCHFORD, C.J. :—Appeals by the plaintiffs and cross-appeals by the 10
defendants from the judgment of the Honourable Justice Grant of January
25, 1928, 61 O.L.R. 363.

The grounds of the main appeals are the same in both cases.

In brief they are :—

1. That the judgment should have declared the plaintiffs entitled to
have the waters of the Lake of the Woods flow to their lands without diversion
by the defendants.

2. That an injunction should have been granted restraining the defen-
dants from wrongfully diverting water from the plaintiffs.

3. That if the defendants have rights to divert water, such rights are 20
limited and are not as declared in the judgment.

4. That the defendants having from time to time altered their race-
ways, water wheels and the flow of water under a claim of right, the plaintiffs
should have been granted the relief which they claimed.

5. That evidence was improperly admitted and rejected.

Apart from the last ground of appeal, the real question involved is whether
the plaintiffs are entitled as against the defendants, to the exclusive use of the
waters of the Lake of the Woods.

This is for an absolute exclusion, as according to the evidence of Mr.
Backus of Minneapolis, he is the sole owner of all the shares in the plaintiff 30
company, and owns not only the western outlet of the Lake, but also the
eastern outlet—the only natural outlets now existing. It follows that should
he succeed in these appeals, the vast area of the Lake of the Woods—over
1,500 square miles in extent, it is said—would be the personal mill pond of
Mr. Backus. The defendants have several millions of dollars invested in
the mills and elevators, which the plaintiffs by these actions seek to deprive
of the power which they have long been using.

I mention these circumstances merely to indicate the magnitude of the
issues involved in this litigation. Of course the gravity of the result does
not affect the plaintiffs' rights in any way. 40

By the cross-appeals the defendants simply claim that the actions should
have been dismissed with costs, and that the plaintiffs are not entitled to the
reference directed.

The facts are fully stated in the reasons for judgment of Mr. Justice

Grant, yet I think something may not unsuitably be said by way of addition or qualification.

In arriving at a proper determination of the issues between the parties, it appears to me of importance carefully to consider the topography of the north shore of the Lake of the Woods in the vicinity of the several properties involved.

With the eastern branch of the Winnipeg River we need have no concern. According to Mr. Backus it was purchased by him in 1920 or 1921. The previous history of that branch of the River appears in the judgment of Mr. Justice Anglin (now the Chief Justice of Canada), in *Keewatin Power Co. vs. The Hudson's Bay Co. and The Town of Kenora* (1906) 13 O.L.R., p. 237, and, in appeal (1908) 16 O.L.R. 184.

About two miles west of the inlet of the western branch of the river, there lies a projection of the lake called Portage Bay. Nearby the river, after discharging northerly through both its branches, turns to the west, and at a much lower level than the Lake passes close to Portage Bay, from which it is separated in several places by a low, undulating, narrow reef or neck of rock, bare or covered only with scattered trees of little or no value. The proximity of the lake to the river, the great difference in the two levels, a ravine and one or more depressions across the reef, and the consequent ease of cutting through the rock along the ravine and depressions, constitute it an ideally attractive location for the development of water power.

This is so obvious from a glance at the maps filed, notably the McLatchie Map of May 14, 1881 (Ex. 20), especially when the conformation of the reef, the difference in the levels on its two sides, and the vast area of the lake as a source of supply are borne in mind, that no oral testimony was needed to demonstrate it. The first impression, in my opinion, that the locality would make on the mind of any practical business man, was its economic adaptability for the generation of enormous power in more than one place.

Mr. Tilley protested strongly against the admission of evidence from which it might be inferred that locations between Portage Bay and the Winnipeg River were applied for and granted as power sites. For my part I think that no such evidence was needed to establish the fact. The very topography of the place seems to me conclusive that the Crown grants of the sites which the defendants occupied in 1916 and still occupy were made with the common intention on the part of the Crown and the grantees that the subject matter of the grants should be used for the development of power. Apart from their availability for that purpose, the sites on which the defendants' mills now stand had no more value than any equally narrow reef of barren rock anywhere in the vicinity ; yet upon it as early as 1878, if not earlier, when the territory was in dispute between the Dominion and the Ontario Government, men of capital desired to acquire power sites. In that year W. J. Macaulay, of Winnipeg, a licensee of a timber area on the Lake of the Woods, applied to the Rt. Hon. Sir John A. Macdonald for a mill site on Portage Bay, and in 1880 he was granted a lease for twenty-one years. In 1881 he assigned his timber licence and the remainder of his term under the lease to Dick & Banning, of Winnipeg.

*In the
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sional Court,
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—continued.

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—continued.

In April, 1884, a grant in fee of a certain area was made to Macaulay by the Dominion, but, as the description was found to be inaccurate, a new patent was issued to him on May 19th, 1884. It describes the area granted by metes and bounds, and by reference to an attached tracing, stated to have been taken from a plan of survey made by John McLatchie, D.L.S., dated May 14th, 1881, of record in the Department of the Interior. The tracing, a copy of which is in evidence, shows the granted area of 27 acres to be bisected by a canal leading from the lake to the river, and bears the legend, "W. J. McAuley's Mill Site," indicating that it was contemplated at the time that the property should be put to the only use for which it was adapted. 10
However, the canal or mill race does not appear to have been actually cut until later.

The attention of John Mather, a lumber merchant and capitalist of Ottawa, was attracted by the locality in 1878 or 1879. While the historic Boundary Dispute was determined in the former year, the lands within the disputed area continued to be claimed by the Dominion. In Regina vs. St. Catharines Milling and Lumber Co. the question of ownership was first decided in favour of Ontario by the remarkable judgment of Chancellor Boyd (1885) 10 Ont. R. 196, which persisted unimpaired in the gauntlet of litigation through which it was forced to run : (1886) 13 A.R., 148, 13 S.C.R. 577 and 20 (1888) 14 A.C. 46.

In the ten year interval the working arrangement between the conflicting claimants mentioned by Mr. Justice Grant was in operation.

On the 14th August, 1879, a licence to cut timber on an area on the Lake of the Woods, granted by the Dominion to John Dennis and others, was purchased by the Keewatin Lumbering & Mfg. Co. of which Mather was vice-president and general manager. The reef as an obviously desirable site for a mill to cut the timber from the limit naturally appealed to him. The location upon it of the main line of the Canadian Pacific Railway created exceptional facilities for shipment, while its narrowness and its slight elevation above the lake greatly facilitated the development of power. In 1880 Mather had a survey and plan of it (Ex. 41 and Ex. 42) made by O. R. Davidson, a Dominion Land Surveyor. Davidson reported to the Hon. T. B. Pardee, Commissioner of Crown Lands for Ontario, on 5th May, 1880 (Ex. 50), stating that the mills of the company only awaited the opening of the Lake to begin operations, and that they were to be run by the water of the Lake carried by an artificial water course connecting with the Winnipeg River. 30

The survey by McLatchie was also made at Mather's instance. It was by Mather's "favour" (Ex. 34, *ad fin.*) that the formal instructions of the Surveyor General of Canada were delivered to McLatchie. Mather himself, 40 possibly on his own motion, but also on the instructions and "additional instructions" (Ex. 43) of the Deputy Minister of the Interior, reported on the 28th April, 1881, to that gentleman on the water power at the outlets of the Lake, excluding the eastern outlet. In his covering letter (Ex. 38) Mather said :

"I have now the honour to send you my report and plan showing how the water power at the outlets of the Lake of the Woods may

be utilized to the fullest extent The Plans made from Mr. McLatchie's late survey will show the positions of the Dam and Canals proposed by me as a portion of the scheme and I took the liberty to request him to note that very particularly."

10 The report is too long to quote except in part. Three localities are stated to be suitable for the development of water power. One was on the western outlet of the river, where the plaintiff company then managed by Mather, afterward built what is known as the Roller Dam ; the second was where a canal was shown on a plan sent to Colonel Dennis, "through a natural depression very little above the surface of the lake." The canal "should be 40 feet wide, and at least 8 feet deep below the present level of the water in the lake." On this site were subsequently erected the works of the defendant the Lake of the Woods Milling Co. The third was "another canal near McAulay's saw mill." This "should be 25 feet wide and carry at least 8 feet of water from the lake in order to provide a plentiful supply for a range of mills along Winnipeg Bay." On this site now stand the mills of the defendant The Keewatin Flour Mills Ltd.

20 It may be observed incidentally—though the fact may be of slight if of any moment—that the ravine mentioned by Mather as "a depression but little above the surface of the lake" appears to have been at times below it—probably only when the water was high. In Dick and Banning's letter of the 30th May, 1887, referring to a prior letter (Ex. 57) written to the Commissioner in 1885, applying for an area west of their 27 acres, they speak of the place as "a natural water way which with very little improvement could be made a valuable mill-race." Again, in the Kirkpatrick report (Ex. 66), the ravine is stated to be "a natural water course, extending from Portage Bay to the River Winnipeg proposed to be utilized by the Milling Company for their water power."

30 The Order in Council (Dominion) of the 5th April, 1887 (Ex. 49), authorizing \$7,000 to be placed in the estimates and paid to Mather for the construction of the Roller Dam, recites that with an increased body of water and a permanent water level, such as the proposed dam would ensure, the narrow neck of land dividing the Lake of the Woods from the Winnipeg River "would be made invaluable to Capitalists and Manufacturers and relieve the companies who have already established themselves, and are now, owing to the lowness of the water, compelled to run their mills on half time only".

40 While improvement in the navigation of the lake was one of the objects for which the construction of the dam was sought, another, and to Mather's companies the more important, was stated to be "to maintain a constant head of water for the mills, both saw and grist, which have been and may hereafter be erected, and depend for their power, and therefore their constant working, upon an ample supply of water."

The only capitalists and manufacturers who had established themselves and their mills on the neck between the lake and the river were Mather and his associates ; and the mills which had been or might afterwards be erected are now the property of one or other of the defendant companies.

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—continued.

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sional Court
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—continued.

As stated in the opinion of the learned trial judge, 61 O.L.R. at pp. 366 and 367, the two mill races on the reef are shewn on the Stewart plan (Ex. 12) incorporated in the Ontario patent to Dick & Banning of the 5th January, 1891 (Ex. 28) and are referred to in the Dominion patent to the Canadian Pacific Railway Company of the 29th March, 1894 (Ex. 23). In the former grant the mill race of the Lake of the Woods Company is expressly mentioned.

It is not, I think, open to doubt that the fullest disclosure was made to the government of Ontario of the particular purpose—absolutely necessary to the success of their undertaking for which Mather and his associates sought, and ultimately obtained, title to the two power locations between Portage Bay and the river, or that the Provincial authorities sanctioned and encouraged the enterprises, actual or contemplated, that would depend for their success on the development and use of the water power available obviously across the reef, owing to the physical characteristics there existing.

The approval of the Dominion could not be more clearly manifested than by its contribution of \$7,000 towards ensuring a continuous supply of water for the mill races constructed by the defendants and in use at the time the appropriation was provided. The desired end was attained by the construction of the Roller Dam.

Lower down the west branch of the river the Keewatin Power Company under Mather's supervision built, about 1893, what is called the Norman Dam, but developed no power and erected no buildings during his lifetime. He died in 1906 or 1907, leaving three sons and one daughter. The shares in the plaintiff company which passed to his children or were otherwise owned by them, were pledged to the Bank of Ottawa as security for advances made to the power company.

In 1911 the Norman Dam was leaking, and the Lake of the Woods Milling Company paid the plaintiffs one-third of the cost of repairing it. The Milling Company had been authorized by 6 Ed. VII, c. 120 (Dominion), to guarantee an issue of bonds by the Keewatin Flour Mills Company amounting to \$750,000, but its only interest in the reparations was that they were likely to improve the flow through the two canals at Portage Bay.

At a date not definitely fixed but probably in 1911 or 1912, David L. Mather, one of John Mather's sons, interviewed Mr. Backus at Fort Frances with a view to the sale of the Keewatin Power Company's holdings. Nothing was then arranged, but in 1913 Backus agreed to purchase the property. The contract was not produced at the trial, and the little that transpired regarding it is to be found only in the evidence of Backus himself. What is certain is that he did not fulfil his obligations to pay the price which he admits was stipulated. After stating on cross-examination that he had agreed to pay \$425,000, and had made an initial payment of \$70,000, he was asked by Mr. McCarthy (p. 123) :

“Then am I right in saying you refused to pay the balance ?

“A. Well, this question of diversion came up sometime after the initial payment was made.”

No better success attended the repetition of the question, than, “Well, I think we made more than one payment.”

If more than one payment was made its amount is not stated. That Backus defaulted cannot be doubted, but the precise date of the default is uncertain. That it was after February, 1916, may be inferred from the extract from the minutes of the company of that date, read by Mr. Tilley at the trial (Ev. p. 136), setting forth that the Secretary "had received certain letters in connection with the contract for the sale of the company to Mr. Backus. One of such letters was from Mr. Backus himself. It stated "that there was a possibility that the Lake of the Woods Milling Company "might obtain an easement to divert water through one of their artificial
 10 "channels if quick action was not taken, and that he (the Secretary) had "accordingly issued a writ against that company for an injunction and a "declaration that the company had no right to divert any water." The writ was issued by the Company's solicitors in February, 1916. Its purpose, Mr. Backus states (Ev. p. 134), "was to have our title cleared up." That title arose only under the agreement.

This writ was followed on the 29th March, 1916, by that against the Keewatin Flour Mills, Ltd., and statements of claim in both actions were filed on the 26th June in the same year by the same solicitors, but no further proceeding was taken for many years. In the meantime, early in 1920, Backus
 20 acquired from the Bank of Ottawa all the shares of the Keewatin Power Company. This was done it would appear at the instance, or with the concurrence of the shareholders. The purchaser was at the time as fully aware of the user by the defendants of their power developments as he was when, in 1916, he desired to have his title under the agreement of 1913 "cleared up." The sale and purchase constituted in effect an abandonment by both parties of the agreement, and involved the right to revive the dormant law suits, as they were revived in 1927.

Both actions are based on the patent from the Crown to the Plaintiffs of the 13th April, 1894. The titles of the defendants, as pointed out in the opinion
 30 of Mr. Justice Grant, are based upon grants from the Crown which are prior in date in both instances.

The patent of 1894 refers to an agreement (Ex. 87), dated the 24th November, 1891, made between Her Majesty represented by the Commissioner of Crown Lands for Ontario and the Keewatin Lumbering & Manufacturing Company, a John Mather organization of which he was at the time Acting Secretary. The Company on the 22nd September, 1893 (Ex. 92) assigned to the plaintiffs all its rights and privileges arising under the agreement, which provided that in consideration of a money payment and the fulfilment of specified obligations,
 40 one of which was the expenditure of \$250,000 in developing water power, the Crown would convey certain lands to the Keewatin Lumbering & Manufacturing Co. The lands included Tunnel Island on the western branch of the Winnipeg River. The development was the construction of the Norman Dam.

The benefit passing to the plaintiffs by the assignment was a right to acquire from the Crown certain described lands.

It is argued by Mr. Tilley that the rights of the plaintiffs against the Lake of the Woods Milling Company, whose patent was subsequent to the agreement, can be founded on the agreement as well as on the patent.

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—continued.

*In the
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sional Court
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—continued.

I do not think this contention tenable. By the agreement the Crown imposed upon itself an obligation under stated conditions to make a grant of certain lands to the Keewatin Lumbering & Manufacturing Co., and such obligation might be enforceable against the Crown by the plaintiffs under the assignment if the original conditions were complied with. But the claim of the plaintiffs to prevent the defendants from using their water powers must in my opinion rest on the patent of 1894. The recitals in it referring to the agreement of 1891 grant nothing to the plaintiffs. Such rights against the defendants as the plaintiffs may have must arise from what appears on the face of the patent itself, regard being had at the same time to the prior grants. 10

In my opinion the patent to the plaintiffs was never intended to convey and does not in fact convey the exclusive use to which they assert a right. The lands at Portage Bay were granted by the Crown with full knowledge that they were to be used, and as they were when patented used, as power sites. It was for their manifest adaptability to such purposes alone that the Mather interests acquired them and the site at Tunnel Island now owned by the plaintiffs. It is simply inconceivable that the same interests should by acquiring the property now owned by the plaintiffs, desire the impairment of their investment in the defendant companies by eliminating or limiting the water power serving the great mills of their allied enterprises. 20

It is not in my opinion necessary to refer to any extraneous circumstances or to any evidence to explain or affect the terms of the grant to the plaintiffs. To my mind by mentioning in addition to Tunnel Island and a described block of land "the water power adjoining thereto on the west branch or outlet of the Winnipeg River," the patent manifests an intention of granting that water power and none other. Whether the Crown had or had not the right to grant the water power need not be discussed. I cite the words simply as a manifestation of the intention of the Crown.

What was intended is otherwise shewn by the limitations expressed in the patent. The patent states that the grant is 30

"Subject to the condition and understanding that nothing herein contained shall be construed as conferring upon the Grantees exclusive rights elsewhere upon the said Lake of the Woods or upon other streams flowing into or out of said lake, or shall confer upon said Company power or authority to interfere with, or restrict any powers or privileges heretofore enjoyed by us or which may hereafter be granted or demised to any other person or company in respect of any other water power on the said Lake of the Woods or any other stream flowing out of or into the said Lake."

The "understanding" must have been arrived at by minds representing 40 the grantee as well as the province of Ontario. Many of the shares in the plaintiff company were then owned by John Mather, and it is in the highest degree improbable that he and his associates should be parties to an understanding that would imperil their other long-established enterprises at Portage Bay.

It therefore seems to have been clearly understood, as the patent declares in effect, that nothing contained in it should be taken to mean that any rights

conferred by it should enable the grantee to exclude the defendants from the exercise of their rights "elsewhere upon the lake," that is, where to the knowledge of the grantors the defendants had long been using its waters.

As has been stated no streams were flowing out of the lake originally except the Eastern and Western branches of the Winnipeg River, and, occasionally, the ravine at Portage Bay, where the plant of the Lake of the Woods Milling Co. was located. The only natural stream flowing out of the Lake, other than the western branch of the river was the eastern branch. The use of the plural "streams," while inapt in a sense, can only be given effect to by
 10 regarding it as understood to relate to the canals used at the time by the defendants as well as to the eastern outlet of the lake. *Majus valeat quam pereat* should apply to the word.

It was also part of the understanding that the grantee should not have "power or authority to interfere with or restrict any powers or privileges previously enjoyed by the Crown." Among such powers was the undoubted power to grant the lands at Portage Bay obviously, as I have stated, in order that they should be used as power sites.

In my opinion the patent when properly regarded required no extraneous evidence to interpret it; and I make no comment on the numerous cases cited
 20 by the learned trial judge and upon the argument of the appeals as to the ability of such evidence.

The result arrived at in the Court below seems to be right and I think the
 a appeals should be dismissed.

Upon the evidence adduced at the trial Mr. Justice Grant did not deem it proper to determine that injury had resulted to the plaintiffs by any changes that had been made in the mill races; but, while it was realized that the onus of proving damage was upon the plaintiffs they were given an option to take a reference at their own risk as to costs. That option they have exercised.

With the greatest respect I am humbly of opinion that the option should
 30 not have been given. In the first place the onus was upon the plaintiffs of establishing that they had sustained damages by acts of the defendants in enlarging the canals. I have carefully read all the evidence on the point. It seems to me to amount to no more than that the Keewatin Flour Mills cleared out their mill race by removing rocks that had fallen into it; and that the Lake of the Woods Milling Company rounded off an acute angle of their intake which had created an eddy, and had by so doing increased the head of water at the mills. The supply of water previously was sufficient to permit of the installation of a fire pump and a plant to generate electric light for the mills. It also enabled the defendants to substitute additional and larger
 40 turbines of improved design for the wheels originally installed. That the resulting increased capacity of the mills was due to abstracting from the lake more than was taken when the plants were first operated—even if that gave the plaintiffs a right of action—was not proved.

More solid grounds were in my opinion necessary to be established before a reference was directed.

An additional reason is that a reference would protract litigation which

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has already continued nearly fifteen years. Interest *rei publicae ut sit finis litium* is a fundamental legal principle.

I would therefore allow with costs the cross appeals.

RIDDELL, J.A. :—I agree.

MIDDLETON, J.A. :—I agree in the result.

ORDE, J.A. : I agree in the result.

Ex. 33.
Reasons for Judgment of Second Divisional Court, —Latchford, C.J., 11th November, 1928.

—continued.

No. 34.

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Supplementary Reasons for Judgment of Second Divisional Court.

(LATCHFORD, C.J., RIDDELL, J.A., MIDDLETON, J.A., and ORDE, J.A.)

No. 34.
Supplementary Reasons for Judgment of Second Divisional Court, delivered by Latchford, C.J., 26th June, 1929.

KEEWATIN POWER CO., LTD., v. LAKE OF THE WOODS MILLING CO., LTD. AND KEEWATIN POWER CO., LTD., v. KEEWATIN FLOUR MILLS, LTD.	}	W. N. TILLEY, K.C., <i>for Plaintiffs (Appellants),</i> C. C. ROBINSON, K.C., <i>for Defendants (Respondents).</i>	20
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LATCHFORD, C.J. :—On motion to a single judge, enlarged into Court, the plaintiffs apply to settle the form of the judgments on these appeals and cross-appeals.

Our judgments simply dismissed the appeals with costs, and allowed the cross-appeals with costs.

Mr. Tilley urges that the judgment in each case should contain a declaration regarding the amount or quantity of the water of the Lake of the Woods which the defendant was entitled to divert. This was determined by the Hon. Mr. Justice Grant, and his conclusion on the point is expressed in the first paragraph of the formal judgment, which is as follows :

“This Court doth declare that the Defendants are entitled to use in the operation of their mill and plant at Keewatin all the water that may pass through the artificial channel in question herein, as the dimensions of the said channel existed on the 13th day of April, 1894, and doth order and adjudge the same accordingly.”

While that declaration was, I think, in effect affirmed by this Court, it is not considered proper to insert it in our judgments which were to the effect stated above.

I would add that if either party so desires the judgment may direct that certain reserved costs mentioned in the 8th paragraph of the order of the Hon. Mr. Justice Grant, dated 11th February, 1928, be disposed of as may be directed by the learned trial judge.

Costs of this motion should be in the cause to the original respondents. Mr. Justice Riddell, owing to illness, takes no part in this judgment.

40

No. 35.
 Formal Judgment of Second Divisional Court.
 (Lake of the Woods Action.)

IN THE SUPREME COURT OF ONTARIO.

*In the
 Supreme
 Court of
 Ontario.*

No. 35.
 Formal
 Judgment of
 Second Divi-
 sional Court
 (Lake of the
 Woods
 Action)
 26th June,
 1929.

THE HONOURABLE THE CHIEF JUSTICE
 of the Second Appellate Division,
 THE HONOURABLE MR. JUSTICE RIDDELL,
 THE HONOURABLE MR. JUSTICE MIDDLETON,
 THE HONOURABLE MR. JUSTICE ORDE.

Wednesday, the 26th
 day of June, 1929.

10 BETWEEN :

THE KEEWATIN POWER COMPANY, LIMITED, *Plaintiff,*
 AND
 LAKE OF THE WOODS MILLING COMPANY, LIMITED, *Defendant.*

UPON motion made unto this Court on the 13th, 14th, 15th and 16th days of November, 1928, and on the 26th day of May, 1929, by Counsel on behalf of the Plaintiff, in the presence of Counsel for the Defendant, by way of appeal from the judgment pronounced by the Honourable Mr. Justice Grant on the 25th day of January, 1928, after the trial of this action, and by Counsel on behalf of the Defendant, in presence of Counsel for the Plaintiff, by way of cross-appeal from the said judgment, upon hearing read the pleadings and proceedings in the action, the evidence adduced at the trial, and the said judgment, and upon hearing what was alleged by Counsel aforesaid, and this Court being pleased to direct that the said motion should stand over for judgment, and the same coming on this day for judgment :—

1. THIS COURT DOTH ORDER that the said appeal of the Plaintiff be and the same is hereby dismissed and that the said cross-appeal be and the same is hereby allowed and that the said judgment be varied and as varied be as follows :—

“1. THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby dismissed.

“2. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff do pay to the Defendant the costs of this action forthwith after taxation thereof.”

2. AND THIS COURT DOTH FURTHER ORDER that the costs reserved by the 8th paragraphs of the two orders of the Honourable Mr. Justice Grant herein dated 11th February, 1928, be disposed of as may be directed by the Honourable Mr. Justice Grant.

3. AND THIS COURT DOTH FURTHER ORDER that the Plaintiff do pay to the Defendant forthwith after taxation thereof the costs of this motion and of the said motion by way of cross-appeal and the costs of the applications to the Honourable the Chief Justice of the Second Appellate Division and to this Court to settle this Order.

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

In the
Supreme
Court of
Ontario.

No. 36.
Formal Judgment of Second Divisional Court.
(Keewatin Flour Mills Action.)

IN THE SUPREME COURT OF ONTARIO.

No. 36.
Formal
Judgment of
Second Divi-
sional Court
(Keewatin
Flour Mills
Action)
26th June,
1929.

THE HONOURABLE THE CHIEF JUSTICE
of the Second Appellate Division,
THE HONOURABLE MR. JUSTICE RIDDELL,
THE HONOURABLE MR. JUSTICE MIDDLETON,
THE HONOURABLE MR. JUSTICE ORDE.
BETWEEN :

Wednesday, the 26th
day of June, 1929.

10

THE KEEWATIN POWER COMPANY, LIMITED,

Plaintiff,

AND

THE KEEWATIN FLOUR MILLS COMPANY, LIMITED,

Defendant.

UPON motion made unto this Court on the 13th, 14th, 15th and 16th days of November, 1928, and on the 26th day of May, 1929, by Counsel on behalf of the Plaintiff, in the presence of Counsel for the Defendant, by way of appeal from the judgment pronounced by the Honourable Mr. Justice Grant on the 25th day of January, 1928, after the trial of this action, and by Counsel on behalf of the Defendant, in presence of Counsel for the Plaintiff, by way of cross-appeal from the said judgment, upon hearing read the pleadings and proceedings in the action, the evidence adduced at the trial, and the said judgment, and upon hearing what was alleged by Counsel aforesaid, and this Court being pleased to direct that the said motion should stand over for judgment, and the same coming on this day for judgment :—

1. THIS COURT DOTH ORDER that the said appeal of the Plaintiff be and the same is hereby dismissed and that the said cross-appeal be and the same is hereby allowed and that the said judgment be varied and as varied be as follows :—

30

“1. THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby dismissed.

“2. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff do pay to the Defendant the costs of this action forthwith after taxation thereof.”

2. AND THIS COURT DOTH FURTHER ORDER that the costs reserved by the 8th paragraphs of the two orders of the Honourable Mr. Justice Grant herein dated 11th February, 1928, be disposed of as may be directed by the Honourable Mr. Justice Grant.

3. AND THIS COURT DOTH FURTHER ORDER that the Plaintiff do pay to the Defendant forthwith after taxation thereof the costs of this motion and of the said motion by way of cross-appeal and the costs of the application to the Honourable the Chief Justice of the Second Appellate Division and to this Court to settle this Order.

“E. HARLEY,”

“Senior Registrar, S.C.O.”

40

No. 37.
Order of Orde, J.A.

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE MR. JUSTICE ORDE
IN CHAMBERS.

Friday, the 20th day of
September, 1929.

*In the
Supreme
Court of
Ontario.*

No. 37.
Order of
Orde, J.A.,
20th Septem-
ber, 1929.

BETWEEN :

THE KEEWATIN POWER COMPANY, LIMITED,

Plaintiffs,

10

AND

LAKE OF THE WOODS MILLING COMPANY, LIMITED,

Defendants,

AND BETWEEN :

THE KEEWATIN POWER COMPANY, LIMITED,

Plaintiffs,

AND

THE KEEWATIN FLOUR MILLS COMPANY, LIMITED,

Defendants.

1. UPON the application of counsel for the plaintiffs in each of the
20 actions above styled, in the presence of counsel for the defendants in such
actions, upon hearing read the judgments of the Second Divisional Court of
the Appellate Division of the Supreme Court of Ontario pronounced in said
actions respectively on the 26th day of June, 1929, the reasons for said judg-
ments, the affidavit of C. F. H. Carson filed and the bond of The Dominion
of Canada General Insurance Company dated the 19th day of September,
1929, filed and upon hearing what was alleged by counsel aforesaid and it
appearing that the plaintiffs in each of said actions have, under the provisions
of the Privy Council Appeals Act R.S.O. 1927, Chapter 86, a right to appeal
to His Majesty in His Privy Council.

30 2. IT IS ORDERED that the said bond be and the same is hereby
approved and allowed as good and sufficient security that the plaintiffs in
such actions will effectually prosecute their appeals to His Majesty in His
Privy Council from the said judgments of the Second Divisional Court and
will pay such costs and damages as may be awarded in case the said judgments
are confirmed.

3. AND IT IS FURTHER ORDERED that appeals by the said plaintiff in
said actions to His Majesty in His Privy Council from the said judgment of
the Second Divisional Court be and the same are hereby admitted.

40 4. AND IT IS FURTHER ORDERED that the said appeals be and they
are hereby consolidated and that they do proceed as one consolidated appeal
on one record.

5. AND IT IS FURTHER ORDERED that the costs of these applications
shall be costs in the said appeal.

"E. HARLEY,"

Senior Registrar, S.C.O.

Entered O.B. 107, pages 523-4.

Sept. 20, 1929.

"E.B."

RECORD OF PROCEEDINGS

PART II. — EXHIBITS

*In the
Supreme
Court of
Ontario.*

Exhibits.

Part Ex. 5.

Royal
Charter in-
corporating
Hudson's
Bay Com-
pany, 2nd
May, 1670.

Part Exhibit 5.

(Plaintiffs' Exhibit.)

Royal Charter Incorporating Hudson's Bay Company.

CHARLES THE SECOND, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. To ALL to whom these Presents shall come, greeting :

WHEREAS Our dear and entirely beloved Cousin, Prince Rupert, Count Palatine of the Rhine, Duke of Bavaria and Cumberland, &c., Christopher, Duke of Albemarle, William, Earl of Craven, Henry, Lord Arlington, Anthony, Lord Ashley, Sir John Robinson, and Sir Robert Vyner, Knights and Baronets, Sir Peter Colleton, Baronet, Sir Edward Hungerford, Knight of the Bath, Sir Paul Neele, Knight, Sir John Griffith and Sir Philip Carteret, Knights, James Hayes, John Kirke, Francis Millington, William Prettyman, John Fenn, Esquires, and John Portman, Citizen and Goldsmith of London, have, at their own great Cost and Charges, undertaken an Expedition for Hudson's Bay in the Northwest Part of America, for the Discovery of a new Passage into the South Sea, and for the finding some Trade for Furs, Minerals, and other considerable Commodities, and by such their Undertaking, have already made such Discoveries as do encourage them to proceed further in Pursuance of their said Design, by means whereof there may probably arise very great Advantage to Us and Our Kingdom. 10 20

AND WHEREAS the said Undertakers, for their further Encouragement in the said Design, have humbly besought Us to incorporate them, and grant unto them, and their Successors, the sole Trade and Commerce of all those Seas, Streights, Bays, Rivers, Lakes, Creeks, and Sounds, in whatsoever Latitude they shall be, that lie within the entrance of the Streights commonly called Hudson's Streights, together with all the Lands, Countries, and Territories, upon the Coasts and Confines of the Seas, Streights, Bays, Lakes, Rivers, Creeks and Sounds, aforesaid, which are not now actually possessed by any of our Subjects, or by the Subjects of any other Christian Prince or State. 30

NOW KNOW YE, that We being desirous to promote all Endeavours tending to the publick Good of our People, and to encourage the said Undertaking, HAVE of Our especial Grace, certain Knowledge, and mere Motion, given, granted, ratified, and confirmed, and by these Presents for Us, Our Heirs and Successors, Do give, grant, ratify and confirm, unto Our said Cousin Prince Rupert, Christopher, Duke of Albemarle, William, Earl of Craven, Henry, Lord Arlington, Anthony, Lord Ashley, Sir John Robinson, Sir Robert Vyner, Sir Peter Colleton, Sir Edward Hungerford, Sir Paul Neele, Sir John Griffith, and Sir Philip Cartaret, James Hayes, John Kirke,

10 Francis Millington, William Prettyman, John Fenn, and John Portman, that they, and such others as shall be admitted into the said Society as is hereafter expressed, shall be one Body Corporate and Politique, in Deed and in Name, by the Name of The Governor and Company of Adventurers of England, trading into Hudson's Bay, and them by the Name of the Governor and Company of Adventurers of England, trading into Hudson's Bay, one Body Corporate and Politique, in Deed and in Name, really and fully for ever, for Us, Our Heirs and Successors, WE DO make, ordain, constitute, establish, confirm, and declare, by these Presents, and that by the same

20 Name of Governor and Company of Adventurers of England, trading into Hudson's Bay, they shall have perpetual Succession, and that they and their Successors, by the Name of the Governor and Company of Adventurers of England, trading into Hudson's Bay, be, and at all Times hereafter shall be, personable and capable in Law to have, purchase, receive, possess, enjoy and retain, Lands, Rents, Privileges, Liberties, Jurisdictions, Franchises, and Hereditaments, of what Kind, Nature or Quality soever they be, to them and their Successors ; and also to give, grant, demise, alien, assign and dispose Lands, Tenements and Hereditaments, and to do and execute all and singular other Things by the same Name that to them shall or may appertain to do. And that they, and their Successors, by the Name of the Governor and

30 Company of Adventurers of England, trading into Hudson's Bay, may plead, and be impleaded, answer, and be answered, defend, and be defended, in whatsoever Courts and Places, before whatsoever Judges and Justices, and other Persons and Officers, in all and singular Actions, Pleas, Suits, Quarrels, Causes and Demands, whatsoever, of whatsoever Kind, Nature or Sort, in such Manner and Form as any other Our Liege People of this Our Realm of England, being Persons able and capable in Law, may, or can have, purchase, receive, possess, enjoy, retain, give, grant, demise, alien, assign, dispose, plead, defend, and be defended, do, permit, and execute. And that the said Governor and Company of Adventurers of England, trading into

40 Hudson's Bay, and their Successors, may have a Common Seal to serve for all the Causes and Businesses of them and their Successors, and that it shall and may be lawful to the said Governor and Company, and their Successors, the same Seal, from time to time, at their Will and Pleasure, to break, change, and to make anew, or alter, as to them shall seem expedient.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 5.
Royal
Charter in-
corporating
Hudson's
Bay Com-
pany, 2nd
May, 1670.

—continued.

AND FURTHER WE WILL, and by these Presents for Us, Our Heirs and Successors, WE DO ordain, that there shall be from henceforth

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 5.
Royal
Charter in-
corporating
Hudson's
Bay Com-
pany, 2nd
May, 1670.

—continued.

one of the same Company to be elected and appointed in such Form as here-
after in these Presents is expressed, which shall be called the Governor of
the said Company. And that the said Governor and Company shall or may
elect Seven of their Number in such Form as hereafter in these Presents is
expressed, which shall be called The Committee of the said Company, which
Committee of Seven, or any Three of them, together with the Governor or
Deputy-Governor of the said Company for the time being, shall have the
Direction of the Voyages of and for the said Company, and the Provision
of the Shipping and Merchandizes thereunto belonging, and also the Sale
of all Merchandizes, Goods, and other Things returned, in all or any the
Voyages or Ships of or for the said Company, and the managing and handling
of all other Business, Affairs and Things, belonging to the said Company. 10

AND WE WILL, ordain, and grant by these Presents for Us, Our
Heirs and Successors, unto the said Governor and Company, and their Suc-
cessors, that they the said Governor and Company, and their Successors,
shall from henceforth for ever be ruled, ordered and governed, according to
such Manner and Form as is hereafter in these Presents expressed, and not
otherwise : And that they shall have, hold, retain and enjoy, the Grants,
Liberties, Privileges, Jurisdictions and Immunities, only hereafter in these
Presents granted and expressed, and no other. And for the better Execution
of Our Will and Grant in this Behalf, WE HAVE ASSIGNED, nominated, 20
constituted and made, and by these Presents for Us, Our Heirs and Successors,
WE DO ASSIGN, nominate, constitute, and make, our said Cousin, PRINCE
RUPERT, to be the first and present Governor of the said Company, and
to continue in the said Office from the Date of these Presents until the 10th
November then next following, if he, the said Prince Rupert, shall so long
live, and so until a new Governor be chosen by the said Company in Form
hereafter expressed.

AND ALSO WE HAVE assigned, nominated and appointed, and by
these Presents for Us, Our Heirs and Successors, WE DO assign, nominate 30
and constitute, the said Sir John Robinson, Sir Robert Vyner, Sir Peter
Colleton, James Hayes, John Kirke, Francis Millington, and John Portman,
to be the seven first and present Committees of the said Company, from the
Date of these Presents until the said 10th day of November, then also next
following, and so until new Committees shall be chosen in Form hereafter
expressed. AND FURTHER WE WILL and grant by these Presents, for Us,
Our Heirs and Successors, unto the said Governor and Company and their
Successors, that it shall and may be lawful to and for the said Governor
and Company for the Time being, or the greater Part of them present
at any publick Assembly commonly called, The Court General to be holden 40
for the said Company, the Governor of the said Company being always one,
from time to time to elect, nominate and appoint one of the said Company
to be Deputy to the said Governor ; which Deputy shall take a corporal
Oath, before the Governor and three or more of the Committee of the said
Company for the time being, well, truly, and faithfully to execute his said

Office of Deputy to the Governor of the said Company, and after his Oath so taken, shall and may from time to time, in the Absence of the said Governor, exercise, execute the Office of Governor of the said Company, in such Sort as the said Governor ought to do.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 5.
Royal
Charter in-
corporating
Hudson's
Bay Com-
pany, 2nd
May, 1670.

—continued.

AND FURTHER WE WILL and grant by these Presents, for Us, Our Heirs and Successors, unto the said Governor and Company of Adventurers of England, trading into Hudson's Bay, and their Successors, that they or the greater Part of them, whereof the Governor for the Time being, or his Deputy, to be one, from time to time, and at all Times hereafter, shall and
10 may have Authority and Power, yearly and every Year, between the first and last Day of November, to assemble and meet together in some convenient Place, to be appointed from time to time by the Governor, or in his Absence by the Deputy of the said Governor for the Time being, and that they being so assembled, it shall and may be lawful to and for the said Governor or Deputy of the said Governor, and the said Company for the Time being, or the greater Part of them which then shall happen to be present, whereof the Governor of the said Company, or his Deputy for the Time being to be one, to elect and nominate one of the said Company, which shall be Governor of the said Company for one whole Year, then next following, which Person
20 being so elected and nominated to be Governor of the said Company, as is aforesaid, before he be admitted to the Execution of the said Office, shall take a corporal Oath before the last Governor, being his Predecessor or his Deputy, and any three or more of the Committee of the said Company for the Time being, that he shall from time to time, well and truly execute the Office of Governor of the said Company, in all Things concerning the same ; and that immediately after the same Oath so taken, he shall and may execute and use the said Office of Governor of the said Company, for one whole Year from thence next following. And in like Sort We will and grant, That as well every one of the above named to be of the said Company or Fellowship, as all others hereafter to be admitted, or free of the said Company, shall take
30 a corporal Oath before the Governor of the said Company, or his Deputy for the Time being, to such Effect as by the said Governor and Company, or the greater Part of them, in any publick Court to be held for the said Company, shall be in reasonable and legal Manner set down and devised, before they shall be allowed or admitted to trade or traffick as a Freeman of the said Company.

AND FURTHER WE WILL and grant by these Presents, for Us, Our Heirs and Successors, unto the said Governor and Company, and their Successors, That the said Governor, or Deputy Governor, and the rest of the said Company, and their Successors for the Time being, or the greater Part
40 of them, whereof the Governor or Deputy Governor, from time to time, to be one, shall and may from time to time, and at all Times hereafter, have Power and Authority yearly, and every Year, between the first and last day of November, to assemble and meet together in some convenient Place, from time to time to be appointed by the said Governor of the said Company, or in his

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Royal
Charter in-
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Bay Com-
pany, 2nd
May, 1670.

—continued.

Absence by his Deputy ; and that they being so assembled, it shall and may be lawful to and for the said Governor or his Deputy, and the Company for the Time being, or the greater Part of them, which then shall happen to be present, whereof the Governor of the said Company, or his Deputy for the Time being to be one, to elect and nominate Seven of the said Company which shall be a Committee of the said Company, for one whole Year from then next ensuing, which Persons being so elected and nominated to be a Committee of the said Company as aforesaid, before they be admitted to the Execution of their Office, shall take a corporal Oath, before the Governor or his Deputy, and any three or more of the said Committee of the said Company, being their last Predecessors, that they, and every of them, shall well and faithfully perform their said Office of Committees in all Things concerning the same, and that immediately after the said Oath so taken, they shall and may execute and use their said Office of Committees of the said Company, for one whole Year from thence next following. 10

AND MOREOVER, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, WE DO GRANT unto the said Governor and Company, and their Successors, that when, and as often as it shall happen, the Governor or Deputy Governor of the said Company for the Time being, at any Time within one Year after that he shall be nominated, elected, and sworn to the Office of the Governor of the said Company, as is aforesaid, to die or to be removed from the said Office, which Governor or Deputy Governor not demeaning himself well in his said Office, WE WILL to be removeable at the Pleasure of the rest of the said Company, or the greater Part of them which shall be present at their publick Assemblies, commonly called, Their General Courts holden for the said Company, that then, and so often it shall and may be lawful to and for the Residue of the said Company for the Time being, or the greater Part of them, within a convenient Time, after the Death or Removing of any such Governor, or Deputy Governor to assemble themselves in such convenient Place as they shall think fit, for the Election of the Governor or Deputy Governor of the said Company ; and that the said Company, or the greater Part of them, being then and there present, shall and may, then and there, before their Departure from the said Place, elect and nominate one other of the said Company, to be Governor or Deputy Governor for the said Company, in the Place and Stead of him that so died or was removed ; which Person being so elected and nominated to the Office of Governor or Deputy Governor of the said Company, shall have and exercise the said Office, for and during the Residue of the said Year, taking first a corporal Oath, as is aforesaid, for the due Execution thereof ; and this to be done from time to time, so often as the Case shall so require. 20 30

AND ALSO, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, WE Do grant unto the said Governor and Company, that when, and as often as it shall happen any person or persons of the Committee of the said Company for the Time being, at any time within one Year next after that they or any of them shall be nominated, elected 40

and sworn to the Office of Committee of the said Company as is aforesaid, to die or to be removed from the said Office, which Committees not demeaning themselves well in their said Office, We will, to be removeable at the Pleasure of the said Governor and Company, or the greater Part of them, whereof the Governor of the said Company for the Time being, or his Deputy, to be one ; that then, and so often, it shall and may be lawful to and for the said Governor, and the rest of the Company for the Time being, or the greater Part of them, whereof the Governor for the Time being, or his Deputy, to be one, within convenient Time after the Death or removing of any of the

10 said Committee, to assemble themselves in such convenient Place as is or shall be usual and accustomed for the Election of the Governor of the said Company, or where else the Governor of the said Company for the Time being, or his Deputy, shall appoint. And that the said Governor and Company, or the greater Part of them, whereof the Governor for the Time being, or his Deputy, to be one, being then and there present, shall, and may, then and there, before their Departure from the said Place, elect and nominate one or more of the said Company, to be of the Committee of the said Company in the Place and Stead of him or them that so died, or were or was so removed,

20 of the said Company, shall have and exercise the said Office, for and during the Residue of the said Year, taking first a corporal Oath as is aforesaid, for the due Execution thereof, and this to be done from time to time, so often as the Case shall require. And to the End the said Governor and Company of Adventurers of England trading into Hudson's Bay, may be encouraged to undertake, and effectually to prosecute the said design, of Our more especial Grace, certain Knowledge, the mere Motion, WE HAVE given, granted, and confirmed, and by these Presents, for Us, Our Heirs and Successors, Do give, grant, and confirm, unto the said Governor and Company, and their Successors, the sole Trade and Commerce of all those Seas, Streights,

30 Bays, Rivers, Lakes, Creeks, and Sounds, in whatsoever Latitude they shall be, that lie within the Entrance of the Streights commonly called Hudson's Streights, together with all the Lands and Territories upon the Countries, Coasts and Confines of the Seas, Bays, Lakes, Rivers, Creeks, and Sounds aforesaid, that are not already actually possessed by or granted to any of our Subjects or possessed by the Subjects of any other Christian Prince or State, with the Fishing of all Sorts of Fish, Whales, Sturgeons, and all other Royal Fishes, in the Seas, Bays, Inlets, and Rivers within the Premisses, and the Fish therein taken, together with the Royalty of the Sea upon the Coasts within the Limits aforesaid, and all Mines Royal, as well discovered

40 as not discovered, of Gold, Silver, Gems, and precious Stones, to be found or discovered within the Territories, Limits, and Places aforesaid, and that the said Land be from henceforth reckoned and reputed as one of our Plantations or Colonies in America, called Rupert's Land.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 5.
Royal
Charter in-
corporating
Hudson's
Bay Com-
pany, 2nd
May, 1670.

—continued.

AND FURTHER WE DO by these Presents, for Us, Our Heirs and Successors, make, create and constitute, the said Governor and Company for the Time being, and their Successors, the true and absolute Lords and

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 5.
Royal
Charter in-
corporating
Hudson's
Bay Com-
pany, 2nd
May, 1670.

—continued.

Proprietors, of the same Territory, Limits and Places aforesaid, and of all others the Premises, SAVING ALWAYS the Faith, Allegiance and Sovereign Dominion due to Us, our Heirs and Successors, for the same To HAVE HOLD, possess and enjoy the said Territory, Limits, and Places and all and singular other the Premises, hereby granted as aforesaid, with their, and every of their Rights, Members, Jurisdictions, Prerogatives, Royalties and Appurtenances whatsoever, to them the said Governor and Company, and their Successors, for ever, To BE HOLDEN of Us, Our Heirs and Successors as of Our Manor of East Greenwich in our County of Kent, in free and common Soccage, and not in Capite or by Knight's Service; YIELDING 10
AND PAYING yearly to Us, Our Heirs and Successors, for the same, two Elks and two black Beavers, whensoever, and as often as We, our Heirs and Successors, shall happen to enter into the said Countries, Territories and Regions hereby granted.

AND FURTHER, OUR WILL and Pleasure is, and by these Presents, for Us, Our Heirs, and Successors, WE Do grant unto the said Governor and Company, and to their Successors, that it shall and may be lawful, to and for the said Governor and Company, and their Successors, from time to time, to assemble themselves, for or about any the Matters, Causes, Affairs, or Businesses of the said Trade, in any Place or Places for the same convenient, within our Dominions or elsewhere, and there to hold Court for the said Company, and the Affairs thereof ; and that also, it shall and may be lawful to and for them, and the greater Part of them, being so assembled, and that shall then and there be present, in any such Place or Places whereof the Governor or his Deputy for the Time being to be one, to make, ordain, and constitute, such, and so many reasonable Laws, Constitutions, Orders and Ordinances, as to them, or the greater part of them being then and there present, shall seem necessary and convenient for the good Government of the said Company, and of all Governors of Colonies, Forts and Plantations, Factors, Masters, Mariners, and other Officers employed or to be employed, 30
in any of the Territories and Lands aforesaid, and in any of their Voyages ; and for the better Advancement and Continuance of the said Trade, or Traffic and Plantations, and the same Laws, Constitutions, Orders and Ordinances so made, to put in Use and execute accordingly, and at their Pleasure to revoke and alter the same, or any of them, as the occasion shall require : And that the said Governor and Company, so often as they shall make, ordain, or establish, any such Laws, Constitutions, Orders, and Ordinances, in such Form as aforesaid, shall and may lawfully impose, ordain, limit and provide, such Pains, Penalties and Punishments upon all Offenders, contrary to such Laws, Constitutions, Orders and Ordinances, or any of them, 40
as to the said Governor and Company for the Time being, or the greater Part of them, then and there being present, the said Governor or his Deputy being always one, shall seem necessary, requisite, or convenient for the Observation of the same Laws, Constitutions, Orders and Ordinances ; and the same Fines and Amerciaments shall and may by their Officers and Servants, from time to time to be appointed for that Purpose levy, take and

have, to the Use of the said Governor and Company, and their Successors' without the Impediment of Us, Our Heirs or Successors, or of any the Officers or Ministers of Us, Our Heirs or Successors, and without any Account therefore to Us, Our Heirs or Successors, to be made. All and singular which Laws, Constitutions, Orders and Ordinances, so as aforesaid, to be made, WE WILL to be duly observed and kept under the Pains and Penalties therein to be contained; so always as the said Laws, Constitutions, Orders and Ordinances, Fines and Amerciaments, be reasonable, and not contrary or repugnant, but as near as may be agreeable to the Laws, Statutes or Customs
 10 of this our Realm.

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AND FURTHERMORE, of our ample and abundant Grace, certain Knowledge, and mere Motion, WE HAVE granted, and by these Presents for Us, Our Heirs and Successors, Do grant unto the said Governor and Company, and their Successors, that they, and their Successors, and their Factors, Servants and Agents, for them, and on their Behalf and not otherwise, shall for ever hereafter have, use and enjoy, not only the whole, entire, and only Trade and Traffick, and the whole, entire, and only Liberty, Use and Privilege, of Trading and Trafficking to and from the Territory, Limits and Places aforesaid; but also the whole and entire Trade and Traffick to
 20 and from all Havens, Bays, Creeks, Rivers, Lakes and Seas, into which they shall find Entrance or Passage by Water or Land out of the Territories, Limits or Places, aforesaid; and to and with all the Natives and People, inhabiting, or which shall inhabit within the Territories, Limits and Places aforesaid; and to and with all other Nations inhabiting any the Coasts adjacent to the said Territories, Limits and Places which are not already possessed as aforesaid, or whereof the sole Liberty or Privilege of Trade and Traffick is not granted to any other of Our Subjects. AND WE of Our Further Royal Favour, and of Our more especial Grace, certain Knowledge, and mere Motion, HAVE granted, and by these Presents for Us, Our Heirs
 30 and Successors, Do grant to the said Governor and Company, and to their Successors, that neither the said Territories, Limits and Places, hereby granted as aforesaid, nor any Part thereof, nor the Islands, Havens, Ports, Cities, Towns or Places thereof, or therein contained, shall be visited, frequented or haunted, by any of the Subjects of Us, Our Heirs or Successors, contrary to the true Meaning of these Presents, and by Virtue of Our Prerogative Royal, which we will not have in that Behalf argued or brought into Question; WE STREIGHTLY charge, command and prohibit for Us, Our Heirs and Successors, all the Subjects of Us, Our Heirs and Successors, of what Degree or Quality soever they be, that none of them directly or indirectly, do visit,
 40 haunt, frequent or trade, traffick or adventure, by way of Merchandize, into, or from any the said Territories, Limits or Places, hereby granted, or any, or either of them, other than the said Governor and Company, and such particular Persons as now be, or hereafter shall be, of that Company, their Agents, Factors and Assigns, unless it be by the Licence and Agreement of the said Governor and Company in Writing first had and obtained, under their Common Seal, to be granted, upon Pain that every such Person or

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Persons that shall trade or traffick into or from any of the Countries, Territories or Limits aforesaid, other than the said Governor and Company, and their Successors, shall incur our Indignation, and the Forfeiture, and the Loss of the Goods, Merchandizes, and other Things whatsoever, which so shall be brought into this Realm of England, or any the Dominions of the same, contrary to our said Prohibition, or the Purport or true Meaning of these Presents, for which the said Governor and Company shall find, take and seize, in other Places out of our Dominions, where the said Company, their Agents, Factors, or Ministers, shall trade, traffick or inhabit, by Virtue of these Our Letters Patent, as also the Ship and Ships, with the Furniture thereof, wherein such Goods, Merchandizes, and other Things, shall be brought and found, the one Half of all the said Forfeitures to be to Us, Our Heirs and Successors, and the other Half thereof WE Do by these Presents clearly and wholly for Us, Our Heirs and Successors, give and grant unto the said Governor and Company, and their Successors. 10

AND FURTHER, all and every the said Offenders, for their said Contempt, to suffer such other Punishment as to Us, Our Heirs and Successors, for so high a Contempt, shall seem meet and convenient, and not to be in any wise delivered until they, and every of them, shall become bound unto the said Governor for the time being in the Sum of One Thousand Pounds at the least, at no time then after to trade or traffick into any of the said Places, Seas, Streights, Bays, Ports, Havens or Territories, aforesaid, contrary to our express Commandment in that Behalf set down and published. 20

AND FURTHER, of OUR more especial Grace, WE HAVE condescended and granted, and by these Presents for Us, Our Heirs and Successors, Do grant unto the said Governor and Company, and their Successors, that We, Our Heirs and Successors, will not grant Liberty, Licence, or Power, to any Person or Persons whatsoever, contrary to the Tenor of these Our Letters Patent, to trade, traffick or inhabit, unto or upon any the Territories, Limits or Places, afore specified, contrary to the true Meaning of these Presents, without the Consent of the said Governor and Company, or the most part of them. AND, OF Our more abundant Grace and Favour to the said Governor and Company, WE Do hereby declare Our Will and Pleasure to be, That if it shall so happen, that any of the Persons free, or to be free of the said Company of Adventurers of England trading into Hudson's Bay, who shall, before the going forth of any Ship or Ships appointed for A VOYAGE, or otherwise, promise or agree by Writing under his or their Hands, to adventure any Sum or Sums of Money, towards the furnishing any Provision, or Maintenance of any Voyage or Voyages, set forth, or to be set forth, or intended or meant to be set forth, by the said Governor and Company, or the more Part of them present at any publick Assembly, commonly called Their General Court, shall not within the Space of twenty Days next after Warning given to him or them, by the said Governor or Company, or their known officer or Minister, bring in and deliver to the Treasurer or Treasurers 40

appointed for the Company, such Sums of Money as shall have been expressed and set down in Writing, by the said Person or Persons, subscribed with the Name of said Adventurer or Adventurers, that then, and at all Times after, it shall and may be lawful to and for the said Governor and Company, or the more Part of them present, whereof the said Governor or his Deputy to be one, at any of their General Courts or General Assemblies, to remove and disfranchise him or them, and every such Person and Persons at their Wills and Pleasures, and he or they so removed and disfranchised, not to be permitted to trade into the Countries, Territories, and Limits aforesaid, or any
 10 Part thereof, nor to have any Adventure or Stock going or remaining with or amongst the said Company, without the special Licence of the said Governor and Company, or the more Part of them present at any General Court, first had and obtained in that Behalf, any thing before in these Presents to the contrary thereof in anywise notwithstanding.

AND OUR WILL AND PLEASURE IS, and hereby we do also ordain, That it shall and may be lawful, to and for the said Governor and Company, or the greater Part of them, whereof the Governor for the Time being, or his Deputy to be one, to admit into and to be of the said Company, all such
 20 Servants or Factors, of or for the said Company, and all such others, as to them, or the most Part of them present, at any Court held for the said Company, the Governor or his Deputy being one, shall be thought fit and agreeable with the Orders and Ordinances made and to be made for the Government of the said Company.

AND FURTHER, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, WE DO grant unto the said Governor and Company, and to their Successors, that it shall and may be lawful in all Elections, and By-laws to be made by the General Court of the Adventurers of the said Company, that every Person shall have a number of Votes according to his Stock, that is to say, for every hundred Pounds by him subscribed or
 30 brought into the present Stock, one Vote, and that any of those that have subscribed less than one hundred Pounds, may join their respective Sums to make up one hundred Pounds, and have one Vote jointly for the same, and not otherwise.

AND FURTHER, Of Our especial Grace, certain Knowledge, and mere Motion, WE DO for Us, Our Heirs and Successors, grant to and with the said Governor and Company of Adventurers of England trading into Hudson's Bay, that all Lands, Islands, Territories, Plantations, Forts, Fortifications, Factories, or Colonies, where the said Company's Factories and Trade are
 40 or shall be, within any the Ports or Places afore limited, shall be immediately and from henceforth, under the Power and Command of the said Governor and Company, their Successors and Assigns ; SAVING the Faith and Allegiance due to be performed to Us, Our Heirs and Successors aforesaid ; and that the said Governor and Company shall have Liberty, full Power and Authority, to appoint and establish Governors, and all other Officers

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to govern them, and that the Governor and his Council of the several and respective Places where the said Company shall have Plantations, Forts, Factories, Colonies, or Places of Trade within any the Countries, Lands or Territories hereby granted, may have Power to judge all Persons belonging to the said Governor and Company, or that shall live under them, in all Causes, whether Civil or Criminal according to the Laws of this Kingdom. and to execute Justice accordingly. And, in Case any Crime or Misdemeanor shall be committed in any of the said Company's Plantations, Forts, Factories, or Places of Trade within the Limits aforesaid, where Judicature cannot be executed for want of a Governor and Council there, then in such Case it shall 10
and may be lawful for the chief Factor of that Place and his Council, to transmit the Party, together with the Offence, to such other Plantation, Factory, or Fort, where there shall be a Governor and Council, where Justice may be executed, or into this Kingdom of England, as shall be thought most convenient, there to receive such Punishment as the Nature of his Offence shall deserve.

AND MOREOVER, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, WE DO GIVE and grant unto the said Governor and Company, and their Successors, free Liberty and Licence, 20
in Case they conceive it necessary, to send either Ships of War, Men or Ammunition, unto any their Plantations, Forts, Factories, or Places of Trade aforesaid, for the Security and Defence of the same, and to choose Commanders and Officers over them, and to give them Power and Authority, by Commission under their Common Seal or otherwise, to continue or make Peace or War with any Prince or People whatsoever, that are not Christians, in any Places where the said Company shall have any Plantations, Forts or Factories, or adjacent thereunto, as shall be most for the Advantage and Benefit of the said Governor and Company, and of their Trade ; and also to right and recompense themselves upon the Goods, Estates or People of 30
those Parts, by whom the said Governor and Company shall sustain any Injury, Loss, or Damage, or upon any other People whatsoever that shall any Way, contrary to the Intent of these Presents, interrupt, wrong or injure them in their said Trade, within the said Places, Territories, and Limits, granted by this Charter. And that it shall and may be lawful to and for the said Governor and Company, and their Successors, from time to time, and at all Times from henceforth, to erect and build such Castles, Fortifications, Forts, Garrisons, Colonies or Plantations, Towns or Villages, in any Parts or Places within the Limits and Bounds granted before in these Presents, unto the said Governor and Company, as they in their Discretion 40
shall think fit and requisite, and for the Supply of such as shall be needful and convenient, to keep and be in the same, to send out of this Kingdom, to the said Castles, Forts, Fortifications, Garrisons, Colonies, Plantations, Towns or Villages, all Kinds of Cloathing, Provision of Victuals, Ammunition and Implements, necessary for such Purpose, paying the Duties and Customs for the same, as also to transport and carry over such Number of Men being willing thereunto, or not prohibited, as they shall think fit, and also to govern

them in such legal and reasonable Manner as the said Governor and Company shall think best, and to inflict Punishment for Misdemeanors, or impose such Fines upon them for Breach of their Orders, as in these Presents are formerly expressed.

AND FURTHER, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, WE Do grant unto the said Governor and Company, and to their Successors, full Power and lawful Authority to seize upon the Persons of all such English, or any other Our Subjects, which shall sail into Hudson's Bay, or inhabit in any of the Countries, Islands
 10 or Territories hereby granted to the said Governor and Company, without their Leave and License in that Behalf first had and obtained, or that shall contemn or disobey their Orders, and send them to England ; and that all and every Person or Persons, being Our Subjects, any ways employed by the said Governor and Company, within any the Parts, Places, and Limits aforesaid, shall be liable unto and suffer such Punishment for any Offences by them committed in the Parts aforesaid, as the President and Council for the said Governor and Company there shall think fit, and the Merit of the
 20 Offence shall require, as aforesaid ; and in case any Person or Persons being convicted and sentenced by the President and Council of the said Governor and Company, in the Countries, Lands, or Limits aforesaid, their Factors or Agents there, for any Offence by them done, shall appeal from the same ; that then and in such Case, it shall and may be lawful to and for the said President and Council, Factors, or Agents, to seize upon him or them, and to carry him or them home Prisoners into England, to the said Governor and Company, there to receive such condign Punishment as his Cause shall require, and the Law of this Nation allow of ; and for the better Discovery of Abuses and Injuries to be done unto the said Governor and Company, or their Successors, by any Servant by them to be employed in the said Voyages and Plantations, it shall and may be lawful to and for the said Governor
 30 and Company, and their respective President, Chief Agent or Governor in the Parts aforesaid, to examine upon Oath all Factors, Masters, Pursers, Supercargoes, Commanders of Castles, Forts, Fortifications, Plantations or Colonies, or other Persons, touching or concerning any Matter or Thing, in which by Law or Usage an Oath may be administered, so as the said Oath, and the Matter therein contained, be not repugnant, but agreeable to the Laws of this Realm.

AND, WE Do hereby streightly charge and command all and singular, our Admirals, Vice-Admirals, Justices, Mayors, Sheriffs, Constables, Bailiffs, and all and singular other our Officers, Ministers, Liege Men and Subjects
 40 whatsoever, to be aiding, favouring, helping and assisting to the said Governor and Company, and to their Successors, and to their Deputies, Officers, Factors, Servants, Assigns and Ministers, and every of them, in executing and enjoying the Premises, as well on Land as on Sea, from time to time, when any of you shall thereunto be required ; ANY STATUTE, Act, Ordinance, Proviso, Proclamation, or Restraint heretofore had, made, set forth, ordained, or

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provided, or any other Matter, Cause, or Thing whatsoever to the contrary in any wise notwithstanding, IN WITNESS WHEREOF, we have caused these Our Letters to be made Patent; WITNESS OURSELF at Westminster, the Second Day of May, in the Two and Twentieth Year of Our Reign.

Part Exhibit 5.

(Plaintiffs' Exhibit.)

Deed of Surrender from Hudson's Bay Company to Her Majesty Queen Victoria.

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To ALL whom these Presents shall come unto, or concern, the
Governor and Company of Adventurers of England Trading
into Hudson's Bay, send Greeting :

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WHEREAS the said Governor and Company were established and incorporated by their said name of "The Governor and Company of Adventurers of England Trading into Hudson's Bay," by Letters Patent granted by His late Majesty King Charles the Second, in the twenty-second year of his reign, whereby His said Majesty granted unto the said Company and their successors the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds in whatsoever latitude they should be. that lay within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, that were not already actually possessed by, or granted to, any of His Majesty's subjects, or possessed by the subjects of any other Christian Prince or State, and that the said lands should be from thenceforth reckoned and reputed as one of His Majesty's Plantations or Colonies in America, called Rupert's Land; and whereby His said Majesty made and constituted the said Governor and Company and their successors, the absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises saving the faith, allegiance and sovereign dominion due to His said Majesty, his heirs and successors for the same; and granted to the said Governor and Company and their successors, such rights of Government and other rights, privileges and liberties, franchises, powers and authorities in Rupert's Land as therein expressed. AND WHEREAS, ever since the date of the said Letters Patent, the said Governor and Company have exercised and enjoyed the sole right thereby granted of such trade and commerce as therein mentioned, and have exercised and enjoyed other rights, privileges, liberties, franchises, powers and authorities thereby granted; and the said Governor and Company may have exercised or assumed rights of Government in other parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia. AND WHEREAS by "The British North America Act, 1867," it is (amongst other things) enacted that it shall be lawful for Her present Majesty, Queen Victoria, by and with the advice and consent of Her Majesty's Most Honourable Privy Council, on address

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from the Houses of Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union of the Dominion of Canada on such terms and conditions as are in the Address expressed, and as Her Majesty thinks fit to approve, subject to the provisions of the said Act. AND WHEREAS, by the "Rupert's Land Act, 1868," it is enacted (amongst other things) that for the purpose of that Act the term "Rupert's Land" shall include the whole of the lands and territories held or claimed to be held by the said Governor and Company, and that it shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty, by any instrument under Her Sign Manual and Signet, to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company, within Rupert's Land, upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided, however, that such surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from the Houses of the Parliament of Canada, in pursuance of the 146th Section of "The British North America Act, 1867," and that upon the acceptance by Her Majesty of such surrender, all rights of Government and proprietary rights and all other privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished, provided that nothing in the said Act contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere, trade and commerce. AND WHEREAS Her said Majesty Queen Victoria and the said Governor and Company have agreed to terms and conditions upon which the said Governor and Company shall surrender to Her said Majesty, pursuant to the provisions in that behalf in the "Rupert's Land Act, 1868" contained, all the rights of Government and other rights, privileges, liberties, franchises, powers and authorities, and all the lands and territories (except and subject as in the said terms and conditions expressed or mentioned) granted or purported to be granted by the said Letters Patent, and also all similar rights which have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert's Land, or of Canada, or of British Columbia, in order and to the intent that, after such surrender has been effected and accepted under the provisions of the last mentioned Act, the said Rupert's Land may be admitted into the Union of the Dominion of Canada, pursuant to the hereinbefore mentioned Acts or one of them. AND WHEREAS the said terms and conditions on which it has been agreed that the said surrender is to be made by the said Governor and Company (who are in the following articles designated as the Company) to Her said Majesty, are as follows (that is to say) :

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1. The Canadian Government shall pay to the Company the sum of £300,000 sterling when Rupert's Land is transferred to the Dominion of Canada.

2. The Company to retain all the posts or stations now actually possessed and occupied by them or their officers or agents, whether in Rupert's Land or any other part of British North America, and may within twelve months after the acceptance of the said surrender select a block of land adjoining each of their posts or stations, or within any part of British North America, not comprised in Canada and British Columbia in conformity, except as regards the Red River Territory, with a list made out by the Company, and communicated to the Canadian Ministers, being the list in the annexed Schedule. The actual survey is to be proceeded with all convenient speed. 10

3. The size of each block is not to exceed in the Red River Territory an amount to be agreed upon between the Company and the Governor of Canada in Council.

4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, and of which the frontage shall not be more than half the depth. 20

5. The Company may at any time within fifty years after such acceptance of the said surrender, claim in any township or district within the fertile belt in which land is set out for settlements, grants of land not exceeding one-twentieth part of the land so set out ; the blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of their right of claiming their proportion of each township or district for not more than ten years after it is set out, but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it. 30

6. For the purpose of the last article the fertile belt is to be bounded as follows : On the south by the United States boundary ; on the west by the Rocky Mountains ; on the north by the Northern Branch of the Saskatchewan River ; on the east by Lake Winnipeg, the Lake of the Woods and the waters connecting them.

7. If any township shall be formed abutting on the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which, for the purpose of this article, shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of land coming to them of townships established on the southern bank of the said river. 40

8. In laying out any public roads, canals or other public works, through any block of land reserved to the Company, the Canadian Government may take without compensation such land as is necessary for the purpose, not exceeding one-twenty-fifth of the total acreage of the block ; but if the Canadian Government require any land which is actually under cultivation, which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, the said Government shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their ser-

10 vants.

9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause, shall be appropriated for public purposes.

10. All titles to land up to the eighth day of March, one thousand, eight hundred and sixty nine, conferred by the Company, shall be confirmed.

11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity ; and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duty on goods introduced by the said Company previously to such acceptance of the said

20 surrender.

12. Canada is to take over the materials of the electric telegraph at cost price ; such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.

13. The Company's claim to land under an agreement of Messrs. Vankoughnet and Hopkins is to be withdrawn.

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government ; and the Company shall be relieved of all responsibility in respect of them.

30 AND WHEREAS the surrender hereinafter contained is intended to be made in pursuance of the agreement, and upon the terms and conditions hereinbefore stated.

NOW KNOW YE, and these presents witness, that, in pursuance of the powers and provisions of the "Rupert's Land Act, 1868," and on the terms and conditions aforesaid, and also on condition of this surrender being accepted pursuant to the provision of that Act, the said Governor and Company do hereby surrender to the Queen's Most Gracious Majesty, all the rights of Government, and other rights, privileges, liberties, franchises, powers and authorities, granted or purported to be granted to the said Governor

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and Company by the said recited Letters Patent of His Late Majesty King Charles the Second ; and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert's Land or of Canada, or of British Columbia, and all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent. In witness whereof, the Governor and Company of Adventurers of England Trading into Hudson's Bay, have hereunto caused their Common Seal to be affixed, the nineteenth day of November, one thousand, eight hundred and sixty-nine. 10

—continued.

EXTRACT FROM SCHEDULE.

DISTRICT	POST	ACRES OF LAND	
Lake La Pluie.....	Fort Alexander.....	500	
	Fort Frances.....	500	
	Eagle's Nest.....	20	
	Big Island.....	20	
	Lac du Bonnet.....	20	
	Rat Portage.....	50	
	Shoal Lake.....	20	20
	Lake of the Woods.....	50	
	Whitefish Lake.....	20	
	English River.....	20	
	Hungry Hall.....	20	
	Trout Lake.....	20	
	Clear Water Lake.....	20	
Sandy Point.....	20		
		1,300 acres	
		In Lac La Pluie District	

Part Exhibit 32.
(Defendants' Exhibit.)

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Memorandum of Agreement, signed by Minister of Interior and Commissioner of Crown Lands.

Part Ex. 32.
Memoran-
dum of
Agreement
signed by
Minister of
Interior and
Commis-
sioner of
Crown
Lands, 26th
June, 1874.

MEMORANDUM OF AGREEMENT FOR PROVISIONAL BOUNDARY IN
RESPECT OF PATENTS OF LANDS.

The Government of the Dominion of Canada having, by an Order-in-Council dated the 3rd day of June, 1874, suggested that the Ontario Government should be moved to appoint a Commissioner to meet the Minister of the Interior and "arrange some joint system for the sale of lands, and adjusting disputed rights in the territory claimed by both Governments, by the adoption of a conventional boundary on the west and north, and that after the final 40

adjustment of the true boundaries, titles to lands should be confirmed by the Government, whether of Ontario or the Dominion, whichever should be the proper party to legalize the same.”

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And the Ontario Government having acted on the suggestion of the Privy Council, by appointing the Commissioner of Crown Lands of that Province to meet the Minister of the Interior, and discuss the proposed arrangements, and the said parties having met this day, have agreed to the following propositions as the basis of a memorandum to be submitted to their respective Governments :—

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Part Ex. 32.
Memorandum of
Agreement,
signed by
Minister of
Interior and
Commissioner of
Crown
Lands, 26th
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—continued.

10 1. That the conventional boundary of the Province of Ontario, for the purposes set forth in the said Order in Council of the 3rd June instant, shall be, on the west, the meridian line passing through the most easterly point of Hunter's Island, run south until it meets the boundary line between the United States and Canada, and north until it intersects the fifty-first parallel of latitude ; and the said fifty-first parallel of latitude shall be the conventional boundary of the Province of Ontario on the north.

20 2. That all patents for lands in the disputed territory, to the east and south of the said conventional boundaries, until the true boundaries can be adjusted, shall be issued by the Government of Ontario ; and all patents of lands on the west or north of these conventional boundaries shall be issued by the Dominion Government.

3. That when the true west and north boundaries of Ontario shall have been definitely adjusted, each of the respective Governments shall confirm and ratify such patents as may have been issued by the other for lands then ascertained not to be within the territory of the Government which granted them, and each of the respective Governments shall also account for the proceeds of such lands as the true boundaries, when determined, may show to belong of right to the other.

30 4. That the Government of the Dominion shall transfer to the Government of the Province of Ontario all applications for lands lying to the east and south of the conventional boundaries, and also all deposits paid on the same ; and the Ontario Government shall transfer to the Dominion Government all applications for lands lying to the west or north of the said boundaries, and likewise all deposits paid thereon ; and such of the said applications as are bona fide and in proper form, shall be dealt with finally, according to the priority of the original filing, and where applications for the same lands have been filed in the Departments of both Governments, the priority shall be reckoned as if all had been filed in one and the same office.

Signed in duplicate this 26th day of June, 1874.

40

DAVID LAIRD,
Minister of the Interior.

T. B. PARDEE,
Commissioner of Crown Lands.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 32.
(Defendants' Exhibit.)
Order-in-Council (Canada).

Exhibits.
Part Ex. 32.
Order-in-
Council
(Canada)
8th July,
1874.

**REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR
GENERAL ON THE 8TH DAY OF JULY, 1874.**

(Sess, Papers, Ont., 1875-6, No. 14, P. 9)

The Committee have had under consideration a memorandum, dated 29th June, 1874, from the Honourable the Minister of the Interior, stating that, in pursuance of the suggestion contained in the Minute in Council of the 3rd June inst., relative to a provisional arrangement respecting the western and northern boundaries of the Province of Ontario and the questions therewith connected, the Ontario Government appointed the Hon. T. B. Pardee, Commissioner of Crown Lands in that Province, to meet him, the Minister of the Interior, at his office, with a view to their arriving at some understanding of a provisional nature on the subjects referred, and that on the 26th June ult., the memorandum hereto annexed was agreed upon, and he submits the same for the consideration of your Excellency in Council. 10

The Committee are of opinion that the provisional arrangement proposed in the said memorandum is unobjectionable, and advise that the same be sanctioned by your Excellency in Council. 20

Certified,

W. A. HINSWORTH,
C.P.C.

Part Ex. 32.
Order-in-
Council
(Ontario)
9th July,
1874.

Part Exhibit 32.
(Defendants' Exhibit.)
Order-in-Council (Ontario).

**ORDER-IN-COUNCIL APPROVED BY THE LIEUTENANT-GOVERNOR THE
9TH DAY OF JULY, 1874.**

The Committee of Council have had under consideration the Report of the Honourable the Commissioner of Crown Lands, dated 2nd July, 1874, 30 submitting for ratification and approval by your Excellency a joint memorandum signed by the Hon. David Laird, Minister of the Interior of the Dominion of Canada, and the Honourable the Commissioner of Crown Lands, whereof a copy is hereunto annexed, fixing a temporary conventional boundary of the Province of Ontario on the west and north, and adopting a system for the sale of lands and for adjusting disputed rights in the territory claimed by both Governments.

The Committee advise that the arrangements proposed in the said memorandum be adopted and ratified by your Excellency.

Certified.

J. G. SCOTT,
Clerk, Executive Council, Ontario. 40

Exhibit 88.

(Plaintiffs' Exhibit.)

Lease from the Crown (Canada) to Richard Fuller, et al.*In the
Supreme
Court of
Ontario.*

[SEAL]

WM. O'G. HALY,
*Lieutenant General.*Exhibits.
Ex. 88.
Lease from
the Crown
(Canada) to
Richard
Fuller, et al.
22nd July,
1875.

— C A N A D A . —

VICTORIA, by the Grace of God of the United Kingdom
of Great Britain and Ireland, QUEEN, Defender of the
Faith, etc., etc., etc.—

10 To all to whom these Presents shall come,—

GREETING :—

WHEREAS it is in and by an Act of the Parliament of Canada passed in the Thirty-fifth year of Our Reign, called, and known as the "Dominion Lands Act", amongst other things in effect enacted, that any Tract of Land covered by Forest Timber, may be set apart as timber lands, and reserved from Sale and Settlement and further that in cases where application may be made for limits on which to cut timber in unsurveyed territory, Our Governor in Council may on the recommendation of the Minister of Interior, authorize the same to be leased for a term of Twenty-one years, granting the right of

20 cutting Timber, on said lands for the said term for such bonus as may be deemed fair and reasonable, such leases to be subject nevertheless to the conditions of the Fifty-first Section of the said Act, except as to that part of Sub-Section One of the said Section which provides for the erection of Mills, which provision in respect to limits in unsurveyed territory, may if considered expedient by the Minister of the Interior be dispensed with.

AND WHEREAS the lands covered by forest timber hereinafter mentioned and described have been set apart as timber lands and reserved from Sale and Settlement,—

AND WHEREAS, Richard Fuller, John Ross, and John Dennis trading

30 together at Lake Winnipeg, in Our North West Territories as Lumber Merchants under the name, Style and Firm of "Fuller and Company" have made application for limits of Sixty square Miles in extent on which to cut timber, and the lands hereinafter mentioned and described being in unsurveyed territory Our Governor in Council, on the recommendation of the Minister of the Interior, by an Order bearing date the Twenty-Second day of July, in the year of Our Lord, One thousand eight hundred and Seventy-five, authorized the same to be leased for a bonus of Nine hundred dollars of lawful money of Canada, the said sum being deemed fair and reasonable,—

NOW KNOW YE, that in consideration of the said bonus of Nine

40 hundred dollars paid to Our Minister of the Interior of Canada, by the said Richard Fuller, John Ross and John Dennis, the receipt whereof is hereby acknowledged, and in consideration of the Rents and Royalty hereinafter mentioned and reserved and under and subject to the provisoes, conditions

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 88.

Lease from
the Crown
(Canada)
to Richard
Fuller, *et al.*
22nd July,
1875.

—continued.

and restrictions and stipulations hereinafter expressed and contained, We do by these Presents demise, lease, set and to farm let unto the said Richard Fuller, John Ross, and John Dennis their executors, administrators and assigns, All and Singular those several parcels or tracts of land situate, lying and being in Our North West Territories known and described as and being Composed of All of the Islands in the Lake of the Woods lying north of the Steamboat channel leading into the North West Angle of said Lake, including the Islands in White Fish Bay, together with Eighteen square miles on the main shore adjoining the said Lake, Eight square miles of the said Eighteen having been surveyed and reported on by Dominion Land Surveyor Lachlan Kennedy by his report dated the Fifteenth day of June in the year of Our Lord, One thousand eight hundred and Seventy-five filed of record in the Dominion Lands Branch of the Department of the Interior of Canada, as part of the said limits at the request of the said Richard Fuller, John Ross and John Dennis, and with the approval of Our said Minister of the Interior, the remaining ten miles to be selected by the said Fuller and Company and to be surveyed at their cost by a Surveyor to be appointed by the said Department. 10

TO HAVE AND TO HOLD the said several parcels or tracts of land above mentioned with the right of cutting timber thereon unto the said Fuller and Company, their executors, Administrators and assigns from the Twenty-second day of July, in the year of Our Lord, One thousand eight hundred and Seventy-five, for and during and unto the full end and term of Twenty-one years thence next ensuing and fully to be complete and ended,— 20

PROVIDED ALWAYS and these Presents are upon and subject to the several stipulations, provisoes and conditions hereinafter expressed, and contained, that is to say :—

1. THE SAID LESSEES shall take from every tree they cut down all the timber fit for use and manufacture the same into sawn lumber or some other such saleable product as may be provided by any regulations under this Act. 30

2. THEY SHALL prevent all unnecessary destruction of growing timber on the part of their men, and shall exercise strict, and constant supervision to prevent the origin or spread of fires.

3. THEY SHALL make returns to the Government monthly or at such other periods as may be required by Our Minister of the Interior or by regulations under the said Act, sworn to by them or one of them or by their Agent or Employee, cognizant of the facts, declaring the quantities sold or disposed of as aforesaid of all sawn lumber, timber, railway car stuff, ship timbers, and knees, shingles, laths, cordwood or Bark, or any other product of timber from the limit in whatever form the same may be sold or otherwise disposed of by them during such month or period and the price, or value thereof,— 40

4. THEY SHALL pay in addition to the bonus an annual ground rent of One Hundred and twenty dollars per annum and further a royalty of five per cent. on their monthly account of Sales.

5. THEY SHALL keep correct books in such form as may be provided by regulation under said Act and shall submit the same for the inspection

of the Collector of dues when ever required for the purpose of verifying their returns aforesaid.

6. THIS LEASE shall vest in the said Lessees during its continuance the right to take and keep exclusive possession of the lands hereinbefore described subject to the conditions hereinbefore provided or referred to ; and shall vest in the holder or holders hereof all right of property whatsoever in all trees, timber, lumber and other products of timber cut within the limits of this lease during the continuance hereof whether such trees, timber and lumber or products be cut by authority of the holder or holders of this lease
 10 or by any other person or persons with or without his or their consent ; and this lease shall entitle the said Leesses to seize in replevin, revendication or otherwise as their property such timber when same is found in the possession of any unauthorized person, and also to bring any action, or suit at law or in Equity against any party unlawfully in possession of any such timber or of any land so leased, and to prosecute all trespassers thereon, and other such Offenders as aforesaid to conviction and punishment and to recover damages if any ; and all proceedings pending at the expiration of this lease may be continued and completed as if the same had not expired ;

7. THIS LEASE shall be subject to forfeiture for infraction of any One
 20 of the conditions to which it is subject or for any fraudulent return ; and in such case Our Minister of the Interior shall have the right without any suit or other proceeding at law, or in equity or compensation to the said Fuller and Company, to cancel the same, and to make a new lease or disposition of the limit described herein to any other party during the term of the lease so cancelled ; provided that Our Minister of the Interior, if he sees fit may refrain from forfeiting such lease for non payment of dues and may enforce payment of such dues in the manner provided by the said Act,

8. PROVIDED THAT if the said Lessees do faithfully carry out
 30 the conditions hereinbefore mentioned they shall have the refusal of the said limits if not required for settlement for a further term not exceeding twenty-one years on payment of the same amount of bonus per square mile as was paid for this lease, and on the said Lessees agreeing to such conditions, and to pay such other rates as may be determined on for such Second term,

IN TESTIMONY WHEREOF WE have caused these Our Letters to be made Patent and the Great Seal of Canada, to be hereunto affixed :
 —WITNESS Our Trusty and Well Beloved Lieutenant General Sir William O'Grady Haly, Knight Commander of Our Most Honourable Order of the Bath, Administrator of the Government of Canada, and Commander of Our forces therein,—etc., —etc.,—

40 AT OUR GOVERNMENT HOUSE IN OUR CITY OF OTTAWA, this Twenty-Second day of July in the Year of Our Lord, One thousand eight hundred and Seventy-five and in the Thirty-ninth year of Our Reign.

BY COMMAND

(Sgd.) R. W. SCOTT,
Secretary of State.

(Sgd.) E. A. MEREDITH,
Deputy of the Minister of the Interior.

*In the
 Supreme
 Court of
 Ontario.*

—
 Exhibits.
 Ex. 88.
 Lease from
 the Crown
 to Richard
 Fuller *et al.*
 22nd July,
 1875.

—continued.

ENDORSEMENT ON BACK.

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 88.

Lease from
the Crown
(Canada) to
Richard
Fuller, *et al.*
22nd July,
1875.

—continued.

Toronto, August 21st, 1875.

We accept this Lease subject to the following express conditions that
is to say :—

1. That we agree to select and survey the ten miles yet to be selected and surveyed on the shores of the Lake of the Woods to make up the limit granted in, within four months from this date ; and,
2. That we undertake, in accordance with our original agreement with the Government to that effect, that the price at which we sell stock lumber at our Mill, shall not exceed thirty dollars per thousand 10 feet, Board Measure, at the Mill,—

(Sgd.) RICHARD FULLER,
by his Atty. John Dennis.
JOHN ROSS,
JOHN DENNIS.

Recorded 16th August, 1875.

Lib : 16 Folio 461.

(Sgd.) L. A. CATELLIER,

Reg. No. 7201.

Registrar General of Canada.

20

Ex. 89.
Memoran-
dum by
Minister of
Interior,
16th April,
1878.

Exhibit 39.

(Defendants' Exhibit.)

Memorandum by Minister of Interior.

DEPARTMENT OF THE INTERIOR.

Ottawa, 16th April, 1878.

MEMORANDUM :

The undersigned has the honor to report to Council that Mr. W. J. Macaulay, who was granted a timber limit of one hundred square miles in area on the east shore of the Lake of the Woods or in that vicinity, on the 14th April, 1874, such limit to be selected and surveyed by him, and whose claim as to area was confirmed by a second Order-in-Council, dated 8th March, 1876, has now submitted a plan and descriptions dated the 11th instant, shewing selections and surveys of pine lands, amounting in all to an area of 74 59-100 square miles, the several tracts making up that quantity being exhibited on the map accompanying his letter, and also set forth in separate tracings certified by the surveyor employed by him to locate his limits.

Mr. Macaulay explains that owing to the time involved examining the country in order to enable him to make these selections and the cost of the latter, he has been unable to this time to select and survey more than this quantity, but requests to be allowed to make the selection of the remaining 25 41-100 square miles at one or partly at both of the points marked in pencil respectively A and B on the map mentioned, the localities indicated by these letters being situate respectively on the east and west sides of the northerly portion of the Rainy Lake ; the remaining portion of the area of his limit, as above, to be surveyed, and maps and descriptions thereof furnished to
 10 this Department at his expense.

The undersigned had occasion during his visit to Manitoba last autumn to observe the lumber manufacturing establishment of Mr. Macaulay, in which, evidently, a large amount of capital has been expended, and the value of which, as contributing towards the requirements of settlers in the way of supplying lumber, cannot be denied.

In view of this fact and of the promise by the Government already made by Council to Mr. Macaulay, the undersigned respectfully recommends that the selection and survey now reported by him be approved.

The undersigned further recommends that Mr. Macaulay be permitted
 20 to take the balance of the one hundred square miles at the points where indicated by him with that view, the same to be surveyed and maps and descriptions thereof to be forwarded by him to this office at his own expense.

As Mr. Macaulay has announced his desire to have this matter concluded with the least possible delay, wishing to enter forthwith upon the erection of mills at the Lake of the Woods, so as to have the same in operation by the time the railway reached Rat Portage, it is suggested, should Council approve, that Mr. Macaulay receive a lease of the 74 59-100 square miles now reported, the remaining 25 41-100 square miles to be included in an additional lease upon the same being surveyed and reported.

30 It is of course understood, as set forth in preceding Orders in Council on this subject, that on the adjustment of the question of boundary between the Dominion and the Province of Ontario, should the limits granted to Mr. Macaulay prove to be within the said Province this government shall not be held liable to him in any way to secure his continuing in the enjoyment thereof, or for any damages which he may sustain by reason of any action which may be taken by the Government of the said Province in respect of the limits now granted.

Respectfully submitted,
 (Sgd.) DAVID MILLS,
Minister of the Interior.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 40.
Letter, W. J.
Macaulay
to Sir John
A. Mac-
donald, 5th
November,
1878.

Exhibit 40.
(Defendants' Exhibit.)
Letter W. J. Macaulay to Sir John A. Macdonald.

MACAULAY & JARVIS.

**Winnipeg, Manitoba,
Nov. 5th, 1878.**

To,
**The Right Honorable
Sir John A. Macdonald, K.C.B.**

Dear Sir,—

10

I have a timber limits as no doubt you are aware on Lake of the Woods, and my intention is to build a mill at Rat Portage, one that will cut from eight to ten million feet per season. I sent my mill-wright out to select a site. He has just returned and has found a very excellent water power on Section fifteen, Station (134) one hundred and thirty-four. In order to make it available it will require an opening of forty feet wide left through the bank at about Section 134. What I now ask for is that a bridge of forty or fifty feet may be put across in order that my logs can run under as my mill will be below the opening. If you will consent to this, you will have one of the best water powers in the Country and will be a great benefit to me. 20
If you will grant me this favor you will require to telegraph at once as they have commenced the filling already. I expect to be in Ottawa this winter at which time I hope to have the pleasure of seeing you.

I remain,
Yours truly,
Sgd. : W. J. MACAULAY.

Ex. 89.
Indenture of
Assignment,
John Dennis
et al. to Kee-
watin Lum-
bering and
Manufactur-
ing Co.,
14th August,
1879.

Exhibit 89.
(Plaintiffs' Exhibit.)
**Indenture of Assignment, John Dennis, et al, to Keewatin Lumbering
and Manufacturing Co.**

30

THIS INDENTURE made in duplicate the fourteenth day of August in the year of our Lord One thousand eight hundred and seventy-nine : IN PURSUANCE OF THE ACT RESPECTING SHORT FORMS OF CONVEYANCES :

BETWEEN :—

JOHN DENNIS, of the Village of Weston, in the County of York, Gentleman, **RICHARD FULLER**, of the City of Hamilton, Contractor, **WILLIAM H. BROUSE**, of the

Town of Prescott, Senator, and JOHN MATHER, of the City of Ottawa, lumberman, of the first part,

AND

THE KEEWATIN LUMBERING AND MANUFACTURING COMPANY, of the second part.

In the Supreme Court of Ontario.

Exhibits. Ex. 89.

Indenture of Assignment, John Dennis et al. to Keewatin Lumbering and Manufacturing Co., 14th August, 1879.

—continued.

10 WITNESSETH that in consideration of Sixty Thousand dollars of lawful money of Canada now paid by the said parties of the second part to the said parties of the first part (the receipt whereof is hereby by them acknowledged) they the said parties of the first part have granted bargained and sold and by these presents do grant bargain and sell unto the said parties of the second part their successors and assigns all their estate right title and interest in to or out of the lands lumber and timber limits more particularly mentioned and described in the lease from the Government of the Dominion of Canada to Richard Fuller, John Ross and John Dennis dated on the twenty-second day of July one thousand eight hundred and seventy-five and recorded in the office of the Registrar General of Canada on the sixteenth day of August one thousand eight hundred and seventy-five in liber 16 folio 461 and registered as number 7201 and also all the rights powers privileges and benefits granted or conferred by the said lease.

20 TO HAVE AND TO HOLD unto the said parties of the second part their heirs successors and assigns to and for their sole and only use for ever SUBJECT NEVERTHELESS to the reservations, limitations, provisoes and conditions expressed in the original Grant thereof from the Crown.

THE said parties of the first part COVENANT with the said parties of the second part that they have the right to convey the said lands to the said parties of the second part notwithstanding any act of the said parties of the first part.

AND that the said parties of the second part shall have quiet possession of the said lands free from all incumbrances.

30 AND the said parties of the first part COVENANT with the said parties of the second part that they will execute such further assurances of the said lands as may be requisite.

AND the said parties of the first part COVENANT with the said parties of the second part that they have done no act to encumber the said lands.

AND the said parties of the first part RELEASE to the said parties of the second part all their claims upon the said lands.

IN WITNESS whereof the said parties hereto have hereunto set their hands and seals.

40 SIGNED, SEALED AND DELIVERED
in the presence of
as to execution by John
Dennis, Richard Fuller and
John Mather
“ALEC. C. BEASLEY”
as to execution by William
H. Brouse
“CHARLES PLUMB, JR.”

“JOHN DENNIS”	[SEAL]
“RICHARD FULLER”	[SEAL]
“WILLIAM H. BROUSE”	[SEAL]
“JOHN MATHER”	[SEAL]

*In the
Supreme
Court of
Ontario.*

Received on the day of the date of this Indenture from the said parties of the second part the sum of Sixty thousand dollars being the full consideration therein mentioned.

Exhibits.

Ex. 89.
Indenture of
Assignment,
John Dennis
et al., to Keewatin Lumbering and Manufacturing Co.,
14th August,
1879.

Witness :

as to execution by John Dennis, Richard Fuller and
John Mather
as to execution by William H. Brouse
"CHARLES PLUMB, JR."

"JOHN DENNIS"
"RICHARD FULLER"
"W. H. BROUSE"
"JOHN MATHER"

—continued.

Ex. 50.
Letter, O. B.
Davidson to
Hon. T. B.
Pardee,
Commissioner of
Crown
Lands,
Ontario,
5th May,
1880.

Exhibit 50.

(Defendants' Exhibit.)

Letter O. B. Davidson to Hon. T. B. Pardee, Commissioner of Crown
Lands, Ontario.

10

RAT PORTAGE,
LAKE OF THE WOODS,
5th May, 1880.

SIR :—

I beg leave to submit the following Report (together with accompanying Field Notes and Plan of Survey of lands) in connection with the mills of the Keewatin Lumbering and Manufacturing Company (Limited), the work being done at the request of the said Company. The survey was commenced on the 12th and completed on the 20th day of April, 1880. Field notes and plan completed this day. 20

On the dates above mentioned the Lake of the Woods was covered with ice, the traverse of shores was made in the ice effects (?) taken to high water mark.

The soil is of very inferior quality, only a small portion fit for cultivation. The surface is very rough, broken and rocky. Timber consists of white and red pine, spruce, tamarac, balsam, white birch and poplar. The pine, spruce, tamarac and balsam is of inferior quality, being small and unsound, the birch and poplar is of small growth. Will be serviceable for cordwood only. This description is applicable to both blocks of land. 30

The mills are about ready for commencing operations waiting the opening of the Lake. They are to be run by the water of the Lake of the Woods carried by an artificial water course connecting with the Winnipeg Bay, an arm of the Winnipeg River. There is a fall of about 18 feet.

There are several small hay marshes as shown on the plan, which are only available in dry seasons, but are included in the measurements.

The land as surveyed includes south of the right of way of the Canadian Pacific Railway as shown on the Plan.

The contents of the Block adjoining the mills and the small Belt between the right of way and the Bay of the Lake (not including the small lot occupied by F. Gardiner) is 312.98 acres, the Eastern Block 118.64 acres, making a total of 431.62 acres as shown on the Plan.

I have the honour to be, etc.,

HON. T. B. PARDEE,

OTIS B. DAVIDSON, D.L.S.

Comm. of Crown Lands, Ont.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 50.
Letter, O. B.
Davidson to
Hon. T. B.
Pardee,
Commissioner of
Crown
Lands,
Ontario,
5th May,
1880.

Exhibit 42.

(Defendants' Exhibit.)

10

Field Notes of O. B. Davidson on Survey.

Survey of Lands at Keewatin for W. J. McCauley for Water Power and Mill Grounds, starting from a point on the Canada Pacific Railway at 13952½ feet westerly from the east end of Contract 15 Canada Pacific Railway. Survey commenced this 29th day of Oct., 1880.

Ex. 42.
Field Notes
of O. B.
Davidson on
Survey, 29th
October,
1880.

OTIS B. DAVIDSON, D.L.S.

(NOTE : Attached field notes not printed.)

Exhibit 41.

(Defendants' Exhibit.)

20

Letter O. B. Davidson to Minister of Crown Lands, Toronto.

RAT PORTAGE,
LAKE OF THE WOODS,
23rd Nov., 1880.

Ex. 41.
Letter, O. B.
Davidson to
Minister of
Crown
Lands,
Toronto,
23rd Novem-
ber, 1880.

SIR,—

I beg leave to report the survey of a block of land at Keewatin for W. J. McCauley of Winnipeg, Manitoba, for a Water Power Mill yard and Piling Ground. It lies immediately adjoining on the east of a location surveyed by me for G. R. Fellowes—plans of which have been forwarded to your Department yesterday.

30 It is connected with the Canadian Pacific Railway at 13952½ feet from the East of Sec. 15. The land is almost entirely barren rock (Granite), no timber of any value except on about five acres on the North East corner of the block. The waterpower (see Plan) is by canal from a bay of Lake of the Woods to Winnipeg Bay between which there is a fall of about 16 feet with

*In the
Supreme
Court of
Ontario.*

an unlimited supply of water and excellent advantages for bringing logs to the Mill.

There is no land fit for cultivation. This survey was made 28th to 30th October inclusive.

Exhibits.

Ex. 41.

Letter, O. B. Davidson to Minister of Crown Lands, Toronto, 23rd November, 1880.

Plan and field notes finished this day.

I have the honor to be,

Sir,

Your obedient servant,

OTIS B. DAVIDSON.

THE HONORABLE
THE MINISTER OF CROWN LANDS,
Toronto.

10

—continued.

Exhibit 34.

(Defendants' Exhibit.)

Letter from Surveyor-General to John McLatchie.

25th February, 1881.

Ex. 34.
Letter from Surveyor-General to John McLatchie, 25th February, 1881.

JOHN McLATCHIE, ESQ.,
D. L. Surveyor,
Winnipeg, Man.

SIR,—

By direction of the Minister, I have the honour to instruct you to make 20 a survey of a parcel of land at Rat Portage, Keewatin.

The enclosed trace has marked on it, by being included in red shaded lines, a projection indicating those that are required to be run. The object is to establish and mark on the ground by the regular legal monuments, the boundaries of sections 19 and 20, township 19, range 22, East.

The nearest iron bar corner of township, from which you could start as a basis for your survey, is the one on or near the shore of the Lake of the Woods, on the southern outline of this township planted there by Mr. A. L. Russell, D.L.S.

A sketch of that portion of the Lake is placed on the margin of the map 30 in order that you may better know where to look for the bar.

The distance eastward from the southeast corner of section 5, measuring along the southern outline of the township to the iron bar, is, by Mr. Russell's field notes (copy herewith) 49 chains and 85 links.

It is desirable that you should scale the shore of the Lake of the Woods from its intersection by the western boundary of sections 19 and 20, eastward to the most easterly crossing of the Winnipeg River by the line of the Canadian Pacific Railway, following closely all the bays and indentations and giving accurately the position of those islands that may be in such bays or close to the shore outside.

40

Please also to note, and show on your plan, the position of the Keewatin Lumbering Company's Mills, also of any other mill that may be building

on the neck of land between that Company's premises and the Railway Crossing aforesaid.

Further, note and show any sites that may, in your judgment, be suitable for the erection of other mills.

You will also connect with your survey, the different points (ring-bolts or other marks) that govern in the description of a certain boomage license to the Keewatin Lumbering Company (copy enclosed herewith).

Further, having established the boundaries of section 20, you will run the line dividing the east halves from the west halves of the northeast and south-east quarters of section 20 first mentioned, planting good permanent posts where such line intersects the shore of the Lake of the Woods or interior bays thereof. This line is marked A. B. on the sketch.

Enclosed herewith is a cheque for \$100.00 in advance, on account of this Service, for which please sign and return the accompanying vouchers.

John Mather, Esq., by whose favour you receive this, will be able to give you information as to how best you will get at Rat Portage, the assistance, supplies, etc., you need.

I have the honour to be,

Sir,

Your obedient servant,

LINDSAY RUSSELL,

Surveyor General.

Exhibit 36.

(Defendants' Exhibit.)

Letter John Mather to Col. Dennis (Deputy Minister of Interior).

KEEWATIN LUMBERING & MANUFACTURING CO., LTD.

Keewatin Mills, 2nd April,

1881.

Dear Sir,—

Yours of 22nd instant duly reached me and its contents has had my attention. I have also received the map showing the different channels of the outlet of the Lake of the Woods.

I shall be much pleased to furnish you with a comprehensive scheme as to what arrangements would in my opinion best utilize to the fullest extent the undeveloped water power and will mark on the plan you have sent as nearly as I can the different positions and localities where the water may be used as a motive power, and will refer to them in my report. Meantime, Mr. McLatchie is noting in his survey the exact position and when his plan is made up there will be no difficulty in mapping out the different water powers.

It may be a few weeks before I can manage to complete my report but I will do it as soon as I can.

I am, Sir,

Your obedient servant,

(Sgd.) JOHN MATHER.

COL. DENNIS,

Deputy Minister of the Interior,

Ottawa.

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 34.

Letter from
Surveyor-
General to
John Mc-
Latchie, 25th
February,
1881.

Ex. 36.
Letter, John
Mather to
Col. Dennis
(Deputy
Minister of
Interior)
2nd April,
1881.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 37.
Letter, John
Mather to
Col. Dennis,
21st April,
1881.

Exhibit 37.
(Defendants' Exhibit.)
Letter John Mather to Col. Dennis.

KEEWATIN LUMBERING & MANUFACTURING CO., LTD.

Keewatin Mills, 21st April, 1881.

COL. J. S. DENNIS,—

Dear Sir,—

Yours of 2nd instant only got here yesterday having been lying in the post office at Rat Portage since the 10th. I will attend to your additional instructions by stating as nearly as possible the probable cost of adapting 10 the various water powers to practical use.

I have now arranged the scheme on the map and expect to complete the Report next week.

I am, Sir,

Your obedient servant,
(Sgd.) JOHN MATHER.

**DEPUTY MINISTER OF THE INTERIOR,
Ottawa.**

Part Ex. 38.
Letter, John
Mather to
Col. Dennis,
28th April,
1881.

Part Exhibit 38.
(Defendants' Exhibit.)
Letter John Mather to Col. Dennis.

20

Keewatin Mills, 28th April, 1881.

Sir,—

I have now the honour to send you my Report and plan showing how the water power at the Outlets of the Lake of the Woods may be utilized to the fullest extent, and an estimate of the cost of adapting the same for driving machinery.

The plans made from Mr. McLatchie's late survey will show the positions of the Dam and Canals proposed by me as a portion of the scheme, as I took the liberty to request him to note that very particularly. 30

I have the honour to be,
Sir,

Your obedient servant,
(Sgd.) JOHN MATHER.

**COL. J. S. DENNIS,
Deputy Minister of the Interior,
Ottawa.**

Part Exhibit 38.
(Defendants' Exhibit.)
Letter John Mather to Col. Dennis.

*In the
Supreme
Court of
Ontario.*

Keewatin Mills, 27th April, 1881.

COL. J. S. DENNIS,
Deputy Minister of the Interior,
Ottawa.

Exhibits.
Part Ex. 38.
Letter, John
Mather to
Col. Dennis,
27th April,
1881.

Sir,—

10 You were pleased to request me in yours of 22nd March last to report
to you and to sketch on a map which was enclosed, a comprehensive scheme
which would in my opinion utilize to the fullest extent the available water
powers now undeveloped at the different outlets of the Lake of the Woods,
also in a letter dated 2nd April you requested me to include in the report an
estimate of the cost of adapting the various water powers to the scheme
proposed.

Keeping your request in view I have sketched on the map three groups
of water powers, and have marked them A, B, C, endeavouring to make as
much as possible of the water frontage, and arranging the size of the lots to
suit the nature of the ground, and to accommodate parties with more or less
20 space as their different businesses might require.

Saw mills require water frontage and considerable room for piling lumber
near a siding, or railway track. Mills for grinding grain, paper mills, wood
working shops, machine shops, etc., etc., can be built more closely together,
the principal consideration being railway facilities to receive raw materials
and to despatch their finished productions.

I have sketched a wharf on Portage Bay in connection with the Railway
Station there, as it is already the natural harbour for the settlements on
Rainy Lake and river and the northern parts of Minnesota. Considering
that there is already one saw mill on this bay and another in course of erection,
30 I have laid out the powers marked C of suitable size for grain grinding mills
and smaller concerns as they do not require space in front for logs to the
obstruction of navigation; the necessary room required by the two saw
mills already there will be all that the harbour can afford to spare.

I have shown a harbour at A that at a future time may be made of much use
in connection with the works there.

To develop the water power at A I have sketched a dam on the map
across the west branch of the Winnipeg river, at the lowest of its several falls
which will develop a very large power to be used on both sides of the river
downwards—on the south side to meet the mills built at B, and on the north
40 as far as the west end of Tunnel Island.

There is a depression clear across Tunnel Island at where the dam is
shown, that would carry water with very little excavation to the north side
and into a bay partly enclosed by a rocky island, one end of which is almost
connected with the shore, one dam would be required to keep the water in
this bay and would make a first class site for one or more saw mills, and

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Exhibits.
Part Ex. 38.
Letter, John
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Col. Dennis,
27th April,
1881.

—continued.

power could be taken also for other purposes both ways along the shore of the river.

The power at these falls might be used by building two dams, each would have about eight feet of fall, but it would cost more money than to build the one proposed, besides, the power on the north side of the island would be much less, and there would be very little chance for a harbour where it is shown on the plan.

In building a dam it should be kept in view that the westerly outlet is the only one by which fish can enter the Lake from the river, and as the fisheries must in the future be valuable, especially white fish and trout, a proper fish ladder should be constructed, and there should be a system of gates to increase the escape of water when necessary so as to make the possible outflow of the lake even greater than at present in order to prevent complaints in the future during periods of exceptional high water. 10

At B on the map, a canal is shown taken from the bay through a natural depression very little above the surface of the lake. It should be 40 feet wide and at least 8 feet deep, below the present level of the water in the lake, the power thus carried would be used along the shores of the Winnipeg river from a flume leading up and down from the end of the canal for a considerable distance each way, as shown on the map. 20

As there is at this point plenty of room between the river bank and the Railway, I have made the mill sites large for the purpose of providing room for buildings for storage of grain and other purposes.

At C in Portage Bay, I have shown another canal near McCaulay's saw mill, this should be 25 feet wide and carry at least 8 feet of water from the lake, in order to provide a plentiful supply for a range of mills along the bank of Winnipeg Bay.

These canals should be provided with strong gates or stoplogs at the ends nearest the lake, so as to regulate or shut out the water when necessary, and would also require timber work and stoplogs at the other end built in such manner as would enable parties building mills to attach their flumes to them without difficulty. 30

I have not noticed the falls on the easterly outlet of the lake partly because of the enormous power already indicated and partly because it would be very expensive to utilize, the water at the falls is very deep, and the vertical shores of solid rock rise to a considerable height; one side of the river at these falls is claimed by the Hudson's Bay Company but they can use their share of the power by a canal from the bay east of the falls, carried to the bay immediately below.

As I have made no exact survey or plans of the proposed works, the estimate of their cost is therefore only approximate but with sufficient margin to meet contingencies. 40

The works at A as before explained would consist of a dam across the river with stoplogs on top to regulate and allow a large overflow of water, also a fish way, and large openings or gates at each end to communicate with the flumes to be built by the owners of the mills on either bank of the river,

also a channel across the island, and a dam on the entrance to the bay. I estimate the cost of these works not to exceed \$50,000.

The works at B would consist of a canal 40 feet wide with a depth of water of 8 feet connecting Lake of the Woods with Winnipeg river below the falls, strong gates or stoplogs at the end next the lake, and a flume at the end next the river of proper capacity and fitted with gates at each end to allow water to pass either way to supply power on either side. I estimate that the cost of these works should not exceed \$25,000.

10 The works at C to be of the same character with a channel 25 feet wide and 8 feet deep of water; the cost of which I estimate should not exceed \$20,000.

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Col. Dennis,
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1881.

—continued.

SUMMARY OF ESTIMATE OF COST.

Works indicated at	A on Map	\$50,000
“ “ “	B “	25,000
“ “ “	C “	20,000
Total cost of works at A, B, and C		\$95,000

In addition to giving my opinion as to the best mode of utilizing the water power and an estimate of its cost, I have, thinking it might be useful to you, shown on the map what I consider would be a good arrangement of 20 lots for a town site, as the land nearly all over is rocky and very uneven.

I have allowed about 25 acres for Mr. McAulay's requirements, as that space would hold 20 million feet of lumber, and leave ample space for mills and buildings.

Care should be taken that the land allotted to Mr. McAulay should not cover the entrance to the proposed canal at C.

30 The ground nearest Mr. McAulay's land eastwards is very broken and for a time at least one half would not be built upon, but to avoid confusion it should be laid out as if it were level and parties building made to keep to the line of the streets, indeed something should be done soon in that way as workmen are now coming in with their families and building small houses where it suits them.

I have shown a reserve on both sides of the canal at B as the ground in the middle is a swamp and at the sides rocky and unfit for building ground.

The ground further east is the best and most suitable for building of any near the water powers, three-fourths at least of its surface could be made available.

On the north side of the Railway near the proposed harbour, I show a reserve which no doubt would be useful for lumber yards and other storage purposes.

40 The point of land between the two bays if laid out for building should be in larger lots as it is uneven and swampy.

There is a considerable amount of good building ground on Tunnel Island.

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Part Ex. 38.
Letter, John
Mather to
Col. Dennis,
28th April,
1881.

—continued.

I have indicated on the map how sidings from the Railway could be built to suit the proposed works.

It might be proper that this report should now end, but as it may be difficult to decide as to who should undertake the proposed works, I shall presume to give an opinion.

There would of course be no difficulty if it should be undertaken by the Government, and the water power thus ready made sold to intending operators of mills and other works, but should it decline to do so, much care and precaution would be required to prevent a state of things that would retard future prosperity and usefulness. The primary object of the Government would of course be the proper utilization of the water power, and the best interests of the country as connected therewith. 10

Should it be determined that private parties or companies might undertake these works, plans and full descriptions should be prepared and those only encouraged to go on with the undertakings who would be able to show evidence of ample means to carry it out.

The first outlay would be considerable and for a few years the demand for power might not be great, it might therefore be necessary to treat generously those willing and able to go on with the required undertakings, and to sell or lease to them for a lengthened period the different sites for mills and works at a nominal rate. 20

Good proof should be had that they could carry out without difficulty the undertaking in hand.

They should be bound to make the power available within a certain stated time after entering into a contract.

They should also be bound to lease any of the lots to parties desiring to build mills or works as laid down on the plans provided, at such rates and rents as the Government might consider fair and reasonable for them to get, due consideration being had in fixing these rates that it might be several years before the whole of the powers might be occupied. 30

It might also be considered advisable and I think fair and reasonable to require parties getting such privileges to build the first mill on such power themselves, the mill to be of a certain capacity and complete and in running order in a certain specified time.

In fixing rates or rents to be charged by parties undertaking to make these water powers, consideration should of course be given to the eligibility of the site, and the size of the lot, but the main factor would be the quantity of water required by the establishment.

Parties leasing such powers from contractors should be required to carry a flume of a certain size past the ground leased and to leave stoplogs or gates in the end to connect with the next, and either them or the contractors should always keep the works in a proper state of repair. 40

I have not estimated the amount of water power that can be developed at the outlets of the Lake of the Woods as such estimate would certainly be vague at the best. You are, however, aware that the fall is seventeen feet and the volume of water nearly as great as the Ottawa at the City of Ottawa,

the power is therefore so great that it is hardly necessary at this stage to make an estimate of it.

Trusting that this report will meet your approval and contains all the information you require,

I have the honour to be,

Sir,

Your obedient servant,
(Sgd.) JOHN MATHER.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 38.
Letter, John
Mather to
Col. Dennis,
27th April,
1881.

—continued.

Exhibit 35.

(Defendants' Exhibit.)

Report John McLatchie to Minister of Interior.

Winnipeg,

May 14, 1881.

Ex. 35.
Report, John
McLatchie
to the
Minister of
the Interior,
Ottawa,
14th May,
1881.

10

To the Rt. Honourable,
The Minister of the Interior,
Ottawa.

SIR,—

I have the honour in accordance with instructions issued by Lindsay Russel, Esq., Surveyor General of Dominion Lands, dated the 25th February, 1881, to submit the following Report of the Survey of sections nineteen and twenty in township nine, range twenty-two, east of the Principal meridian; and also the traverse of a part of the Lake of the Woods, Winnipeg Bay and River.

The instructions were handed me by John Mather, Esq., on the 11th of March, and I proceeded by the Canada Pacific Railway to Keewatin Mills on the 16th of March, taking with me Mr. H. A. H. Dunsford as first chainer.

During the forenoon of the 17th I engaged the balance of men required for the survey, and in the afternoon I went along the shore of the Lake of the Woods and found the Iron Bar referred to in the Instructions.

Owing to the extremely mild weather the Lake was open in many places, and the ice being in an unsafe condition I opened out the Third Base Line westward to the post between the east and west halves of section five, township nine, range twenty-two East and ran northward along the boundary between the east and west halves of section five, 100 chains; thence westward 23 chains; thence northward 144 chains and 50 links, making the full depth of three sections including road allowances.

Having determined the boundaries of sections 19 and 20 I ran the line dividing the east and west halves of the east half of section twenty planting posts at the shore of the Lake of the Woods, the south and north shores of Portage Bay and on the north boundary of section twenty.

20

30

40

*In the
Supreme
Court of
Ontario.*

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Exhibits.
Ex. 35.
Report, John
McLatchie
to the
Minister of
the Interior,
Ottawa,
14th May,
1881.

—continued.

The east boundary of section 19 having run through the Keewatin Lumbering and Manufacturing Company's Saw Mill, I ran a line at a distance of twenty chains westward from this boundary and parallel with it, planting posts at the south boundary of section 19 and at 40 chains north of the road allowance on this line.

Owing to the ground being frozen and the rocky nature of the country I found it necessary to place a heap of stones around each and every post, which accordingly was done.

I traversed the north shore of the Lake of the Woods eastward from the boundary between sections 17 and 18 to the east branch of the Winnipeg River, including an island in Portage Bay; two islands close to the shore of the lake and a point of a large island. This island runs almost parallel with the shore of the lake, 15 to 25 chains distance from it. 10

I also traversed the shores of Winnipeg and Mink Bays and the islands in Winnipeg Bay in sections 19 and 20, as well as the Railway Line in those sections and its continuation to the east branch of the Winnipeg river.

I also ran traverses across the neck of land from Portage Bay and the Lake of the Woods to Winnipeg Bay, wherever suitable places were noticed for the erection of mills. These places are shown on the accompanying field notes and plan of survey and are marked A, B, C, and D. 20

Finding that I had nearly two spare days after completing the above work before I could return to Winnipeg I continued the traverse of the south shore of Winnipeg Bay eastward from the northerly boundary of section 20 to the Railway Line near where it crosses the west branch of the Winnipeg River, for the purpose of showing the position of the Rapids on the west branch of the Winnipeg River.

I also traversed the east shore of the west branch of the Winnipeg River northward from the Railway Line until opposite a valley which I followed to a bay of the east branch of the Winnipeg River. This valley is marked E on the accompanying plan and field notes of survey. 30

The cost of construction of a canal at A would not be very great. At this place, however, a water tank and windmill have recently been erected for the Canada Pacific Railway and while remaining there will interfere with its use if required for a water power.

At B the depth of excavation would not be very great but the length is considerable.

The entrance to this valley from Portage Bay is only a few chains west of the canal already made by W. J. McAuley, where he is about erecting a saw mill; and to have proper access to it, it would be necessary to divide the space between the two water powers. 40

At C it is nearly all swamp between the Bay and Winnipeg River and although of considerable length would not be expensive to excavate a canal. At the railway crossing the Bay has been filled above the water level in the construction of the Railway. It will be necessary to open this again or to make a tunnel in the bank to get a supply of water.

At D there is a fall of about eight feet. A canal would not be expensive but should the west branch of the Winnipeg River be dammed to raise the

water in it to the level of the Lake of the Woods it would do away with the fall altogether and would consequently then be of no value.

At E it appears to be sandy soil and may yet be of value as a water power.

The property of the Keewatin Lumbering and Manufacturing Company is shown on the accompanying plan of survey included in red shaded lines.

The area of this property is three hundred and forty-four acres and six-tenths of an acre exclusive of road allowances.

The area of each parcel of land in sections 19 and 20 is marked on the plan of survey as well as the total area of those sections.

10 On the accompanying plan of survey I have shown the position of all buildings in sections 19 and 20 and the names of the owners as far as they could be ascertained. The descriptions and dimensions of the buildings are shown more particularly in the field notes.

The whole of the country is rocky and broken, only a few patches being found suitable for agricultural purposes.

The Keewatin Lumbering and Manufacturing Company's Boomage Ground with the bearing of the lines between the Ringholes is also shown on the accompanying plan of survey.

I have the honour to be,

20

Sir,

Your obedient servant,
JOHN McLATCHIE, D.L.S

Exhibit 33.

(Defendants' Exhibit.)

Plan by John McLatchie.

See Book of Plans.—Plan No. 2.

Ex. 33.
Plan by John
McLatchie,
14th May,
1881.

Exhibit 43.

(Defendants' Exhibit.)

Agreement W. J. Macaulay and Dick and Banning.

30 This Indenture made in duplicate this fourteenth day of November, in the year of our Lord, one thousand eight hundred and eighty-one.

BETWEEN :

WILLIAM JAMES MACAULAY of the City of Winnipeg, in
the County of Selkirk and Province of Manitoba, Lumber
Merchant, *of the First Part,*

AND

WILLIAM R. DICK and WILLIAM WARD BANNING, both of
the same place, Lumber Merchants, *of the Second Part.*

40 WHEREAS, by a certain indenture of lease bearing date the first day of May, A.D. 1878, expressed to be made by Her Majesty the Queen represented

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 35.
Report, John
McLatchie
to the
Minister of
the Interior,
Ottawa,
14th May,
1881.

—continued.

Ex. 43.
Agreement,
W. J. Mac-
aulay and
Dick and
Banning,
14th Novem-
ber, 1881.

*In the
Supreme
Court of
Ontario.*

Ex. 43.
Agreement,
W. J. Mac-
aulay and
Dick and
Banning,
14th Novem-
ber, 1881.

by the Minister of the Interior of Canada. All and Singular those certain parcels or tracts of land, the general position of which as also butts and bounds thereof are respectively set forth upon a plan or record in the Department of the Interior of Canada, dated the first day of April, 1878, certified by John Stoughton Dennis, Esquire, Surveyor General of Dominion Lands, the said tracts or parcels of timbered lands, covering in all seventy-four square miles and fifty-nine one hundredths of a square mile, were demised and leased to the party hereto of the first part, his executors, administrators and assigns, with the right of cutting timber thereon for and during the term of twenty-one years from the date thereof, upon the consideration and subject to the terms and conditions therein set forth. 10

AND WHEREAS by certain Indenture of Lease, bearing date the twelfth day of October, A.D. 1880, expressed to be made between Her Majesty the Queen, represented by the Minister of the Interior of Canada, the lessor of the first part, and the party hereto of the first part—the lessee of the second part—All and Singular that certain parcel or tract of land which may be known and described as follows, that is to say :—Situate in the District of Keewatin, on the South shore of the Seine River, commencing at a squared post planted by Dominion Land Surveyor, C. I. Bouchette, where he has marked a white pine tree with W. J. Macaulay's name and date of survey thereon, which said post is at the foot of those rapids on the Seine River which flow into an enlargement of the same called "Nanwatanany Lake" and is shown marked "A" on the said Dominion Land Surveyor C. I. Bouchette's map of survey, thence west astronomically six miles, more or less, to a post planted by the said Dominion Land Surveyor, C. I. Bouchette where he has marked a pine tree with W. J. Macaulay's name thereon, thence south five degrees and thirty minutes East astronomically two miles and sixty chains more or less to a post planted by the said Dominion Land Surveyor, C. I. Bouchette, where he has marked a poplar tree with Mr. Macaulay's name thereon; thence South sixty-three degrees East astronomically four miles more or less to a post planted by the said Dominion Land Surveyor, C. I. Bouchette; thence North eighty degrees East astronomically three miles fifty-two chains and ninety-six links—thence north twenty-one degrees thirty minutes East astronomically, five miles more or less to the said Seine River; thence Westerly following the Southern shore of the said Seine River to the place of beginning, the general position of which parcel or tract of land, as also the butts and bounds thereof respectively set forth upon a plan of record in the Department of the Interior, dated the fifteenth day of April, eighteen hundred and seventy-nine certified by Lindsay Russell, Esquire, Surveyor General of the Dominion Lands, the said parcel or tract of timbered lands covering an area of twenty-five and forty-one one hundredths square miles (exclusive of Kakapajingwak and Macaulay Lakes contained within the described limits) more or less, were demised to the said party hereto of the first part, his Executors and Administrators and assigns for the term of twenty-one years from the first day of May, A.D. 1880, with the right of cutting timber thereon upon the consideration and subject to the terms and conditions therein set forth. 20 30 40

AND WHEREAS there is situate and being between the Lake of the Woods and the Bay of Winnipeg River or Mink Bay a valuable mill privilege or water power containing not less than twenty-seven acres of land in connection therewith, the right to the user of which the party of the first part has agreed to obtain from the Minister of the Interior of Canada, for the parties of the second part.

AND WHEREAS the party of the first part is possessed in his own right of certain goods and chattels including four million five hundred thousand feet of logs and lumber situate and being in or near the said premises and at Turtle Portage and the steamer "Lily MacAulay" now on the Lake of the Woods a full and particular description of which is set out in the Schedule hereto annexed.

AND WHEREAS the said party of the first part has agreed to sell, and the parties of the second part have agreed to purchase the residue of the terms hereinbefore mentioned and the goods and chattels in the said schedule particularly described at and for the price or sum of Two hundred and forty thousand dollars.

NOW THEREFORE this indenture witnesseth that in pursuance of the said agreement and in consideration of the sum of two hundred and forty thousand dollars of lawful money of Canada payable at the times and in the manner following that is to say:—Twenty thousand dollars on the execution and delivery of these Presents (the receipt whereof is hereby acknowledged), forty thousand dollars on the first day of June, A.D. 1882, Forty thousand dollars on the first day of August, A.D. 1882, Seventy thousand dollars on the first day of April, A.D. 1883, and seventy thousand dollars on the first day of April, A.D. 1884, with interest on the said several sums in the meantime at the rate of eight per cent. per annum—the party of the first part hath bargained, sold, assigned, and set over, and by these presents doth grant, bargain, sell, assign and set over unto the said parties of the second part, their executors, administrators and assigns the lands and premises hereinbefore described in the said indentures expressed to be demised together with the goods and chattels in the schedule hereto annexed particularly mentioned.

TO HAVE AND TO HOLD the same and every of them and every part thereof with the appurtenances and all the right, title and interest of the said party of the first part, thereto and therein as aforesaid unto the said parties of the second part and their executors, administrators and assigns to and for their sole and only use forever, subject however to the covenants by the lessee and conditions in said two indentures of lease reserved and contained and henceforth to be observed and performed.

AND the said party of the first part doth hereby for himself, his heirs, executors and administrators covenant with the said parties of the second part their executors, administrators and assigns that notwithstanding any act by the said party of the first part done, omitted or knowingly suffered, the rent reserved by and the covenants of the lessee and conditions contained in the said two indentures of lease have been paid, performed and observed up to the date of these presents, and that notwithstanding any such thing as aforesaid he the said party of the first part now hath power to assign all the

*In the
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Exhibits.
Ex. 43.
Agreement,
W. J. Mac-
aulay and
Dick and
Banning,
14th Novem-
ber, 1881.

—continued.

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Supreme
Court of
Ontario.*

Exhibits.
Ex. 43.
Agreement,
W. J. Mac-
aulay and
Dick and
Banning,
14th Novem-
ber, 1881.

—continued.

said premises, and the said parties of the second part, their executors, administrators and assigns for and during the residue of the terms aforesaid free from encumbrances, and that all the said premises may be quietly held and enjoyed without any interruption by the said party of the first part his executors or administrators or any person claiming through or in trust for him.

AND that he the said party of the first part shall and will as soon as practicable after the execution and delivery of these presents procure or cause to be procured from the Minister of the Interior of Canada a lease of the mill privilege or water power hereinbefore mentioned to the parties of the second part or himself, and assign the same to the parties of the second part, for and during the terms of twenty-one years or if possible a deed in fee simple of the same. And in default of his procuring the said lease the parties of the second part shall deduct the sum of Twenty thousand dollars from the last payment and to retain the same until the lease shall have been obtained for the parties of the second part, and the parties of the second part are to pay all rents reserved to the Government under said leases. 10

And that the party of the first part in case there is a deficiency in the amount of logs and lumber aforesaid will deliver to the said parties of the second part their executors administrators and assigns during the summer of one thousand eight hundred and eighty-three at the respective premises aforesaid as sufficient quantity to make up the deficiency and in default thereof that the said parties of the second part shall be at liberty to make up the deficiency at the costs and charges of the said party of the first part and deduct the same from the first payment accruing due herein after the said costs and charges have been ascertained as aforesaid. 20

And that the said party of the first part is now rightfully and absolutely possessed of and entitled to the chattels and goods and every of them and every part thereof as set forth in said schedule. And that the said party of the first part now hath in himself good right to assign the same unto the said parties of the second part, their executors, administrators and assigns in manner aforesaid and according to the true intent and meaning of these presents. 30

And that the said parties hereto of the second part their executors, administrators and assigns shall and may from time to time and at all times hereafter peaceably and quietly have hold possess and enjoy the said hereby assigned goods and chattels and every of them and every part thereof to and for their own use and benefit without any manner of hindrance, interruption, molestation, claim or demand whatsoever of from or by him the said party of the first part, or any person or persons claiming through him, and that free and clear and freely and absolutely released and discharged or otherwise at the costs of the said party of the first part, effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges and incumbrances whatsoever made by the said party of the first part. 40

And moreover that the said party of the first part and all persons rightfully claiming or to claim any estate right, title or interest of in or to the said

hereby assigned goods and chattels and every of them and every part thereof, shall and will from time to time and at all times hereafter upon every reasonable request of the said parties of the second part, their executors, administrators or assigns but at the costs and charges of the said parties of the second part, make, do and execute or cause or procure to be made, done and executed all such further acts, deeds and assurances for the more effectually assigning and assuring the said hereby assigned goods and chattels unto the said parties of the second part, their executors, administrators or assigns or his or their counsel, shall be reasonably advised or required.

10 And that the parties of the second part for themselves, their heirs, executors and administrators do hereby covenant with the party of the first part his executors and administrators that they the said parties of the second part their executors, administrators and assigns will henceforth pay the rent, tolls and dues by the said two indentures of lease reserved and perform all covenants on the part of the lessee therein contained, and keep the said party of the first part, his executors and administrators indemnified against the actions, suits, expenses and claims on account of the non-payment of the said rent or the breach of the said covenants or any of them by the said parties of the second part.

20 And that they will pay to the said party of the first part his executors or administrators the balance of the said consideration money, at the times and in the manner hereinbefore mentioned.

And whereas the party of the first part has at present on hand a quantity of supplies to be used in the manufacture of lumber aforesaid, the said parties of the second part hereby agree to purchase the same from the said party of the first part at the cost or invoice price of the same together with the charges thereon to the place of destination to be paid for by a promissory note bearing even date herewith payable in three months.

30 And whereas the party of the first part has entered into certain contracts for the purpose of prosecuting and carrying on the said business of lumbering upon the lands, and amongst others the contract for sawing lumber heretofore made with one Brundenburgh. It is further agreed by and between the parties aforesaid that the said party of the first part shall and will assign and set over unto the said parties of the second part their executors, administrators and assigns the said contracts so entered into by him as aforesaid together with all benefit and advantage to be derived therefrom.

40 And the parties of the second part covenant with the party of the first part that they will perform all the covenants, conditions and agreements as provided in the said several agreements to be performed by the party of the first part and will save him harmless of and from all loss, costs and damages, arising out of the same subsequent to the date hereof.

And it is hereby agreed and understood by and between the parties hereto that promissory notes shall be given for said payments which notes shall be payable at the Merchants Bank here and shall bear interest at eight per cent. per annum.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 43.
Agreement,
W. J. Mac-
aulay and
Dick and
Banning,
14th Novem-
ber, 1881.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 43.
Agreement,
W. J. Mac-
aulay and
Dick and
Banning,
14th Novem-
ber, 1881.

—continued.

It is further agreed that the parties of the second part shall be at liberty at any time before their maturity to pay off and retire the said notes or any of them upon giving one month's notice to the party of the first part.

In Witness Whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of (sd.) R. CASSIDY	}	(sd.) W. J. MACAULAY [SEAL] (sd.) W. R. DICK [SEAL] (sd.) W. W. BANNING [SEAL]
as to execution by all parties.		

[COPY]

10

Schedule referred to in the hereto annexed Indenture.
Two span of horses, three grey and one black.
Two sets of double harness.
Five sleighs, one at Rainy River Camp.
Two hundred chains about, at the Norman Mills, Kewaydin,
Mackenzie Camp and at Rainy River Camp and in booms at
warehouse at Norman Mills.
Ropes—at the Norman Mills.
Camp Outfits, including stores, axes, cant hooks, pike poles, cross
cut saws, logging chains, etc., etc.
Steamer "Lily Macaulay" and all pipes, anchors, chains and
tackle connected therewith.
Sawdust cart, one set of four wheels and three sets of hind wheels.

20

Ex. 44.
Letter, Col-
lingwood
Schreiber to
I. Braun,
Secretary,
Department
Railways &
Canals,
2nd May,
1882.

Exhibit 44.
(Defendants' Exhibit.)
**Letter Collingwood Schreiber to I. Braun, Secretary, Department of
Railways and Canals.**

CANADIAN PACIFIC RAILWAY.
OFFICE OF THE ENGINEER IN CHIEF.

Ottawa, May 2nd, 1882. 30

SIR,—

With respect to the letter from Mr. J. Ryan, M.P., dated the 28th ulto. and addressed to Sir Charles Tupper, referring to Mr. W. J. Macaulay's claim to a lease of water power at Rat Portage, I have the honour to report :

At the time the embankment was being formed across the small bay of the Lake of the Woods, near the Engineer's (Fellowes) house at Keewatin, the work was stopped at the request of Mr. Macaulay and others, and a bridge substituted in place thereof.

After the latter was erected, Mr. Macaulay, who was cutting a raceway for his mill, asked to have a change made in one of the spans so as to leave a larger opening. This change was allowed and the work was done at Mr. Macaulay's expense.

I have the honor to be,
Sir,

Your obedient servant,

(Sgd.) COLLINGWOOD SCHREIBER,
Engineer in Chief.

10 I. BRAUN, ESQ.,
Secretary,
Dept. Railways and Canals.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 44.
Letter, Col-
lingwood
Schreiber to
I. Braun,
Secretary,
Department
Railways &
Canals,
2nd May,
1882.

—continued.

Exhibit 45.

(Defendants' Exhibit.)

Letter W. J. Macaulay to Sir John A. Macdonald.

St. Paul, Minn., May 3rd, 1882.

Ex. 45.
Letter, W. J.
Macaulay to
Sir John A.
Macdonald,
3rd May,
1882.

THE RIGHT HONOURABLE

SIR JOHN A. MACDONALD, K.C.B.

DEAR SIR,—

I intended leaving for Ottawa this week to again see you with respect
20 to the Mill Site and water power at Keewatin. At the time I sold out there
I agreed to get the Parties a lease if not a deed in fee Simple for the Mill site
and power in Consequence they are holding back Twenty thousand dollars
of the purchase money until I procure a lease for them. They also threaten to
sue me for damages I never would have gone on and built the power which
cost me ten thousand dollars besides putting up a Mill at the Cost of \$25,000.00
and Only I had your verbal promise I could have the power provided it did not
interfere with the Rail Road. You then told me to see Sir Charles Tupper
with respect to it which I did. Sir Charles had a change made in the Bridge.
At my request in that it would not impede the power and I paid for said change.
30 It was well understood in the Department that I was to have the Site Mr.
Lindsay Russell himself agreed to arrange about booming ground between my-
self and Mather of the Keewatin Lumber Co. The Department knew I was
blasting out the rock for a mill race at a large cost and did not interfere with
me in any way. Mr. Mather went into that Country when and not until
he had Rail Road accommodation and have not the hardships that I had
who went in years before him. And you must acknowledge that I was a great
benefit to the Country in an early day in the way of furnishing lumber for
the City and Country and also for the Government. At that time I run the
most of my logs from Red Lake River in Minnesota to Fort Garry a distance
40 of 700 miles and then sold lumber at five dollars per ft. less than it sold for
last year. I now beg of you to take up my Case, and not make fish of me
and flesh of Mather. Your Government I believe has given him a deed for

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 45.
Letter, W. J.
Macaulay to
Sir John A.
Macdonald,
3rd May,
1882.

—continued

320 acres of land with the best Mill Site and water power in the Province. I only ask a lease of my Mill Site and 27 acres of land for a piling ground for 21 years. I am surely entitled to at least this much and being the Pioneer lumber Man of the N.W. I don't think I should be treated more than twelve times worse than my friend Mather of the Keewatin Lumber Co. The Amt. the parties are keeping back is very large and as Mr. Dodge and I are organizing a large lumbering business in the North West. I require every dollar I can raise to put into it. Our family have been supporters of your Government all our life time and I think I am the only one that is personally known to you. The Others never had any favours to ask of your department. My Brother 10
John D. Macaulay lives at Trenton and has grain elevators at Brighton, Belleville and Shaminvill, and has a good deal of influence with the Catholic population around him as no doubt MacKenzie Bowell can tell you also John White knows him well. Hoping you will See Justice done me in this Case and assuring you I will always glad to Serve you.

I am Yours Very Truly,

W. J. MACAULAY.

Ex. 46.
Petition of
W. J. Mac-
aulay to
Minister of
Interior,
1882.

Exhibit 46.

(Defendants' Exhibit.)

Petition of W. J. Macaulay to Minister of Interior.

20

To The

RIGHT HONOURABLE,
THE MINISTER OF THE INTERIOR.

The Humble petition of William James MacAulay of the City of Winnipeg in the Province of Manitoba, Lumber Manufacturer,

Sheweth

That your Petitioner having for many years prior to the year 1872 been engaged in the manufacture of timber in the Province of Ontario proceeded in the said year to Manitoba and erected and put into operation at the City of Winnipeg the first Saw Mill ever built in that country. 30

That your Petitioner applied in said year to the then Dominion Government for a grant of a timber license or licenses to cut timber on the Shore of Lake of the Woods or Rainy Lake with the view and intention as the Petitioner then informed the said Government and in accordance with the then timber regulations of building a Mill at or near Rat Portage for the purpose of manufacturing lumber from said limits if granted to him.

That your Petitioner as appear by an order in Council of Her Majesty's Privy Council for Canada passed on the 14th April, 1874, was granted a timber area of one hundred square miles on the east side of Lake of the Woods.

That the selection and survey of said one hundred square miles of timber 40
limits were as appears by another order in Council dated the 16th April, 1878,

approved of and licenses therefore subsequently thereto granted which licenses have ever since been held by your Petitioner.

That your Petitioner was always given to understand by the Government through the Minister and officers of your Department from the time he first applied for said timber limits that he would be granted a Mill site and the necessary ground adjacent thereto for the purposes of a piling ground at or near said limit as soon as he could decide upon the location for said Mill.

10 That as appears by the report of the then Minister of the Interior upon which the Order in Council of 16th April, 1878, in reference to your Petitioners timber limits was based your Petitioner had prior to said date been pressing the Government to grant him said timber licenses without delay in order that he might proceed with the erection of a Saw Mill at or near his said limits in Lake of the Woods.

That in the Autumn of the year 1878 your petitioner selected the site for his said Mill at "old Rat Portage" between "the Lake of the Woods bay" and "Mink Bay" on Winnipeg River and communicated such location to the then Minister of the Interior.

20 That your Petitioner also applied to the said Minister in the same Autumn to have a gap or opening left in the embankment of the Canadian Pacific Railroad at that point to be covered with a Bridge in order to render available a water power in connection with your petitioners proposed Mill site on the location above mentioned which was station 134 on section 15 of the said Railway.

30 That your Petitioner visited Ottawa late in the Autumn of 1878 or in the beginning of the following winter and in an interview with yourself on the subject of the said Mill site and necessary adjoining ground at old Rat Portage was informed by you that unless the proposed location interfered in any way with the Canadian Pacific Railway line at that point it would be approved of and granted to your Petitioner and your petitioner was at the same time referred by you as to the question of interference with the Railway to the then Minister of Public Works.

That your Petitioner immediately obtained an interview with the said Minister of Public Works in reference to the said question and was informed by the said Minister that the location proposed by your Petitioner as aforesaid for said Mill was quite satisfactory to his Department and that the carrying out of your Petitioners intention with reference to said location would in no respect interfere with the line of the Canadian Pacific.

40 That your Petitioner was also informed by said Minister of Public Works at the same time in compliance with his request to that effect that an opening would be left in the Railway embankment at the proposed site of said Mill and Water power for the purposes of said water power and would be covered by a Bridge.

That from what took place at said interview with yourself above mentioned and at several other interviews with yourself and your Deputy between the Autumn of 1878 and the Autumn of 1880 your Petitioner understood that there was no doubt of his being granted said Mill site and the necessary adjacent ground for piling purposes.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 46.
Petition of
W. J. Mac-
aulay to
Minister of
Interior,
1882.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 46.

Petition of
W. J. Mac-
aulay to
Minister of
Interior,
1882.

—continued.

That your Petitioner was requested by your Department during the summer of the year 1880 to send in a plan of his proposed Mill site and adjacent ground which he accordingly sent in to your Department and which is now of record there.

That the said Minister of Public Works in accordance with his promise aforesaid caused said Railway embankment to be left open at the point where the proposed Mill site was located and had the said opening bridged for the purpose of said Railway.

That in the Autumn of the year 1880 your Petitioner relying upon his having secured said location for Mill site and adjacent piling ground shown 10 in the plan furnished to your Department commenced the necessary work to establish a water power at said point and completed same in the Spring of the year 1881 and in the same Spring proceeded to the erection of a Saw Mill on said location which was completed by your petitioner in the fall of 1881.

That your Petitioner expended in the establishment of said water power and in the erection of said Mill about Twenty-seven thousand dollars.

That the said Mill is now and has been in operation during the whole sawing season since it was completed.

That the ground adjacent to the Mill on the east side thereof to the extent of Twenty-seven acres is necessary for said Mill as a piling ground and 20 is useless for any other purpose.

That your Petitioner expended said money in the establishment of said water power and in the erection of said Mill in good faith and in the belief that the Government had agreed under the circumstances aforesaid to grant to him the said Mill site and adjacent piling ground and your Petitioner would not otherwise have laid out any capital thereon.

That in the Autumn of last year shortly after its completion your Petitioner made a sale of said Mill property and of a lease for 21 years of the said Mill site and adjacent twenty-seven acres before described to certain persons 30 who are now operating said Mill.

That in order to carry out the terms of said sale it is necessary for your Petitioner to have a lease from your Department of the said Mill site and adjacent twenty-seven acres and your Petitioner submits that in the facts above set forth which are borne out in many particulars by the records of your Department he is entitled to have said lease now granted to him.

Your Petitioner therefore prays.

That he may be granted a lease for twenty-one years renewable of the Mill site including the water power now occupied by the Mill built by your Petitioner at "Old Rat Portage" and of the twenty-seven acres adjoining on the east side and 40 used as a piling ground all of which are shown on said plan now of record in your Department.

And your Petitioner will ever Pray.

W. J. MACAULAY

Witness :

A. FERGUSON.

Exhibit 47.
(Defendants' Exhibit.)
Order-in-Council (Canada).

*In the
Supreme
Court of
Ontario.*

CERTIFIED COPY OF A REPORT OF A COMMITTEE OF THE HONOURABLE THE
PRIVY COUNCIL, APPROVED BY HIS EXCELLENCY THE GOVERNOR
GENERAL IN COUNCIL, ON THE 18TH MARCH, 1884.

Exhibits.
Ex. 47.
Order-in-
Council
(Canada)
18th March,
1884.

P.C. No. 538.

On a Memorandum dated 11th March, 1884, from the Minister of the
10 Interior, submitting an application of William James Macaulay, of the City
of Winnipeg, in the Province of Manitoba, for a lease of a certain parcel of
land near Rat Portage on the South shore of Winnipeg Bay, an expansion of
the Winnipeg River, for a Mill site and the necessary land adjacent thereto
as a Piling ground, also for a certain portion of Portage Bay, Lake of the
Woods, for Booming purposes.

The Minister represents that the applicant in the Spring of 1881 at con-
siderable expense, erected on the site he now applies to lease, a mill of suffi-
cient capacity to cut five thousand feet B.M. of lumber per hour, for the
purpose of manufacturing the timber produced from the berths one hundred
20 square miles in extent leased to him in the district of the Lake of the Woods.
At the same time the applicant expended a large sum in establishing a water-
power in connection with his Mill, and the Minister of Railways and Canals
caused to be erected a bridge at the point where the Mill-race intersects the
line of the Canadian Pacific Railway for the purpose of facilitating the estab-
lishment of the said water power.

The Minister recommends, as the timber berths accorded to Mr. Macau-
lay could not have been developed but for the erection of the Saw Mill and as
indeed the conditions on which the berths were leased to Mr. Macaulay,
required him to erect such a Mill, that a license of occupation for twenty-one
30 years from the 1st of January, 1883, be granted to Mr. Macaulay or his
assigns, for the following described lands, as a Mill-site and Piling grounds,
reserving thereout the right of way of the Canadian Pacific Railway, that
is to say :—

Commencing on the North shore of Portage Bay where a due South
line from a point on the center line of the Canadian Pacific Railway intersects
the same, which point is 8 chains 60 lks. in direct distance Westerly from the
centre of the Railway bridge crossing the Mill-race; thence North astro-
nominally 10 chains and 50 links more or less to the South shore of Winnipeg
Bay; thence Easterly and North-Easterly following the sinuosities of the
40 shore of Winnipeg Bay to the Southern boundary of the road allowance
between Sections 20 and 29, Township 9, Range 22, East of the First Principal
Meridian; thence East astronomically 4 chs. 50 lks., more or less, to the
Western Boundary of the North-East Quarter of the North-East Quarter of
Section 20; thence South astronomically 19 chains more or less, to the
Northern shore of Portage Bay; thence Westerly following the sinuosities
of the North shore of Portage Bay to the place of beginning; and containing
after deducting therefrom that portion of the said described area which is

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 47.
Order-in-
Council
(Canada)
18th March,
1884.

—continued.

covered by the right of way of the Canadian Pacific Railway, an area of twenty-three acres, more or less.

The Minister further recommends that for booming purposes in connection with Mr. Macaulay's Mill, the following described portion of Portage Bay be included in the license of occupation hereinbefore mentioned, that is to say :—

Commencing on the North shore of Portage Bay where the same is intersected by the Western boundary of the above described Mill site and Piling grounds; thence South astronomically two chains; thence East astronomically twelve chains; then North astronomically two chains, more or less to the Northern shore of Portage Bay; thence in a Westerly direction following the sinuosities of Portage Bay to the place of beginning; containing an area of four and one-quarter acres, more or less. 10

The said license of occupation to be subject to the payment of an annual rental of One hundred dollars; and to the resumption of the whole or any part of the area included, at any time the Government may require it, without payment to Mr. Macaulay or his assigns for loss or damage that such resumption may involve.

Further that Mr. Macaulay or his assigns be required to file in the Department of the Interior the returns of the Survey of the above described areas, when called upon by the Minister of the Interior to do so. 20

The Committee advise that a license be granted accordingly.

(Signed) JOHN J. MCGEE,
Clerk Privy Council.

Ex. 48.
Patent to
W. J. Mac-
aulay with
plan at-
tached, 19th
May, 1884.

Exhibit 48.
(Defendants' Exhibit.)
Patent to W. J. Macaulay.

CANADA.

JOHN J. MCGEE,
Deputy Governor.

[SEAL]

VICTORIA, by the Grace of God, of the
United Kingdom of Great Britain and Ireland,
QUEEN, Defender of the Faith, Etc., Etc., Etc. 30

TO ALL TO WHOM THESE PRESENTS SHALL COME :

GREETING :

WHEREAS WILLIAM JAMES MACAULAY, of the City of St. Paul, in the State of Minnesota, one of the Unites States of America, Merchant, applied for a grant of the lands secondly hereinafter described and his claim to such lands having been duly investigated by us, he was found duly entitled thereto, the said lands being part and parcel of those known as "Dominion Lands" and mentioned in an Act of the Parliament of Canada, passed in the forty-sixth year of Our Reign and known as the "Dominion Lands Act of 1883." 40

AND WHEREAS although intending to grant the said lands secondly hereinafter described to the said William James Macaulay, we did by our Letters

Patent bearing date the second day of April, in the year of Our Lord one thousand eight hundred and eighty-four grant unto the said William James Macaulay, his heirs and assigns forever, all that parcel or tract of land, situate, lying and being in the Ninth Township in the Twenty-second Range, East of the Principal Meridian, in the Province of Manitoba, in our Dominion of Canada, and being composed of all that portion of fractional section twenty of the said Township, which is more particularly described as follows, that is to say : Commencing on the north shore of Portage Bay where a due south line from a point on the centre line of the Canadian Pacific Railway intersects the same, which point is eight chains and sixty links in direct distance
 10 westerly from the centre of the Railway Bridge crossing the Mill-race, thence north astronomically ten chains and fifty links more or less to the south shore of Winnipeg Bay; thence easterly and north easterly following the sinuosities of the shore of Winnipeg Bay to the southern boundary of the road allowance between sections twenty and twenty-nine, Township Nine, Range Twenty-two, east of the Principal Meridian; thence east astronomically four chains and fifty links more or less to the western boundary of the north east quarter of the north east quarter of said section Twenty; thence south astronomically nineteen chains more or less to the northern shore of Portage Bay; thence
 20 westerly following the sinuosities of the north shore of Portage Bay to the place of beginning, and containing after deducting therefrom that portion of the said described area which is covered by the right of way of the Canadian Pacific Railway, an area of twenty-three acres, more or less, as shown upon the accompanying certified tracing, signed by Edward Deville, for Surveyor General dated 3rd April, 1884, taken from the plan of survey by John McLatchie, Dominion Land Surveyor, dated Winnipeg, 14th May, 1881, and of record in the Department of the Interior.

AND WHEREAS our said Letters Patent did therefore contain a wrong or defective description of the land thereby intended to be granted, and our
 30 Minister of the Interior of Canada (there being no adverse claim) did direct the said defective Letters Patent to be cancelled, and a minute of such cancellation to be entered in the margin of the Registry thereof, and correct Letters Patent to be issued in their stead.

AND WHEREAS it is expedient to issue such correct Letters Patent which shall relate back to the date of those so cancelled and have the same effect as if issued at the date of such cancelled Letters Patent, as provided by the Statutes in that behalf.

NOW KNOW YE, that in consideration of the premises, we have granted, conveyed and assured, and by these presents do grant, convey and assure
 40 unto the said William James Macaulay, his heirs and assigns forever, all and singular that certain parcel or tract of land, situate, lying and being in the Ninth Township, in the Twenty-second Range, east of the Principal Meridian, in the Province of Manitoba, in our Dominion of Canada, and being composed of all those portions of the north half of section Twenty of the said Township, which are more particularly described as follows, that is to say : Commencing at a point on Winnipeg Bay where the same is intersected by the southern boundary of the road allowance between said section Twenty and section

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 48.
Patent to
W. J.
Macaulay
with plan
attached,
19th May,
1884.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 48.
Patent to
W. J. Mac-
aulay with
plan at-
tached, 19th
May, 1884.

—continued.

wenty-nine of the said Township; thence extending east astronomically a distance of four chains more or less to the north west angle of the north east quarter of the north east quarter of said section Twenty (being legal subdivision sixteen of said section Twenty); thence south astronomically a distance of nineteen chains more or less to the northern shore of Portage Bay; thence westerly and following the said northern shore of Portage Bay to a point thereon which is twenty-nine chains in direct distance from the last named point; thence north astronomically a distance of nine chains and seventy-five links more or less to the southern shore of Winnipeg Bay; thence easterly and northerly and following the sinuosities of the shore of said Bay to the place of beginning, containing by admeasurement, after deducting therefrom that portion of the said described area, which is covered by the right of way of the main line of the Canadian Pacific Railway, twenty-seven acres, more or less, as shown upon the accompanying certified tracing signed by Edward Deville, for Surveyor General dated 19th May, 1884, taken from the plan of survey by John McLatchie, Dominion Land Surveyor, dated Winnipeg, 14th May, 1881, and of record in the Department of the Interior. 10

TO HAVE AND TO HOLD the said lands hereby granted, conveyed and assured unto the said William James Macaulay, his heirs and assigns forever. SAVING, excepting and reserving, nevertheless, unto us, our successors and assigns, the free use, passage and enjoyment of, in, over and upon all navigable waters that shall or may be hereafter found on or under or be flowing through or upon any part of the said land hereby conveyed. 20

AND we do hereby direct and declare that these our Letters Patent shall relate back to the said second day of April, in the year of our Lord one thousand eight hundred and eighty-four, and have the same effect as if issued on that day.

GIVEN under the Great Seal of Canada :—WITNESS, John Joseph McGee, Esquire, Deputy of Our Right Trusty and Entirely Beloved Cousin, the Most Honourable Henry Charles Keith Petty Fitzmaurice, Marquis of Lansdowne, in the County of Somerset, Earl of Wycombe of Chipping Wycombe, in the County of Bucks, Viscount Caln and Calnstone in the County of Wilts., and Lord Wycombe, Baron of Chipping Wycombe, in the County of Bucks., in the Peerage of Great Britain; Earl of Kerry and Earl of Shelburne, Viscount Clanmaurice and Fitzmaurice, Baron of Kerry, Lixnaw and Dunkerron, in the Peerage of Ireland, Governor General of Canada and Vice-Admiral of the same, Etc., Etc., Etc. 30

Ref. No.
18249
Sale No.
7301

AT OTTAWA, this Nineteenth day of May in the year of our Lord one thousand eight hundred and eighty-four and in the forty-seventh year of Our Reign. 40

BY COMMAND,
G. POWELL,
Under-Secretary
of State.

A. M. BURGESS,
Deputy of the Minister
of the Interior.

For Plan attached to this Patent, see Book of Plans—Plan No. 3.

Exhibit 51.

(Defendants' Exhibit.)

Letter Dick and Banning to Commissioner of Crown Lands.

Dick, Banning & Co., Lumber Merchant.

Offices opposite C.P.R. Station,

Winnipeg, 23 Jan., 1885.

To the Hon. Commissioner of Crown Lands,
Toronto.

Sir,—

10 We hereby make application for a small piece of land situated at Keewatin. In order to describe the situation of the land we enclose you a map, which we think will enable you to understand the locality more perfectly.

That portion of the map colored pink has been deeded to W. J. MacAulay and deeded by him to us and contains (27) twenty-seven acres.

The position of the land we wish to get from your Department is colored green on the map and contains about (2½) two and a half acres, and is contiguous to the west side of our property. The bounds of which may be more particularly described as follows, viz.: Commencing at the north west angle of the property above mentioned, being on the south shore of Winnipeg Bay, 20 thence south east (7) seven chains more or less along the western limit of our aforesaid property to the northern limit of the C.P.R. property, thence westerly along the northern boundary of the C.P.R. property 7 chains, thence north east about (2) two chains or whatever it may be to the south shore of Winnipeg Bay, thence north easterly along the south shore of Winnipeg Bay to the place of beginning.

This property is we think of little or no use to any other party, being nothing but barren rocks, while if we had it we would be able to extend our mill-yard further west. Quite a large portion of our land is too hilly for piling ground.

30 Hoping to receive a favorable reply at your earliest convenience, we remain,

Your obedient servants,

W. R. DICK.

W. W. BANNING.

Exhibit 49.

(Defendants' Exhibit.)

Order-in-Council (Canada).

P.C. 665.

40 Certified a true copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 5th April, 1887.

On a Memorandum dated 4th April, 1887, from the Minister of Public Works submitting that in October, 1884, a petition was received by him from the people of Rat Portage, Keewatin, and Lake of the Woods, as follows:—

“1. That the water of the Lake of the Woods, during the past few years has been gradually decreasing, and is now so low that the lumbering and other manufacturing interests are seriously interfered with, and the general business and prosperity of the place is retarded.”

*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 51.
Letter, Dick
and Banning
to Commis-
sioner of
Crown
Lands,
23rd January
1885.Ex. 49.
Order-in-
Council
(Canada)
5th April,
1887.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 49.
Order-in-
Council
(Canada)
5th April,
1887.

—continued.

“2. That between Rat Portage and Keewatin a distance of three miles a narrow neck of land divides the Lake of the Woods from the Winnipeg River. With an increased body of water and a permanent water level, this neck of land would be made invaluable to capitalists and manufacturers and relieve the Companies who have already established themselves, and are now, owing to the lowness of the water, compelled to run their mills on half time only.”

“3. That the only two outlets from the Lake of the Woods to the Winnipeg River are at Rat Portage, and only a few yards wide—at a small expense to the Government, these could be dammed to raise the water to the required level, and thus avoid the difficulties above stated and increase the welfare of the community and Country generally. 10

4. Therefore your petitioners humbly pray that your Government will see the desirability of meeting their views herein expressed.”

That since the date of the receipt of such petition other representations to the same effect have been made to him.

The Minister states that the Chief Engineer of his Department reports that the objects for which the construction of the dam is sought are :

(a) To maintain the waters of the Lake of the Woods at a constant level, and thus permit the shallow draft steamers which have been built for the navigation of the Lake to ply during the whole of the season of navigation, and thus afford uninterrupted connection between the settlements around the Lake and the Canadian Pacific Railway; and 20

(b) To maintain a constant head of water for the mills both saw and grist, which have been and may hereafter be erected, and which depend for their power—and therefore their constant working upon an ample supply of water which would be given were the proposed dam constructed.

That Mr. John Mather, who is interested in large lumbering operations on the Lake of the Woods, and who with others, has urged the necessity for the construction of the proposed work, offers to build a dam with a proper fish pass to the satisfaction of the Minister of Public Works and the Minister of Marine and Fisheries for the sum of seven thousand dollars (\$7,000.00) and the Chief Engineer suggests that Mr. Mather's offer be favorably considered. 30

The Minister in view of the foregoing and the desirability of aiding by every possible means in the development of the Country, and of assisting the interests of its manufacturing and other industries, recommends that the suggestion of his Chief Engineer be adopted, and that authority be granted to accept Mr. Mather's offer—payment of the said sum of \$7,000.00 to be only made after the completion of the proposed work to the satisfaction of the Chief Engineer of the Department of Public Works, and further that in order to provide for such payment, a like amount of \$7,000.00 be placed in the Estimates to be laid before Parliament at its approaching session. 40

The Committee submit the above for Your Excellency's approval, it being understood that the said sum shall only be paid when voted by Parliament.

RUDOLPHE BOUDREAU,
Clerk of the Privy Council.

Exhibit 52.

(Defendants' Exhibit.)

Letter John Mather to Hon. T. B. Pardee.*In the
Supreme
Court of
Ontario.*

Keewatin, Ont., 3 May, 1887.

HONOURABLE T. B. PARDEE,
Minister of Crown Lands,
Toronto.

Exhibits.
Ex. 52.
Letter, John
Mather to
Hon. T. B.
Pardee,
3rd May,
1887.

Dear Sir :—

10 Please to find enclosed a plan and field notes of a survey, and a description
of lands and islands lying north of the Canadian Pacific Railway Company's
Station grounds at Keewatin, the same being parts of the northwest quarter
of Section twenty, Township nine, Range 22 east, shaded on the plan with a
brown line, and numbered as under :

C. C. P.	containing	1.56	acres.
C. C. P.-A	“	2.90	“
C. C. P.-B	“	6.69	“
C. C. P.-C	“	0.69	“

Total area . . 11.84 “

20 The Lake of the Woods Milling Company (Limited) are desirous of
erecting a large flouring mill on these lands, besides the other necessary build-
ings, and before beginning to build, I would respectfully request you to allow
the Company to purchase the same.

I will be much obliged if you will inform me as early as possible what will
be the price of these lands, so that I can remit you the amount.

I am, Sir,

Your obedient servant,

JOHN MATHER.

Vice-President Lake of the Woods Milling Company, (Limited)

Exhibit 53.

(Defendants' Exhibit.)

Letter John Mather to Hon. T. B. Pardee.

Ex. 53.
Letter, John
Mather to
Hon. T. B.
Pardee,
3rd May,
1887.

30

KEEWATIN LUMBERING & MANUFACTURING CO. LIMITED.

Keewatin Mills, 3 May, 1887.

HONOURABLE T. B. PARDEE,
Minister of Crown Lands,
Toronto.

Sir :—

40 I have written you today as Vice-President of the Lake of the Woods
Milling Company, Limited, asking for the Company the liberty to purchase
11.84 acres of land at Keewatin. We are now almost ready to begin building
and the Company think it very important that they should be able to purchase

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 53.
Letter, John
Mather to
Hon. T. B.
Pardee,
3rd May,
1887.

and to get a title to the land before they expend in building a sum that may reach two hundred thousand dollars. I hope that the difficulty which your Government have had as to the granting of patents in the lately disputed territory is now overcome, but if not hope that you will take payment for the land and give such a receipt therefor as will entitle the Company to a patent as soon as it can be issued. Mr. Conmee, M.P.P., has already had some verbal correspondence with you on this subject.

I am, Sir,

Your obedient servant,

“JOHN MATHER.”

10

—continued.

Ex. 19.
Letters
Patent
(Canada)
incorporat-
ing The Lake
of the Woods
Milling
Company,
Limited,
21st May,
1887.

Exhibit 19.

(Defendants' Exhibit.)

Letters Patent (Canada) incorporating The Lake of the Woods Milling Company, Limited.

JOHN J. MCGEE,
Deputy Governor.

CANADA.

[L.S.] VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, &c., &c., &c.

20

To all to whom these presents shall come, or whom the same may in anywise concern, GREETING :—

WHEREAS in and by the Revised Statutes of Canada, chapter one hundred and nineteen and known as “The Companies Act,” it is amongst other things in effect enacted, that the Governor in Council may by Letters Patent under the Great Seal grant a Charter to any number of persons, not less than five, who shall petition therefor, constituting such persons, and others who may become shareholders in the Company thereby created, a body corporate and politic for any purposes or objects to which the Legislative Authority of the Parliament of Canada extends, except the construction and working of Rail- 30 ways or the business of Banking and the issue of Paper money or Insurance upon the applicants therefor establishing to the satisfaction of the Secretary of State or of such other officer as may be charged by the Governor in Council to report thereon, due compliance with the several conditions and terms in and by the said Act set forth and thereby made conditions precedent to the granting of such Charter.

AND WHEREAS John Mather, of Keewatin, in the Province of Ontario, Esquire; Alexander Mitchell and William Cassils, both of the City of Montreal, in the Province of Quebec, Merchants; James Ross, of the same place, Engineer, and Robert G. Reid, of the City of Guelph, in the said Province 40 of Ontario, Contractor, all in Our Dominion of Canada, have petitioned for a Charter under the said Act constituting them and such others as may become shareholders in the Company thereby created a Body Corporate and Politic, under the name of “THE LAKE OF THE WOODS MILLING COMPANY” (LIMITED)

for the purposes hereinafter mentioned, and have established to the satisfaction of the Secretary of State for Canada (no other officer having been charged by the Governor in Council to report thereon) due compliance with the several conditions and terms above referred to.

AND WHEREAS among other things, it is in the notice of this application and in the said Petition averred and it has been established, that the amount of the capital stock of the intended Company is THREE HUNDRED THOUSAND DOLLARS, divided into THREE THOUSAND SHARES, of ONE HUNDRED DOLLARS each.

10 THAT the said John Mather, has taken two hundred shares of the said stock and has paid in thereon the sum of two thousand dollars.

THAT the said Alexander Mitchell has taken two hundred shares of the said stock and has paid in thereon the sum of two thousand dollars.

THAT the said William Cassils, has taken fifty shares of the said stock and has paid in thereon the sum of five hundred dollars.

THAT the said James Ross has taken nine hundred and fifty shares of the said stock and has paid in thereon the sum of nine thousand five hundred dollars.

THAT the said Robert G. Reid has taken one hundred shares of the said stock and has paid in thereon the sum of one thousand dollars.

20 THAT the aggregate of the capital stock taken is one hundred and fifty thousand dollars and the aggregate paid in thereon is fifteen thousand dollars, such aggregate has been paid in to the credit of the said Company in the Bank of Montreal in the said City of Montreal, being a chartered bank in Canada and is now standing at such credit.

30 NOW KNOW YE that I, by and with the advice of Our Privy Council for Canada and under the authority of the hereinbefore in part recited Act and of any other power and authority whatsoever in Us vested in this behalf we do, by these Our Letters Patent constitute the said John Mather, Alexander Mitchell, William Cassils, James Ross and Robert G. Reid, and all others who may become shareholders in the said company, a Body Corporate and Politic by the name of "THE LAKE OF THE WOODS MILLING COMPANY" (LIMITED) with all the rights and powers given by the said Act and for the purposes of manufacturing grain into flour and meal, of buying and selling grain, and of holding and operating vessels on the Lake of the Woods and on the waters connected therewith in connection with the said business.

That the place within the Dominion of Canada which is to be the chief place of business of the said Company is Keewatin in the said Province of Ontario.

40 The Capital Stock of the said Company shall be THREE HUNDRED THOUSAND DOLLARS, divided into THREE THOUSAND shares of ONE HUNDRED dollars each, subject to the increase of such capital stock under the provisions of the said Act.

That the said John Mather, Alexander Mitchell, William Cassils, James Ross and Robert G. Reid are to be the first or provisional directors of the said company.

PROVIDED ALWAYS that nothing on these Presents expressed or contained shall be taken to authorize the construction or working of railways, the business of Banking, or the issue of paper money or of Insurance, by the said Company.

*In the
Supreme
Court of
Ontario.*

—
Exhibts.

Ex. 19.

Letters
Patent
(Canada)
incorporat-
ing The Lake
of the Woods
Milling
Company,
Limited,
21st May,
1887.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 19.

Letters
Patent
(Canada)
incorporat-
ing The Lake
of the Woods
Milling
Company,
Limited,
21st May,
1887.

—continued.

IN TESTIMONY WHEREOF we have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto Affixed.

WITNESS :—John Joseph McGee, Esquire, Deputy of Our Right Trusty and Entirely Beloved Cousin, The Most Honourable Sir Henry Charles Keith Petty Fitzmaurice, Marquis of Lansdowne, in the County of Somerset, Earl of Wycombe of Chipping Wycombe, in the County of Bucks, Viscount Calne and Calnstone, in the County of Wilts., and Lord Wycombe, Baron of Chipping Wycombe, in the County of Bucks., in the Peerage of Great Britain, Earl of Kerry and Earl of Shelburne, Viscount Clanmaurice and Fitzmaurice, Baron of Kerry, Lixnaw and Dunkerron, in the Peerage of Ireland, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George; Governor General of Canada, and Vice-Admiral of the same. 10

At Our Government House, in Our City of Ottawa, this twenty-first day of May, in the year of Our Lord one thousand eight hundred and eighty-seven and in the fiftieth year of Our Reign.

BY COMMAND,

G. POWELL,

Under-Secretary of State. 20

Recorded 6th June, 1887,

L. A. CATELLIER,

Dep. Registrar General of Canada.

Exhibit 54.

(Defendants' Exhibit.)

Letter Aubrey White, Assistant Commissioner of Crown Lands to Alexander Mitchell.

Toronto, 23rd May, 1887. 30

Dear Sir,—

Having reference to conversation had with you on Saturday last, the 21st inst., in connection with the application of the Lake of the Woods Milling Company for a site at Keewaydin, on which to erect a large flouring mill, &c., as per plan filed here by Mr. John Mather on the 23rd of March last, I have to say that, I am very desirous of meeting the Company's wishes in all possible ways, but, as pointed out to you, there are some conflicting applications which will not allow me, without fuller information, to grant your application in full.

I will say, however, that you are at liberty to go on and erect your mill on that part or portion of land marked on the plan filed by your Company as C.C.P., containing 1.56 acres, with the assurance that it will be sold to you on the understanding of course that you will compensate the owners of any buildings or improvements, found to be upon it, of the existence of which, however, there is at present no information here. 40

Ex. 54.

Letter,
Aubrey
White,
Assistant
Commis-
sioner of
Crown
Lands, to
Alexander
Mitchell,
23rd May,
1887.

If it is found possible, having regard to prior bona fide applications for improvement purposes, such additional quantity of land covered by your application, as may be necessary for your purposes, will be sold to you; and the Department hopes within a short time to be able to state positively how far it can go in this direction.

With respect to the two islands on the plan, I have to say that there being no adverse application for the smaller one it will be sold to you at once, but, as there is a prior application for the large one I cannot deal with it finally at present, the applicant has been written and requested to state for
 10 what purpose he wishes the island and, should it appear that he desires it for speculative purposes, the propriety of selling to you will be fully considered; meanwhile you are at liberty to take from this island any stone you may require for the erection of your mill.

Yours very truly,

AUBREY WHITE,

Asst. Commissioner.

ALEXANDER MITCHELL, Esq.,
 22 St. John Street,
 Montreal, Que.

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Ex. 54.

Letter,
 Aubrey
 White,
 Assistant
 Commis-
 sioner of
 Crown
 Lands, to
 Alexander
 Mitchell,
 23rd May,
 1887.

--continued.

20

Exhibit 55.

(Defendants' Exhibit.)

Letter Aubrey White to Dick and Banning.

D.C.L.

Toronto, May 23/87.

Ex. 55.
 Letter,
 Aubrey
 White to
 Dick and
 Banning,
 23rd May,
 1887.

Gentlemen :

Having reference to your letter of 23 January, 1885, enclosing plan and application for a certain piece of land described as an addition to your mill yard and lying near Keewayden in the District of Rainy River, which you desire to purchase, I have to inform you that the Lake of the Woods Milling
 30 Company applied for a Mill location which seemed to cover a portion of the land applied for by you.

I have now therefore to request that you will notify this Department promptly for what purpose you desire to purchase the land applied for. If you have made any improvements thereon you will state when they were made,
 40 their nature and value and generally the grounds of your claim or right to become the purchaser of the lands covered by your application.

The Department has been assured that you do not now require this land.

Your obedient servant,

(Sgd.) AUBREY WHITE,

Asst. Comr.

To Messrs. Dick & Banning,
 Keewayden, Ont.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 56.
Letter, A.
Mitchell to
Hon. T. B.
Pardee,
26th May,
1887.

Exhibit 56.

(Defendants' Exhibit.)

Letter A. Mitchell to Hon. T. B. Pardee.

22 St. John Street,
Montreal 26th May, 1887.

HONOURABLE T. B. PARDEE,
Minister of Crown Lands,
Toronto.

Dear Sir :—

I have received your letter of the 23rd inst., which I have submitted to 10
the other parties interested in the Flour Mill undertaking at Keewatin. I am
afraid there will be difficulty unless the Company can be put in possession of
the large island. I hope therefore that the answer from the Nova Scotia
applicant will be of such a nature as will enable you to comply with the request
of the Lake of the Woods Milling Company and that you will grant them
both the islands and nearly all the land they have otherwise asked for, at as
reasonable a price as possible. The Company is all ready to begin building
operations, but before doing so would prefer having a definite arrangement
with you and the price for all the land you are to convey to the Company
including both the islands. I shall be pleased to hear from you as early as 20
possible on this subject, as it is essential the work should be begun forthwith.

Yours very truly,
"A. MITCHELL."

Ex. 57.
Letter, Dick
and Banning
to Mr.
Pardee,
30th May,
1887.

Exhibit 57.

(Defendants' Exhibit.)

Letter Dick and Banning to Mr. Pardee.

HON. T. B. PARDEE,
Commissioner of Crown Lands,
Toronto.

Winnipeg, May 30, 1887.

Dear Sir :

Replying to your letter of May 23rd inst., we wish to say when we made 30
application for the land in question we considered it a part of our mill site
and we thought in the near future we could utilize it for that purpose. How-
ever, the times have been so dull ever since, we have made no improvements
on that part of the land we asked for, but we are still anxious to obtain it.

Owing to the fact it is the lower end of a natural water way which with
very little improvement could be made a valuable mill race, and in as much
as we hold a deed from the Dominion Government for the upper end of this
water way, we think our claim for the lower end having been the first made
we should be recognized by your Department.

We hope you will take this application in careful consideration and send 40
us your reply at your earliest convenience.

Yours truly,
DICK, BANNING & Co.

Exhibit 58.

(Defendants' Exhibit.)

Letter John Mather to Aubrey White.

Keewatin, 30th May, 1887.

AUBREY WHITE, Esq.,
Assistant Commissioner of Crown Lands,
Toronto.

Sir :

10 Mr. Alexander Mitchell, of Montreal, President of the Lake of the Woods Milling Company, has sent me an account of his interview with Honourable Mr. Pardee, and has also sent me copy of your letter to him of 23rd, all relative to the Milling Company's application for a site for mills and other buildings at Keewatin. Mr. Mitchell has asked me to write to you to a certain extent in reply to your letter as I have a personal acquaintance of the whole matter and am a partner in the new Milling Company.

20 I may state that the area left at Keewatin available from the water power there is now apparently very limited, being much reduced by a grant made to W. J. MacAulay by the Dominion Government. The area required by the Milling Company to utilize the water power will be very considerable as it contemplates making it equal to grinding 2,500 bls. of flour daily. It will require two mill buildings each 110 x 50 feet, four elevators each 110 x 50 feet, two stores each 100 x 50 feet, workshops for mechanics, at least four sites for dwelling houses (foreman, millers and manager), a saw mill for cutting staves and hoops, a yard where staves can be piled and dried and a cooper's shop to turn out at least 1,000 barrels per day.

The mills, elevators, stores and dwelling houses should be built on the two locations applied for on the main land, the workshops on the island. and the saw mill, stave yard and coopers' shops on the large island.

30 The most easterly location on the main land is suitable for one-half of the mills, stores and elevators, and possibly the dwelling houses, the westerly location on the mainland for the other half of the mills, stores, elevators, and a siding to connect the whole with the railway, and although this location looks well on the map sent you, it is only available for building upon at the extreme east end. There will be room for the mills at the extreme east end, but there is no room on it for houses. As there is no level ground a siding could only be built on a tressel work set on a very steep side hill. All of the ground applied for in this location is wanted.

40 The small island which you are willing to allow the Milling Company to buy at once will be used for mechanics' shops, and the larger one will be quite small enough for a stave yard, mill and coopers' shops, and it is the only place near the mills where there is room for these.

Richard Fuller of Hamilton has written to me as representing the Keewatin Paper Company, that has not yet organized for business, asking for a statement of the money spent by that Company in clearing and building on the lands applied for by them, and now also applied for by the Lake of the Woods Milling Company, with a view to making the amount spent a claim against the Milling Company. I could not object to that if the Milling

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 58.
Letter, John
Mather to
Aubrey
White,
30th May,
1887.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 58.
Letter, John
Mather to
Aubrey
White,
30th May,
1887.

—continued.

Company can get all the land applied for by the Paper Company, but I know that a large portion has been given, at least 10 acres, to W. J. MacAulay as before stated, and on which a good deal of the money was spent by the Paper Company.

Referring to the grant made by the Dominion Government on 28th May, 1884, to W. J. MacAulay, you will find that it covers at least 10 acres of that applied for by the Paper Company, and not only that but it overlaps the ravine by which the water power is made, and although only to the extent 150 x 130 feet the parties now holding under MacAulay ask \$2,000 from the Milling Company for 3 acres. This we think is exorbitant, as the party told the writer that if it were not for the flour mill being built he would not consider the land worth five cents, for twenty acres, all except the space 150 feet by 30, which is in a ravine by which the water will be carried, is high, rocky and worthless. I consider therefore that if we are to assume the position of the Paper Company and pay for their improvements we should get the land applied for by them without reference to the grant to MacAulay. 10

I am well advised that the Dominion Government never intended that the grant should give entire control of a second water power that he could in nowise use except in the shape that I have stated, the object being to give only the water power driving MacAulay's saw mill a considerable distance to the eastward. 20

I am, Sir,
Your obedient servant,
"JOHN MATHER."

Exhibit 59.

(Defendants' Exhibit.)

Draft Letter Aubrey White to Dick and Banning.

Toronto, 4th June, 1887.

Ex. 59.
Draft letter,
Aubrey
White to
Dick and
Banning,
4th June,
1887.

Gentlemen :

I have your letter of the 30th ult. in connection with Dept. Letter addressed to you on the 23rd ult. in which you were informed of an application made by the Lake of the Woods Milling Company for a site at Keewaydin on which they purposed erecting extensive mills, etc., involving the expenditure of a large sum of money there. 30

It was noticed that you had some time ago applied for a small area there which conflicted somewhat with this application, but, as the Department was informed you would not stand in the way of so extensive a benefit to your neighbourhood, and you were known to have ample facilities for the carrying on of your present business and the Milling Company were ready to go to work at once, it was determined to allow them to go on and erect their building on the site applied for. The Department is quite sure you will not under the circumstances insist further on your application for this small area. 40

"This draft approved by Comm's."
"A.W."

DICK BANNING & Co.,
Winnipeg

Exhibit 60.
(Defendants' Exhibit.)
Letter Aubrey White to A. Mitchell.

DEPARTMENT OF CROWN LANDS
ONTARIO.

Toronto, June 8th, 1887.

Dear Sir,—

10 The Department has received a communication from Mr. Sutherland, the applicant for 4 K, Winnipeg River, which is the larger of the two islands you require for your mill site.

Mr. Sutherland insists upon his application being allowed, urging that he has spent a certain amount in surveying, &c., but, in view of the prospective benefit to that country from your proposed mills, &c., the Department has determined to sell the island to your Company on condition that you pay in here for Mr. Sutherland what it may be found he has expended, which amount I may say is placed by him at about \$333.00.

Yours truly,
"AUBREY WHITE,"
Asst. Commissioner.

20 A. MITCHELL, ESQ.,
22 John St., Montreal.

Exhibit 61.
(Defendants' Exhibit.)
Letter A. Mitchell to Aubrey White.

22 St. John Street,
Montreal, 9th June, 1887.

30 AUBREY WHITE, ESQ.,
Ass't Commissioner of Crown Lands,
Toronto.

Dear Sir :—

40 I have received your letter of the 8th inst. I am glad the Department has consented to give the island to the Company, which it accepts on the conditions named, viz.: "the Department has determined to sell the Island to your Company on condition that (you) pay in here for Mr. Sutherland what it may be found he has expended." "The Lake of the Woods Milling Company" is ready and most anxious to have the entire cost of the whole of the ground that you may determine to grant so that a settlement may be quickly arrived at. The Company would like everything settled before commencing operations, so that no difficulties may arise in the future. May I therefore ask your earliest possible attention to this matter. A check will be sent for the amount agreed upon.

Yours very truly,
A. MITCHELL,
President,
The Lake of the Woods Milling Company, Limited.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 60.
Letter,
Aubrey
White,
to A.
Mitchell,
8th June,
1887.

Ex. 61.
Letter, A.
Mitchell
to Aubrey
White, 9th
June, 1887.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 62

Letter,
Aubrey
White to A.
Mitchell,
23rd June,
1887.

Exhibit 62.

(Defendants' Exhibit.)

Letter Aubrey White to A. Mitchell.

DEPARTMENT OF CROWN LANDS.

Toronto, 23rd June, 1887.

Sir,—

Referring to your letter of the 9th inst. in which you expressed your willingness to pay for the improvements, survey, &c., on 4-K Winnipeg River, Lake of the Woods, if the Department would sell it to your Company, I have now to say that, the former applicant, one Mr. Sutherland, was written and told that the Department was disposed to sell the island to The Lake of the Woods Milling Company, and he has replied to the effect that, while he thinks his claim should be recognized he is not disposed to contest the matter if the Department will refund to him, within 20 days, the amount expended, viz., \$333, but, if this is not done he will insist upon his application being recognized. 10

The Department has no means of ascertaining promptly if this amount was expended, but, as it would cause a good deal of delay and expense to inquire fully into the matter, and as the amount is small, the Commissioner recommends and is of opinion that you should and will be willing to pay this amount without any delay of further investigation. 20

If, therefore, you are willing it is suggested that you send the \$333 here at once so that it may be sent to Mr. Sutherland within the 20 days.

Your obt. Servant

"AUBREY WHITE,"

Asst. Commissioner.

A. MITCHELL, Esq.,
22 St. John Street, Montreal.

Exhibit 63.

(Defendants' Exhibit.)

Letter A. Mitchell to Aubrey White.

Montreal, 24th June, 1887.

AUBREY WHITE, Esq.,
Asst. Commissioner of Crown Lands,
Toronto.

Dear Sir :—

I am in receipt of yours of 23rd inst. I readily assent to the Commissioner's recommendation to pay the \$333 demanded by Mr. Sutherland without further investigation. I would like at the same time to receive a statement from you of the price of the whole of the ground which you intend to deed to the Company in accordance with Mr. John Mather's letter to you dated Keewatin, 30th May, 1887. 40

I have just returned from Keewatin and in looking over the ground with the different contractors the whole of the ground applied for is absolutely necessary as the strip of land is so very narrow. Including the mill and barrel factory upwards of 60 men will be required, which means putting a

Ex. 63.
Letter, A.
Mitchell to
Aubrey
White,
24th June,
1887.

30

large permanent population into the place at once. Besides this there will be large number of men employed getting out the wood for the barrel factory. Messrs. Dick & Banning are demanding \$2000—\$3000 for some property required from them, as explained to you in Mr. Mather's letter. Perhaps you can manage to get these gentlemen to be more lenient in their demands, as the 3 acres required from them are of no value to them, and besides the ground really should belong to a Paper Company whose application was in previous to Mr. MacAulay, the grant having been made to him by the Dominion Government and transferred by him to Messrs. Dick & Banning, whose

10 proceedings are hindering our operations, as their property extends over a corner of the Ravine which is now being excavated for the mill race.

I am ready to go to Toronto the moment I hear I can have an interview with the Commissioner to settle the whole matter, but if you can send me a memo of the amount required for the land, including the two islands, I shall send you a check for the whole, including the \$333 for Mr. Sutherland.

Please answer me at your earliest convenience as very valuable time is being lost in proceeding with the work. Seeing the brilliant prospects for the harvest in the North West it is important the mill should be in operation before the close of this year.

20

Yours very truly,

A. MITCHELL,
President Lake of the Woods Milling Company.

Exhibit 64.

(Defendants' Exhibit.)

Letter Aubrey White to A. Mitchell.

DEPARTMENT OF CROWN LANDS.
SALES AND FREE GRANTS BRANCH.

Toronto, 28th June, 1887.

30

Sir,—

I have the honour to acknowledge the receipt of your letter of the 24th inst. and in reply I have to say that, it would be advisable that you remit here at as early a day as possible, the \$333, which is to be refunded to the former applicant, Mr. Sutherland, so that it may reach him within the 20 days.

40 With respect to the price of the land and to the Dick and Banning property, I would say that it is impossible at this moment to decide exactly how far the Department will be able to meet your application beyond where you have already been allowed to erect your mill and the two islands adjacent; but, an officer is going there this week to examine on the spot and report; after which what can be done will be decided.

The Department understands that the three acres you want from Dick and Banning is land which the Dominion Government has assumed to deal with, and has actually pretended to issue a patent for, to that firm; this being so, the Commissioner does not feel disposed at present to decide this matter as between your Company and them.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 63.
Letter, A.
Mitchell to
Aubrey
White,
24th June,
1887.

—continued.

Ex. 64.
Letter,
Aubrey
White to A.
Mitchell,
28th June,
1887.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 64.
Letter,
Aubrey
White to A.
Mitchell,
28th June,
1887.

—continued.

Ex. 65.
Letter,
Aubrey
White to A.
Mitchell,
20th July,
1887.

The Commissioner hopes that the letter already given you, and the endeavours he has made to meet as fully as possible the requirements of your company, will be sufficient to enable and justify it in going on with the erection of the Mill, &c., while as to the price, there cannot be any difficulty, as only a fair price will be charged for what it is possible to sell you when the matter is in a position to be finally dealt with.

Your obt. Servant,
AUBREY WHITE,
Asst. Commissioner.

A. MITCHELL, Esq.,
22 St. John Street, Montreal,

10

Exhibit 65.

(Defendants' Exhibit.)

Letter Aubrey White to A. Mitchell.

DEPARTMENT OF CROWN LANDS.
SALES AND FREE GRANTS BRANCH.

Toronto, 20th July, 1887.

Sir,—

I have the honour to acknowledge the receipt of your letter of the 18th inst. in which you ask for information about the Hon. Mr. Pardee. In reply I have to say that Mr. Pardee left here two weeks ago on his holidays, being at the time very far from well. I do not know his exact whereabouts so cannot give you his address nor would he undertake in his present state to give any attention to business. 20

He spoke of your Mill site before he went away and expressed the opinion that there was now nothing to prevent your commencing the erection of your Mill, as the question of any further sale of land to your Company could be considered on his return and after the reception of the report of the Departmental officer sent there to inspect.

Your obt. Servant,
AUBREY WHITE,
Asst. Commissioner.

A. MITCHELL, Esq.,
22 St. John Street, Montreal, Que.

30

Ex. 66.
Memoran-
dum, George
B. Kirk-
patrick to
Hon. T. B.
Pardee,
23rd July,
1887.

Exhibit 66.

(Defendants' Exhibit.)

Memorandum George B. Kirkpatrick to Hon. T. B. Pardee.

CROWN LANDS DEPARTMENT,
SURVEY BRANCH,

Toronto, July 23rd, 1887.

Memo *re* Lake of the Woods Milling Co., Keewatin.

40

Sirs :—

In accordance with instructions received from you, dated July 2nd, I have made an examination of the ground applied for by the Lake of the Woods Milling Company at Keewatin, wherein they propose to erect elevators and a large flouring mill, and have to report as follows :

It appears that from the year 1879 down to the present time applications have come in for mining and mill locations at this point, many of them covering the same ground, and some overlapping each other. The mill location applied for by the Lake of the Woods Milling Company consists of various portions of the mainland and two islands in the Winnipeg River covering some twelve acres of land according to a plan of survey by P. L. S. E. Seager, dated April 29th, 1887, of record in this Department, and designated on said plan as C.C.P., C.C.P.a, C.C.P.b., C.C.P.c., respectively.

10 The portion C.C.P. containing about one and a half acres is covered with second growth bushes. There is a small frame house (No. 51 on Railway map), unoccupied, on it, built by the Keewatin Paper Company. At the present time it is worth about \$150, but at the time it was built—some years ago, when lumber was dear—it may have cost \$300. This is the only building or improvement of any kind on C.C.P. This portion is covered by the application of G.R.L. (Fellowes) of Oct. 30th, 1880, D. H. McMillan of August 25th, 1881, of the Keewatin Paper Co. of June 30th, 1882, and of Dick & Banning of January 23rd, 1885.

20 The portion C.C.P.a. containing about three acres, covers parts of the following applications : X 35—W. Huggins, March 4th, 1881 (no improvements on this part), G. R. L. Fellowes of Oct. 30th, 1880, Clap Board house, on posts, 18 x 30, shingled roof. Built by Arthur Torrance last fall. He and his family live in it. Says it cost him \$400. Has a small garden patch around house. No. 3 on Railway map. W. H. Clarke has a hen house, old root house, and stable on C.C.P.a, numbered as 8a on Railway map. The hen house is worth about \$50, the root house about \$75 (Clarke says it cost him \$300), and cow house or stable worth \$25. There is also on C.C.P.a, a stable in rear of number 17 on Railway map, the property of H. Burton, who has used for the last four years a portion by the water's edge, fenced in at both ends as a hog pen. Value with the stable, \$60. Mr. Burton, who is a butcher
30 doing business in No. 13, has made no application to the Department, but paid ground rent to Wm. Clark.

The portion of C.C.P.b, an island known as 4-K, has been the subject of correspondence already between the Department, the Lake of the Woods Milling Company, and Mr. George Sutherland, one of the original applicants for 4-K, and as the said Company has transmitted \$333 to the Department to pay Mr. Sutherland's claim I need not refer further to it.

The portion C.C.P.c., a small island containing less than an acre, has not been applied for previously.

40 It will appear from the above that the following parties have made improvements on the ground applied for :

George Sutherland on location 4-K.	Already settled for . . .	\$333
Keewatin Paper Co., small house (No. 51),	present value. . .	150
Arthur Torrance house (No. 3),	present value.	400
W. H. Clark, hen house, root house and stable (No. 8),	present value	150
H. Burton, stable, hog pen and fencing,	present value.	60
	Total.	\$1093

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 66.
Memoran-
dum, George
B. Kirk-
patrick to
Hon. T. B.
Pardee, 23rd
July, 1887.

—continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 65.
Memoran-
dum George
B. Kirk-
patrick to
Hon. T. B.
Pardee, 23rd
July, 1887
—continued.

I made every endeavour to settle the differences between Dick & Banning and the Milling Company, but without complete success. Mr. John Mather, however, on behalf of the Company, on looking over the ground with me agreed that the company had no necessity for the three acres of land claimed by Dick & Banning, as from the high nature of a good deal of the ground it could not be utilized by the Milling Company, and will be necessary to Dick & Banning in their business. As the ravine or natural water course extending from Portage Bay to the River Winnipeg is proposed to be utilized by the Milling Company for their water power, I examined its position and surroundings carefully. It passes for about two-thirds of its length through the land laid out for station grounds by the Railway, then passes wholly into the ground covered by Dick & Banning's patent from the Dominion Government, and has its outlet wholly on the location C.C.P. of the Milling Company's application. It will be seen by reference to the Railway map that to utilize this ravine the Milling Company must either secure the title to that portion claimed by Dick & Banning or tunnel out a water course for about 100 feet, as the rock goes sheer into the ravine from the Railway Station grounds. 10

As there is a portion of land about an acre and a half in extent adjoining C.C.P. on Dick & Banning's property, which is level and cut off from their mill yard by high rocky ground, and as in all probability a switch will have to be built leading west from the west end of the railway bridge, crossing Dick & Banning's raceway along the north side of the ravine into the location C.C.P., it appears to me that as the Milling Company's position would be materially improved by the gain of this acre and a half of land covering the level land and that part of the ravine in Dick & Banning's property and by the right of way along the north side of the ravine through said property, and as it would not materially affect, curtail or injure in any way Dick & Banning's mill yard or piling grounds, an agreement might be come to between the firms, the basis of which might be that the Milling Company pay to Dick & Banning for the actual portion of the ravine covered by their land and for the right of way for a switch the amount which a tunnel or water course through the 100 feet of rock might cost, and that if the Milling Company require the acre or so of level land above alluded to, and the parties cannot agree as to the price to be paid, they should leave it to arbitrators chosen in the usual way to decide. 20 30

I have the honour to be, Sir,
Your obedient servant,
GEO. B. KIRKPATRICK.

HON. T. B. PARDEE,
Commissioner of Crown Lands,
Toronto.

Exhibit 67.
(Defendants' Exhibit.)
Letter A. Mitchell to Aubrey White.

22 St. John Street,
Montreal, 8th Oct., 1887.

AUBREY WHITE, ESQ.,
Asst. Commissioner of Crown Lands,
Toronto.

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 67.
Letter, A.
Mitchell to
Aubrey
White, 8th
October,
1887.

10 Dear Sir :—

I am obliged for your letter of the 4th inst.

I was hoping that Mr. Pardee would have returned well able to undertake his duties. Has it yet been determined to give us the deed for the ground required for our mill at Keewatin? & Would it be possible for you to grant them in the absence of Mr. Pardee? We should like much to come to a settlement of the question. The Dick matter also remains unsettled.

Yours very truly,
A. MITCHELL.

20

Exhibit 68.
(Defendants' Exhibit.)
Letter Aubrey White to A. Mitchell.

14 Oct., 1887.

Ex. 68.
Letter,
Aubrey
White to A.
Mitchell,
14th October
1887.

Dear Sir :—

I have to acknowledge the receipt of your letter dated the 8th inst., in connection with the issue to your Company of a patent for its mill site at Keewatin, also pointing out that the Dick Banning complication is still unsettled.

30 In reply I have to say that the Honourable Mr. Pardee did not fix the price to be charged for the mill site and as he has not yet returned here, being still far from well, no action can be taken in the direction of issuing the patent. Of course it is presumed this delay does not in any way retard your progress with the work, as you are assured of obtaining the patent for what was promised you.

With respect to the Dick Banning matter I understand they hold a patent for the piece you require. If this is so it complicates the matter in such a way as I fear will prevent this Department interfering except by mediation.

40

Your obedient servant,
AUBREY WHITE,
Asst. Commissioner.

ALEX. MITCHELL,
22 St. John St., Montreal.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 5
(Plaintiffs' Exhibit)
Order-in-Council (Ontario)

Part Ex. 5.
Order-in-
Council
(Ontario)
2nd Decem-
ber, 1887.

**ORDER-IN-COUNCIL APPROVED BY HIS HONOUR THE LIEUTENANT-GOVERNOR
THE 2ND DAY OF DECEMBER, A.D. 1887.**

The Committee of Council have had under consideration the annexed report of the Honourable the Commissioner of Crown Lands, and in accordance with the recommendation contained therein, advise that a patent be issued to the Hudson Bay Company for the Rat Portage Reserve of 690 acres, as laid out by Charles F. Miles, P.L.S.

10

Certified,

S. LONSDALE CAPREOL,

Clerk, Executive Council.

TORONTO, November 1st, 1887.

The Commissioner of Crown Lands has the honour to report for the information of the Lieutenant-Governor in Council, that under the Imperial Order in Council providing for the admission of Rupert's Land and the North-Western Territory into the Dominion of Canada, which Order is dated the twenty-third day of June, A.D. 1870, it is provided, amongst other things, that the Governor and the Company of Adventurers of England trading into Hudson's Bay shall have reserved around their forts, certain areas of land not to exceed in the aggregate 50,000 acres, that in the schedule attached to the deed of surrender the area around their various coasts is set out with the exception of the coasts at Upper Fort Garry, Lower Fort Garry and White Horse Plains, at which, it is stated, the areas to be reserved are to be agreed upon between the Company and the Governor of Canada in Council; that the total area, according to the schedule referred to, aggregate 45,160 acres, or 4,480 less than the 50,000 which they were not to exceed; that the areas at Upper Fort Garry, Lower Fort Garry and White Horse Plains were, arranged as between the Governor of Canada in Council and the Company to be 500 acres at each, or a total of 1,500 acres, which being deducted from the balance of 4,480 unappropriated in the schedule attached to the Deed of Surrender left a balance of 3,340 which they have yet to select.

20

30

By a report upon the subject made on the 12th day of March, 1887, by the Deputy Minister of Interior of Canada and addressed to the Minister, a certified copy of which is of record in the Crown Lands Department, it appears that on the 8th of July, 1872, upon the application of the Honourable Donald A. Smith, Resident Governor of the Hudson's Bay Company, an Order in Council was passed allowing the Company to select additional areas at each of the following posts :

40

Rat Portage.....	640	acres.
Dunvegan.....	280	"
Portage la Prairie.....	280	"
Fort Alexander.....	140	"
Fort Frances.....	140	"

Total..... 1,420 acres.

and that on the 28th day of July, 1874, instructions were issued by the Department of the Interior to Mr. Charles F. Miles, P.L.S., to take measures to lay off certain lands reserved to the Hudson's Bay Company by the Deed of Surrender in the Lac la Pluie District at the posts set forth in the schedule attached to the letter of instructions marked "A" which were named at the following posts, as under :

Fort Alexander.....	640 acres.
Fort Frances.....	640 "
Rat Portage.....	690 "

10 the latter quantity being the additional 640 acres added to the 50 in the schedule attached to the Deed of Surrender.

Mr. Miles completed his survey, which was approved by the Surveyor General of Canada, and a certified copy of his plan is of record in the Crown Lands Department, dated the 7th of January, 1875. The Deputy Minister of Interior further states in his report, that there is nothing of record in his Department to show why the patent did not issue then, but that the failure was no doubt due to an oversight. The Hudson's Bay Company have not yet received their patent, although in 1881-2-3 they surveyed a portion of the reserve at Rat Portage into Village Lots and issued 144 deeds therefore.

20 The Company now ask the Government of Ontario, to whom the Territory is found to belong, to issue Letters Patent to them for the Rat Portage Reserve of 690 acres.

As it appears there is no claim adverse to that of the Company and the people holding deeds from the Company are satisfied to take their titles from them, and the Canadian Pacific Railway Company, having arranged for right-of-way and station grounds with the Hudson's Bay Company, have written consenting to the issue of patent, the Commissioner of Crown Lands is of the opinion it is proper that the agreement entered into by the Government of Canada with the Hudson's Bay Company in the years 1870 and 1872
30 should be carried out in good faith, and he therefore recommends that a patent for the reserve at Rat Portage, as laid out by Mr. Miles, P.L.S., be issued to the Hudson's Bay Company.

(Sgd.) T. B. PARDEE,
Commissioner.

8th November, 1887.

Part Exhibit 5.
(Plaintiffs' Exhibit.)

Crown Patent (Ontario) to Governor and Company of Hudson's Bay.

[CREST]

40

PROVINCE OF ONTARIO.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, etc., etc., etc.

TO ALL TO WHOM THESE PRESENTS SHALL COME—

GREETING :

KNOW YE, that We, of Our Special Grace, certain knowledge, and mere

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 5.
Order-in-
Council
(Ontario)
2nd Decem-
ber, 1887.

—continued.

Part Ex. 5.
Crown
Patent
(Ontario)
to Governor
and Com-
pany of
Hudson's
Bay, 14th
December,
1887.

Exhibits.
Crown
Patent
(Ontario)
to Governor
and Com-
pany of
Hudson's
Bay 14th
December
1887

—continued.

Motion, have GIVEN AND GRANTED, and by these Presents do give and grant unto THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON BAY, in fee simple, ALL that Parcel or Tract of Land, situate at Rat Portage in the District of Rainy River in Our said Province, containing by admeasurement Six hundred and ninety acres be the same more or less, being composed of a Block of land as shown on a Plan of Survey by Provincial Land Surveyor Charles F. Miles, dated "January 7th, 1875" a certified copy of which is of record in the Department of Crown Lands, saving, excepting and reserving nevertheless, unto Us, Our Heirs and Successors, the free uses, passage and enjoyment of, in, over and upon all navigable waters that shall or may be hereafter found on or under, or be flowing through or upon any part of the said Parcel or Tract of land hereby granted as aforesaid, reserving also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons, together with the right to use so much of the banks thereof, not exceeding one chain in depth from the water's edge, as may be necessary for fishery purposes. 10

GIVEN under the Great Seal of Our Province of Ontario :

WITNESS, the Honourable SIR ALEXANDER CAMPBELL, Knight Commander of Our most distinguished Order of St. Michael and St. George, a member of Our Privy Council for Canada, Lieutenant-Governor of Our Province of Ontario. 20

AT TORONTO, this fourteenth day of December, in the year of Our Lord one thousand eight hundred and eighty-seven and in the fifty-first year of Our Reign.

BY COMMAND OF THE LIEUTENANT-GOVERNOR in Council.

ARTHUR S. HARDY,
Secretary.

AUBREY WHITE,
Assistant Commissioner of Crown Lands.

Des. No. 12252 }
A.J., T.J.J. } M

RECORDED 10th day of January, A.D. 1888.

JOHN F. C. USSHER,
Deputy Registrar. 30

Part Ex. 5.
Plan by
Charles L.
Miles,
7th January,
1875.

Part Exhibit 5.
(Plaintiffs' Exhibit)
Plan by Charles L. Miles.

See Book of Plans—Plan No. 1.

Part Ex. 71.
Letter, John
Mather to
Hon. T. B.
Pardee,
17th Feb-
ruary, 1888.

Part Exhibit 71.
(Defendants' Exhibit.)
Letter John Mather to Hon. T. B. Pardee.
Ottawa, 17th February, 1888. 40

HONOURABLE T. B. PARDEE,
Commissioner of Crown Lands,
Toronto.

Sir :—

I hereby again take the liberty to call your attention to the request of the Keewatin Lumbering and Manufacturing Company for a patent to cover the

island at the outlet of the Lake of the Woods called Ka ka ke pe che wan, or Steep Rock Island, or Tunnell Island as it is now called. I may here recapitulate the circumstances under which the company claim to ask for the patent.

The Keewatin Lumbering and Manufacturing Company purchased in 1879 from Messrs. Fuller & Co. and paid them in cash \$60,000 for their rights and interest in a grant of 640 acres of land for a mill site to be paid for at \$1 per acre and a lease of islands in and lands on, the shores of the Lake of the Woods for the purpose of cutting timber; the island above named was selected to form the mill site and a part of the 640 acres and was surveyed for that
 10 purpose by order of the Honourable David Laird, then Minister of the Interior, a copy of the map of this survey and its field notes were sent you last winter, in your reply to that communication you stated, that there were other applicants for parts of the island; and that their claims had to be considered.

Shortly after the purchase from Fuller & Co. was made, it was found that they were expected and considered bound to provide timber for the Government of the Dominion, to build bridges on the Canadian Pacific Railway then under construction by the Government, and it was imperative to begin the construction of a saw mill at once on the most convenient point
 20 to the railway, the site then selected is of very limited capacity but it was the only one considered available to admit of the mills being built and the timber provided in time, at that point 290 acres of the 640 allowed for a mill site, was secured by letters patent.

The company are now desirous of extending their business operations on a more eligible site, and want their title to the island confirmed by letters patent, and as it contains only about 325 acres there would still be a balance of land remaining on the grant of 640 acres.

The company can see no reasonable objection that can be urged against their claim, the Government of Canada set aside 640 acres of land for a mill-site, at the time they granted a lease of timber lands to Fuller & Co. the
 30 Keewatin Lumbering and Manufacturing Company bought out Fuller & Co. and have shown their good faith and business intentions by investing at Keewatin \$288,000 of paid up capital. They are the pioneer company of that western wilderness and risked a large amount of money to establish a business, the result has been already a considerable centre of population, all reaping benefits from the expenditure of the company. Such a company should expect to get at least what they purchased and paid for, and understood that the vendors had an undoubted right to sell.

The company is well aware of the complication and delays caused by the
 40 dispute about the western boundary of Ontario. It is also convinced of your desire to give to all what duly and properly may be shown that they have a claim to expect, and think that after you look into this matter and learn the full particulars you will be convinced that none of the parties claiming lands on Tunnell Island can have any claim because they have made an application years after the lands were practically set aside and granted to others, the Keewatin Lumbering and Manufacturing Company have always looked on their claim as one perfectly clear and beyond dispute.

*In the
 Supreme
 Court of
 Ontario.*

Part Ex. 71.
 Letter, John
 Mather to
 Hon. T. B.
 Pardee,
 17th Feb-
 ruary, 1888.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 71
Letter, John
Mather to
Hon. T. B.
Pardee
17th Feb-
ruary 1888

—continued.

As Manager for the Company and owning the largest amount of the capital invested, I am very particularly interested and hope that you may be at once able to say, that when you are at liberty to do so, a patent will be granted for Tunnell Island and also for the balance in the vicinity of the island, of the 640 acres that may then be ungranted. I am thus urgent because I want to begin arrangements this season to make the water power available as a large sum of money will be wanted.

I have the honor to be, Sir,

Your obedient servant,

(Sgd.) JOHN MATHER.

10

Exhibit 69.

(Defendants' Exhibit.)

Letter Aubrey White to A. Mitchell.

Ex. 69.
Letter,
Aubrey
White to
A. Mitchell,
1st June,
1888.

Toronto, June 1, 1888.

RE LAKE OF THE WOODS MILLING CO., KEEWATIN.

Sir :

It has been represented to this Department that your Company in cutting the mill race has obstructed completely the road leading to the Railway Station and that the only way people can reach it is by the high tressel bridge of the Canadian Pacific Railway. This of course is very dangerous and it is hoped that your Company will as soon as possible make the road fit for travel again. 20

Your obedient servant,

A. WHITE,

Asst. Commissioner.

A. MITCHELL,
22 St. John Street, Montreal.

30

Exhibit 70.

(Defendants' Exhibit.)

Letter John Mather to Aubrey White.

Ex. 70.
Letter, John
Mather to
Aubrey
White, 6th
June, 1888.

Keewatin, 6th June, 1888.

AUBREY WHITE, ESQ.,
Asst. Commissioner of Crown Lands,
Toronto.

Sir :

Mr. Alexander Mitchell of Montreal has sent me your letter to him of the 1st June regarding the erection of a public bridge by the Milling Company across their Mill Race. 40

I may inform you that the Milling Company have built a strong and substantial bridge to accommodate Messrs. Dick, Banning & Co. and gave them access to the railway station, but as that may be considered private are quite willing to build another for the use of the public.

I think it clear that no such second bridge should be built unless as part

of a public highway, and as there has not been any such laid out it is difficult to know what to do. If it is built on private property it may be objected to and closed. An officer of your Department sent to investigate and report to you might lead to the establishment of a public road, which is necessary and much wanted. You are likely aware that the Road made by the Government of Ontario ends at a considerable distance from the Mill Race. The bridge in question should of course connect with it.

I may also say that the Township of Keewatin has lately been incorporated so that you may know whether the former conditions regarding roads and bridges are in any way changed.

I will look for your instructions as to what I am to do in this matter, being ready to build a bridge where it may be decided best to do so in the public interest.

I am, Sir,
Your obedient servant,
For the Lake of the Woods Milling Co., Limited,
JOHN MATHER, Vice-President.

Part Exhibit 71.

(Defendants' Exhibit.)

Letter John Mather to Hon. A. S. Hardy.

Theodore Street, Ottawa,
16 May, 1889.

Sir :

The writer representing the Keewatin Lumbering & Manufacturing Company of Keewatin had the honour a few days ago of conversing with you regarding the Co.'s lease of lands and Islands in the Lake of the Woods.

You then stated that it would be desirable to make an arrangement with the Company so as to allow the public to get possession of such of the islands as might be wanted for residence or for mining purposes, as you understand the Company desires exclusive possession for the term of their lease, you were kind enough to ask me to put in writing for your consideration the terms on which the Company would be willing to surrender the right to exclusive possession of the islands.

This has now been discussed at a meeting of the Directors of our Company, and I am authorized to say that our desire is to do nothing that would retard the development and progress of the district, but that as we have an investment of over \$400,000 involved we naturally could make such surrender only on getting a suitable equivalent.

The Company has cut timber on many of the islands, but on these there is still a good deal of valuable timber uncut. There is also good timber on many other islands and a large quantity of small and healthy trees growing up which makes the whole of much value at present and in the future.

There are many circumstances that increased the value of timber on the islands over that on ordinary timber lands, their being small the distances to haul is very short, and logs can be made as cheaply in summer as in winter.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 70.
Letter, John
Mather to
Aubrey
White, 6th
June, 1888,

—continued.

Part Ex. 71.
Letter, John
Mather to
Hon. A. S.
Hardy, Com-
missioner of
Lands,
Toronto,
16th May,
1889.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 71.
Letter, John
Mather to
Hon. A. S.
Hardy, Com-
missioner of
Lands,
Toronto,
16th May,
1889.

—continued.

The requisite supplies and men are easily taken to the work, there is no expensive creek or river driving, and no risk of loss by broken booms, etc., besides many other advantages that it is needless for me to state.

The Directors keeping all these circumstances in view and also their very large outlay on saw mills, houses and permanent improvements at Keewatin would prefer to receive an equivalent in timber limits rather than a payment in money, and hope that you will not consider the request unreasonable when I say that they think one hundred square miles of our own selection would be both reasonable and just, also keeping in view that there must be more than 500 square miles of area on the islands.

Timber on the mainland cannot be of such value as that growing on the islands in the Lake, the expense of carrying supplies for a long distance over a rough country is a heavy item, the haul of logs is much longer, the creeks in that country are small, and the supply of water capricious and uncertain, and besides all these prolific chances of expense to the lumberman, there is also that of securing logs in a large stream like the Rainy River, where last season over twenty-two millions of feet of logs carried away the booms and were lost in the Lake of the Woods.

The Directors would also ask to have their lease renewed for a second term of twenty-one years, as the lease provides, adopting of course such modifications for giving up the right to exclusive possession of the islands as may be agreed upon.

The Directors ask me also to draw your attention to the Company's claim for a patent of the lands of Tunnel Island, and I refer you to a letter that I sent to the Honourable T. B. Pardee, dated 17th February, 1888, of which a copy is enclosed herewith, they think that this matter should not be mixed up with the release of the islands as it is a part of the original agreement that six hundred and twenty acres of land would be patented to the Company and the present stockholders of the Company paid for and expect to get what was originally agreed upon.

I would also beg respectfully to submit as an evidence of good faith on the part of the Company, that they have been the pioneers of the extreme west of Ontario, spending a large sum of money that can only be repaid in the future. The result, however, has been to gather a large centre of population that is constantly and rapidly increasing. The Company therefore are not speculators taking advantage of the improvements of others, and may be counted upon to continue to promote the interest of the country as they have hitherto done.

I am also authorized by the Directors to say that they intend after they receive the patent for the lands of Tunnel Island to build such dams and works across the Winnipeg River as may be necessary to utilize the water power for driving mills and machinery. The dam and works must cross the river entirely and connect with both its banks, so that access to the West side also would be required, but as there would still be a balance of a few acres left of the six hundred and forty due the Company that could be granted there.

The Directors are prepared to promise to make the necessary erections within any four years or such other reasonably short period as the progress

of the country and the demand for water power may warrant.

I may say that the present stockholders of the Company are as under :

	John Mather.....	Ottawa.
	Robert A. Mather.....	Keewatin.
	David L. Mather.....	“
	W. H. Brouse.....	Toronto.
	William Buckingham.....	Stratford.
	Jas. Corcoran.....	Stratford.
	Henry N. Bate.....	Ottawa.
10	W. R. Thistle.....	“
	Alex. Fraser.....	Westmeath, Ont.
	Richard Fuller.....	Hamilton.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 71
Letter, John
Mather to
Hon. A. S.
Hardy, Com-
missioner of
Lands,
Toronto,
16th May,
1889.

—continued.

I am convinced that you will see that justice is done in this matter, and will be glad to wait upon you at Toronto on any day after the 20th, as I am very anxious to return to Keewatin with these matters all settled and arranged.

I have the honour to be,

Etc.,

JOHN MATHER.

20 HONOURABLE A. S. HARDY,
Commissioner of Lands,
Toronto.

Exhibit 72.

(Defendants' Exhibit.)

Order-in-Council (Ontario).

ONTARIO.

EXECUTIVE COUNCIL OFFICE.

TO HIS HONOUR.

30 THE HONOURABLE SIR THOMAS GALT, KNIGHT, Administrator of the Govern-
ment of the Province of Ontario, etc., etc., etc.

REPORT of a Committee of the Executive Council, on matters referred
to their consideration.

PRESENT :

The Honourable

Mr. Hardy (in the Chair)
Mr. G. W. Ross
Mr. Gibson.

ON MATTERS OF STATE.

40 May it please your Honour,

Upon the recommendation of the Honourable the Commissioner of Crown Lands, the Committee of Council advise that a Commission be issued appointing George Brownly Kirkpatrick, Esquire, a Commissioner, to examine into all applications for Mining Locations, Mill Sites, Lands and Building Lots, in the vicinity of Rat Portage, Keewatin and adjoining part of the Lake of the Woods, to settle differences arising out of conflicting claims, and generally to take evidence and report to the Department upon all matters and

Ex. 72.
Order-in-
Council
(Ontario),
8th July,
1889.

things which in his opinion may appear relevant to the better understanding and carrying out of the work of the Department in the above mentioned part of the District of Rainy River.

The Committee further advise that Your Honour by the Commission confer upon the said Commissioner the power authorized by R.S.O. 1887, Cap. 17.

Respectfully submitted,

A. S. HARDY,
Chairman.

3rd July, 1889,

LONSDALE CAPREOL, Asst. C.E.C.

10

Approved and Ordered 8th day of July, 1889.

THOMAS GALT.

Exhibit 73.

(Defendants' Exhibit.)

Report of Mr. Kirkpatrick to the Lieutenant-Governor of Ontario.

**TO HIS HONOUR THE LIEUTENANT-GOVERNOR
of the Province of Ontario.**

Sir :—

20

Having been appointed by the Honourable the Administrator of the Province of Ontario, a Commissioner to examine into all applications for mining locations, mill sites, lands and building lots in the vicinity of Rat Portage, Keewatin and the adjoining part of the Lake of the Woods, etc., etc., such commission bearing date July 8th, 1889, I have the honour to report that on July 10th I left Toronto for Rat Portage for the performance of the above service.

I remained two days at Port Arthur making arrangements for a hearing with several parties there who had claims in the vicinity of Rat Portage.

I arrived at my destination on Monday, July 15th, having previously 30
announced in the public press that I would be there on that day.

I opened the Commission on Tuesday, July 16th, at the Court House, which had been kindly placed at my disposal by Judge Legon.

I also had some notices printed and circulated stating when and where I would sit to investigate claims, and requesting all parties having claims to attend and give evidence as to the same.

To avoid having too many people in attendance at one time I made appointments ahead for several weeks and arranged to visit several points where an examination on the ground was necessary. I may say here that in all conflicting cases I made a personal inspection of the claim wherever it 40
was in my way practicable.

Mr. A. D. Hardy, Barrister, of London, under instructions, represented the interests of the Crown and rendered me all the assistance in his power.

The points where the conflicting claims were most numerous were (1) Along the line of the Canadian Pacific Railway east of the town of Rat Portage. (2) The territory south of the town extending as far as Indian Reserve 38-B. (3) Tunnel Island. (4) Norman. (5) Keewatin.

At the first point named I succeeded in getting a number of the claimants to settle among themselves in such a way as that when patents come to be issued for the land, a proper description thereof can be inserted without difficulty.

In the cases where the parties failed to agree I took all the evidence under oath and made due enquiry from both sides so as to enable me to arrive at the merits of each case.

At the second point, I found a reconciliation of the different claimants impossible, but from a careful examination of the ground and the thorough
10 hearing given to the parties (several of them being represented by Counsel) I think an equitable decision can be arrived at in each case. Several valuable saw mills, planing mills and dwelling houses having been erected in the neighbourhood, it was necessary to proceed with caution, at the third point, viz., Tunnel Island, the position of this island commanding, as it does, the water power on the two outlets of the Winnipeg River, gives it importance as a site for manufacturing purposes. Portions of the island have been applied for as mining locations, farm locations and mill locations.

John Mather, Esq., for the Keewatin Lumbering and Manufacturing
20 Company, appeared before me, and stated on behalf of his company that the claim of Messrs. Fuller & Co. for the water power at Tunnel Island had been recognized by the Dominion Government and that his company held copies of Orders in Council and correspondence with the Department of the Interior proving this. He also stated that the island in question is covered by lease to Fuller and Company and produced a letter dated March 4th, 1878, with sketch attached signed by the late Surveyor General of Dominion Lands, J. S. Dennis, stating this.

On these two grounds, he urged that the claim of his Company should be recognized as the first claim and that a patent should be issued to his Company for the island.

30 Having taken Mr. Mather's evidence under oath and noted the dates of the correspondence between his Company and the Dominion Government, which he claimed bore out his view of the case, I took the evidence of the other applicants for portions of Tunnel Island. These were principally applied for as mining and farm locations. At the fourth point, Norman, I found that a small village had grown up on and around the saw mill properties there. On the south side of the Canadian Pacific Railway most of the houses have been erected by parties who first obtained the consent of the mill owners and agreed to pay ground rent to them. On the north side of the railway track, however, parties have gone on and cleared and built houses without reference to whether
40 the land had been previously applied for by others. In such cases I carefully noted the relative positions of each applicant and the circumstances under which each came to settle there. All these parties being resident I was able to take their evidence under oath.

At the fifth point, Keewatin, I found a number of parties settled with more or less improvements on the land immediately west of the Keewatin Lumbering and Manufacturing Company's property. These people had not put in any application to the Government for the land though in most cases

*In the
Supreme
Court of
Ontario.*

Ex. 73.
Report of
Mr. Kirk-
patrick to
the Lieu-
tenant-
Governor of
Ontario,
23rd Novem-
ber, 1889.

—continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 78.
Report of
Mr. Kirk-
patrick to
the Lieu-
tenant-
Governor of
Ontario,
23rd Novem-
ber, 1889.

—continued.

they had had surveys made under the Mining Act. When these overlapped I endeavoured to get the parties to agree among themselves as to their respective boundaries and in some instances successfully, but in others both sides stubbornly refused to yield, though at the same time stating that they would acquiesce in whatever decision the Crown should arrive at.

As regards the Keewatin Railway station ground, I carefully examined the locality and found that a number of the squatters' houses thereon had been removed within the last two years when the large Flouring Mill of the Keewatin Milling Company and the Grain Elevator of the Canadian Pacific Railway Company were erected.

I met several of the officers of the Canadian Pacific Railway there, and heard their representations and also heard what each squatter had to say and am in hopes that an arrangement can be arrived at satisfactory to both parties. Negotiations to that end were proceeding when I left.

As regards the outlines of the municipalities of Rat Portage and Keewatin, I obtained from the respective councils copies of the descriptions by metes and bounds of each municipality and a Provincial Land Surveyor under instructions from the Department of Crown Lands is now engaged in putting down permanent monuments to mark said outlines and making the necessary measurements for the preparation of a plan of both townships showing the locations of all kinds thereon.

During the two months I was engaged as Commissioner I heard one hundred and fifty-nine (159) cases, examined one hundred and seventy-seven (177) witnesses, under oath, had eighty-three (83) exhibits filed with me and the evidence I took amounts to two hundred and eighty-six (286) pages of foolscap typewritten.

I left no uninvestigated claim behind me. I found the people glad of the opportunity to present their claims and the unanimous feeling appeared to be one of thankfulness that the period of uncertainty as to their titles had passed away and of confident expectation that the decision arrived at in each case would be an equitable one.

As regards Sultana Island, claimed by the Department of Indian Affairs as a portion of Indian Reserve 38-B, Lake of the Woods, I visited the locality and made an examination of the surroundings of which I shall make a due report to the Honourable The Commissioner of Crown Lands.

I have the honour to be, Sir,
Your obedient servant,

(Sgd.) GEO. B. KIRKPATRICK,
Commissioner.

Toronto, November 23rd, 1889.

Ex. 28.
Part of
Tracing by
E. Stewart,
20th Decem-
ber, 1889.

Exhibit 28.
(Defendants' Exhibit.)
Part of Tracing by E. Stewart.
See Book of Plans—Plan No. 4.

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Exhibit 31.

(Defendants' Exhibit.)

Letter E. Stewart to Hon. A. S. Hardy.

Collingwood, December 20th, 1889.

HON. A. S. HARDY,
Commissioner of Crown Lands,
Toronto.

Sir :—

10 I have the honour to forward herewith a plan of Rat Portage, Keewatin,
and adjoining territory, also three tracings on a large scale showing a traverse
which I made of the Canadian Pacific Railway for a distance of about eight
miles, also the traverse of the shore of the Lake of the Woods and bays thereof
within the said territory as well as that of the colonization road recently con-
structed in the neighbourhood. In addition to this I ran the outlines of the
above-named municipalities and other lines necessary for the preparation of
the plans. The field notes of these outlines I have yet to prepare for the
Department. This will occupy me for about ten days which will make the
whole time employed by me on the work 136 days and the expenses incurred
have been about \$535.

20 I have received so far on account \$900. I may say that I have spared no
pains to make the survey and plans as accurate as possible, and trust that
they will be found satisfactory.

I have the honour to be, Sir,
Your obedient servant,
"E. STEWART."

Exhibit 29.

(Defendants' Exhibit.)

Part of Plan of Rat Portage, Keewatin, &c., by E. Stewart.

30

See Book of Plans.—Plan No. 5.

Exhibit 74.

(Defendants' Exhibit.)

Letter Robert Meighen to Hon. A. S. Hardy.

Montreal, June 27th, 1890.

HON. A. S. HARDY,
Commissioner of Crown Lands,
Toronto.

40

Dear Sir :—

Our Vice-President, Mr. John Mather, has written me referring to a
conversation he has had with you concerning titles of the land of the Lake
of the Woods Milling Company's mill at Keewatin. It appears that Messrs.
Dick, Banning & Co. claim that they own a portion of the lands which should
necessarily belong to the Lake of the Woods Milling Co. and we understand
they base their claim on a title from the Dominion Government. However,

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 31.
Letter, E.
Stewart to
Hon. A. S.
Hardy, 20th
December,
1889.

Ex. 29.
Part of Plan
of Rat Por-
tage, Kee-
watin, etc.,
by E.
Stewart,
20th Decem-
ber, 1889.

Ex. 74.
Letter,
Robert
Meighen to
Hon. A. S.
Hardy,
27th June,
1890.

*In the
Supreme
Court of
Ontario.*

Ex. 74.

Letter,
Robert
Meighen to
Hon. A. S.
Hardy,
27th June,
1890.

—continued.

if you think they are entitled to compensation for the portion that our Company requires, and for what we have possession of, as well as the 30 feet along the bank of canal on the east side, it will be absolutely necessary for us to have the right of way. Now we are quite willing to accept any mode of procedure which you deem advisable for an equitable settlement of this claim, and, as I understand from our Vice-President, you expressed a desire to have this matter left to arbitration, we are quite willing to accede to your desire in this respect. I understand from our Vice-President that you were to write to me as President of this Company regarding this matter. I shall be very pleased to have your views in regard to this at as early a date as possible, as I understand Messrs. 10
Dick, Banning & Company are piling (or preparing to pile) lumber in close proximity to our elevator, which you will readily see places our property in danger in case of fire, and as you will understand this property is a very valuable one, covering possibly an amount now with stock on hand close to \$1,000,000, and we should like if possible to get this matter arranged at once in an amicable manner, and will be prepared if it is your desire to leave it to arbitration, to name an arbitrator on our behalf.

An early reply will much oblige.

Yours very truly,

“ROBERT MEIGHEN,”

President, Lake of the Woods Milling Company, Limited. 20

Exhibit 75.

(Defendants' Exhibit.)

Letter Hon. A. S. Hardy to Dick, Banning & Co.

Toronto, July 3rd, 1890.

Ex. 75.
Letter, Hon.
A. S. Hardy
to Dick,
Banning &
Co., 3rd
July, 1890.

Gentlemen :

Referring to the question of the Patent for your 26 or 27 acres of land and to your claim against the Lake of the Woods Milling Company in the matter of their water power canal, I have conferred fully with the Commissioner (Mr. Kirkpatrick) who was on the spot last summer, and he concurs 30
with me in thinking that the proper course will be for you to settle your claim against the Milling Company by arbitration, each to appoint an arbitrator, and the two a third one in case you cannot agree upon one arbitrator to settle the whole question, the Milling Company to have the bed of the canal and the land lying between the canal and the Pacific Railway line and twenty feet on the other side of the canal for the purpose of protection. The arbitration may proceed on the basis of acknowledgment of your right to 27 acres, the two acres to make up your deficiency to be added in the west limit of your plot.

I have written to the President of the Lake of the Woods Milling Co. in 40
substantially the above terms. I must ask you to proceed to settle the dispute between you at as early a day as possible in order that your Patent may go and the whole matter be brought to a termination.

I have the honour to be,

Your obedient servant,

Messrs. Dick, Banning & Co.,
Keewatin, Ont.

“ARTHUR S. HARDY,”
Commissioner.

Exhibit 76.

(Defendants' Exhibit.)

Letter Hon. A. S. Hardy to The Lake of the Woods Milling Co., Ltd.

Toronto, July 3rd, 1890.

Gentlemen :—

I have the honour to acknowledge receipt of your letter of the 27th ult. respecting the claim of Messrs. Dick, Banning & Company against the Lake of the Woods Milling Company at Keewatin in respect of a Mill Race which the latter Company have cut through the property of the above named firm.

I have notified Dick, Banning & Company that this Department is of opinion that the compensation which they should receive should be settled by arbitration, each to appoint an arbitrator, and the two to appoint a third, unless the two parties can agree upon some man who will act as arbitrator between them. The Government will be prepared to confirm the title of Dick, Banning & Company to the twenty-seven acres (27 acres) called for by their Patent from the Government of Canada, and the arbitration should proceed upon the basis of the territory being Dick, Banning & Company's, the Milling Company to have the bed of the canal and the land lying between the canal and the Pacific Railway line, as well as twenty feet on either side of it, over the property owned by Dick, Banning & Co.

I have, etc.,

(Sgd.) "ARTHUR S. HARDY,"

Commissioner.

The Lake of the Woods Milling Company,
Cor. Port and Cannon Street,
Montreal.

P.S.—The two areas to be on the west side of your plot and north of the Colonization Road.

Exhibit 77.

(Defendants' Exhibit.)

Letter Robert Meighen to Hon. A. S. Hardy.

Montreal, July 9, 1890.

Dear Sir :—

Yours of 3rd of July received for which I am obliged. Referring to the claim of Messrs. Dick, Banning & Company, our Vice-President, Mr. John Mather, gave this Company to understand (that is if we understood him rightly) that your proposition was to settle this matter by arbitration, this Company to appoint one arbitrator, Dick, Banning & Co. another, and the Commissioner of Crown Lands the third. In your letter you mention the Arbitrators of each Company to agree on the third. I may say to you that our Vice-President, Mr. John Mather, is familiar with this whole matter, and I have sent him a copy of your letter to Keewatin. I have also written him that our Company is quite willing to accede to any mode of procedure that will settle this matter in an amicable manner and hope that Mr. Mather, in

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 76.

Letter, Hon.
A. S. Hardy
to The Lake
of the Woods
Milling Co.,
Ltd., 3rd
July, 1890.

Ex. 77.
Letter,
Robert
Meighen to
Hon. A. S.
Hardy, 9th
July, 1890.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 77.
Letter,
Robert
Meighen to
Hon. A. S.
Hardy, 9th
July, 1890.

—continued.

whose hands the Company will leave the management of this matter, may have it adjusted at once, as no doubt he will act on your suggestion regarding the arbitration. In the meantime I hope the Government will be prepared to hold this matter of confirming the title of Messrs. Dick, Banning & Co. in abeyance until the arrangements you have suggested for the settlement of same are carried out, which I have impressed upon Mr. Mather is desirable to do at as early a date as possible.

I am,

Yours truly,

“ROBERT MEIGHEN,”

President,

Lake of the Woods Milling Company.

TO HON. A. S. HARDY,
Commissioner of Crown Lands,
Toronto.

Exhibit 78.

(Defendants' Exhibit.)

Submission to Arbitration by Dick, Banning & Co. and Lake of the Woods Milling Co. Ltd.

Ex. 78.
Submission
to Arbitra-
tion by Dick,
Banning &
Co. and Lake
of the Woods
Milling Co.
Ltd., 1st
August,
1890.

This indenture made the first day of August, A.D. 1890, between Dick, Banning and Company, Lumber Manufacturers of Winnipeg, Man., of the first part, and the Lake of the Woods Milling Company, Limited, of Keewatin, Ont., of the second part.

Whereas disputes and differences have arisen and are now depending between the said parties of the first and second parts in reference to a parcel of land lying partly in the mill race now used by the parties of the second part and partly to the east and north thereof, containing about eighteen thousand and ninety-five (18095) feet in area, and in order to put an end thereto, and to obtain an amicable adjustment thereof, the said parties of the first and second parts have respectively agreed to refer the same to the award, order, arbitration, final end and determination of Rufus Atkinson and George A. Graham, arbitrators, respectively nominated and chosen, by and on behalf of the said Dick, Banning & Company and the Lake of the Woods Milling Company, Limited. And in the event of the two arbitrators hereby appointed not being able to agree within one month from the date of these presents upon their said award, then it shall and may be lawful for them to appoint some fit person as third arbitrator, by a memorandum in writing under their hands, to be endorsed on these presents, and the award of any two of them shall be final and conclusive, both at law and equity, upon both of the said parties hereto, such award to be made in writing on or before the first day of September next.

Now this indenture witnesseth that they, the said Dick, Banning and Company and the Lake of the Woods Milling Company, Limited, do and each of them do, each for themselves severally and respectively, and for their respective heirs, executors and administrators, covenant, promise and agree, with and to each other, and their heirs, executors and administrators, well

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and truly to stand to, obey, abide by, observe, perform, fulfil and keep the award, order, arbitrament and final determination of the said arbitrators hereby appointed, or in the event of it having been necessary to appoint such third arbitrator as aforesaid, to stand to, obey, abide by, observe, perform, fulfil and keep the award, order, arbitrament and final determination of any two of them, of and concerning the premises aforesaid, or anything in any manner relating thereto, so as the said award of the said arbitrators be made in writing under their hands or under the hands of any two of them (in the event of such appointment as aforesaid).

10 And it is hereby agreed that the said arbitrators hereby appointed, or in the event of any such appointment being made as aforesaid, any two of them, shall be at liberty, by writing under their hands respectively endorsed on these presents to enlarge the time for making the said award, when and as often and to such times as they shall think fit. And also that neither of the said parties shall nor will obstruct, delay, impede or prevent in any manner the said arbitrators from making, but will, so far as in them lies respectively, do all such acts and things required to be done, produced or performed by the said arbitrators to enable the said arbitrators to make such award as aforesaid in pursuance hereof. And also that all the costs and charges attending the
20 said arbitration shall be in the discretion of the said arbitrators, hereby appointed, or in the event of such appointment of a third arbitrator as aforesaid, and shall be paid and satisfied pursuant to this award.

In witness whereof we hereby set our hands and seals.

[SEAL]
[SEAL]

DICK, BANNING & Co.
JOHN MATHER,

Vice-President Lake of the
Woods Milling Co., Limited.

Signed, sealed and delivered
in the presence of

FRANK E. BRAY.
GEORGE T. HASTINGS.

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Exhibit 79.
(Defendants' Exhibit.)
Award of Arbitrators.

Ex. 79.
Award of
Arbitrators,
16th August,
1890.

**RE ARBITRATION DICK, BANNING & Co. AND THE LAKE OF THE WOODS
MILLING COMPANY, LIMITED.**

40 We, the undersigned referees, appointed by the within agreement of sub-
mission, having notified and met the parties and heard their several allega-
tions, proofs and arguments and duly considered the same, do award and
and determine that the within named Dick, Banning & Company shall
recover of the within named The Lake of the Woods Milling Company
(Limited) the sum of One thousand three hundred and seventy-five dollars
(\$1,375).

And that the same shall be in full of the matters within referred to us.
Each party to pay their own costs.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 78.
Submission
to Arbitra-
tion by Dick,
Banning &
Co. and Lake
of the Woods
Milling Co.
Ltd., 1st
August,
1890.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 79.
Award of
Arbitrators,
16th August,
1890.
—continued.

Ex. 80.
Letter, Dick,
Banning &
Co. to Hon.
A. S. Hardy,
11th Septem-
ber, 1890.

In witness whereof we have hereunto set our hands and seals this sixteenth day of August, 1890.
Signed, sealed and delivered

in the presence of
"FRED SPRADO"
Witness.

- - -
"GEO. A. GRAHAM" [SEAL]
"RUFUS ATKINSON" [SEAL]

Exhibit 80.

(Defendants' Exhibit.)

Letter Dick, Banning & Co. to Hon. A. S. Hardy.

Winnipeg, 11th Sept., 1890. 10

HON. A. S. HARDY,
Toronto, Ont.

Dear Sir :—

Acting on your wishes as contained in yours of 3rd July, we endeavoured to make a settlement with the Lake of the Woods Milling Company for the mill race taken from us. We made them a very low offer, because we knew by the stand your Government had taken that we were the ones to suffer. If your Government had given us what was right and fair between man and man it would not have been so bad.

We realized that there was no use of us kicking against the combination, 20 the Government, the Milling Company and the Canadian Pacific Railway. Our offer was not accepted by them. In fact they would not listen to it, and arbitrators were appointed who have agreed on \$1375.00, with the understanding that we get the balance of our 27 acres from the Government, elsewhere, immediately alongside of our own property. We would like to know where the Government have our hundred acres of lands in that vicinity, worth half as much as the mill race taken from us.

We have lost a valuable piece of property by this deal and then get nothing for it. It has cost us more than what we are to get to fight these people, pay lawyers, etc. So we have simply lost a portion of our property 30 which we always considered more valuable than the balance left us. The Milling Company have the mill race, which has not cost them as much as steam boilers and engines would to make the same power, and if they were using steam the amount they pay us would not buy cord wood enough to keep them going thirty days.

We have asked them for the award, but they say they will not pay it until they receive their Deed. We suppose that means another year. We believe if we make our demand for it, and they refuse, that is enough to cancel this whole arbitration business.

Now we believe that we have simply given up property worth twenty 40 thousand, or would be worth that much in a few years, to oblige your Government, or in other words your Government took such an unreasonable stand against us we were forced to accept just what we could get, which is simply nothing. We now feel you should do something worth while for us. In the first place, we should get our patent and arrange with the Milling Company so we can get our money.

Then we think the Government should give us the balance of our 27 acres west of our own property, which is not worth one hundredth part of what we have lost, and also give us back all the timber dues we have paid, and are supposed to pay for the next five years.

We do not feel that we are asking one cent more than we should get. It appears that other firms can claim the whole Lake, while we have had a patent for our land since May 19th, 1884, and have been in possession since 1880, are plundered from all sides simply because the Government refused to give us what was our own. We did not ask for anything unreasonable. The
 10 Milling Company did, because they had no claim to one inch of our lands. We had our Patent from the Dominion Government, which you claim was no good, but surely it defined our boundaries, which should have been respected by your Government. If your Government had told the Milling Company that Dick, Banning & Co. had a patent from the Dominion Government and have been in possession for years and years, before they came into existence, and that it would be unfair and unreasonable to expect you to interfere with their rights and that you would have to give us and see that we got our property, we could then have made them come to time. But when
 20 they saw that your Government was willing to do almost anything for them, they simply decided to pay nothing for the property, and they have succeeded.

Now we want the Government to do what is right with us and give us what we have asked. It is the opinion of nearly every person in Keewatin and here, who know anything about our grievance, that we have been used very badly. We know if the Dominion Government had been interested as your Government were, we would have had our rights respected, although not one of us ever supported them to the extent of one vote.

We believe if you consider this matter you will see that your Government should do something and that our claim is a just one and should be granted.

There is at least ten thousand due us on this deal. If you cannot give
 30 us lands up to that value, then we believe you should deduct that amount from our timber dues, or in some way repay us for our loss.

We hope to receive your early reply favourable to our just claim.

Yours truly,

DICK, BANNING & Co.

Exhibit 81.

(Defendants' Exhibit.)

Letter Hon. A. S. Hardy to Dick, Banning & Co.

DEPARTMENT OF CROWN LANDS, ONTARIO,

Toronto, Sept. 18th, 1890.

40

Gentlemen :

I have the honour to acknowledge the receipt of your letter of the 11th inst. referring to the arbitration with the Lake of the Woods Milling Company respecting the mill race property, part of which passes through your lands. I am very sorry that the arbitration has not resulted to your entire satisfaction. I think in your general dealing with this question you omit to give weight to several considerations which affect this entire transaction :

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 80.
Letter, Dick,
Banning &
Co. to Hon.
A. S. Hardy,
11th Septem-
ber, 1890.

—continued.

Ex. 81.
Letter, Hon.
A. S. Hardy
to Dick,
Banning &
Co., 18th
September,
1890.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 81.
Letter, Hon.
A. S. Hardy
to Dick,
Banning &
Co., 18th
September,
1890.
—continued.

(1) It is now several years since the late Commissioner, Mr. Pardee, gave permission to the Milling Company to erect their works and avail themselves of this mill race. The whole question was concluded before my assumption of the duties of Commissioner of Crown Lands and I had but therefore to assist in carrying out the details so that you might receive your patent from the Government.

(2) You speak of the land (the 27 acres) as wholly your own. If this were so, then no action of this Government or of the Department, nothing in fact short of legislation, could have given the Milling Company the right to this mill race. You had, it is true, a deed from the Dominion, which it is thought conveyed nothing, and it still therefore left this property to be dealt with as the Department at the time, in 1887, seemed to think most in the public interest. A very great enterprise was on foot, namely the construction of the flour mills, and on looking at the correspondence, Mr. Pardee appeared to think that the construction of their mill and the consequent benefit to the locality was so important that he should not withhold from them this water privilege. They have since gone on, completed this mill race, and have been constantly engaged in transacting business. This was an important consideration in a new part of the country. 10

(3) You speak of your heavy loss in this connection. You have had an arbitration and have received compensation. It is the constant custom where public works are concerned or works of a public character to expropriate lands and to arbitrate for their value. You have in this case received what the arbitrators at least seemed to think full value, or what would otherwise have been your share of this mill race. In other words you have been paid for any rights you might have had even upon the basis of a supposition of ownership on your part. That you have not received as much as you yourselves thought it was worth is what occurs in most arbitrations respecting property. You have doubtless—been awarded what the arbitrators thought it was worth. That ought to be reasonably satisfactory, and I am sorry 30 indeed that it does not turn out to be so, but it is not a matter which was personally within my control. If you were to receive your deed and they theirs, the matter had to be settled in some way, and I was extremely glad when the two Companies found themselves able to agree upon arbitrators. It would of course be impossible to allow you to fix a price for yourselves and then ask the Government to make compensation to you upon that basis. The arbitrators have settled what you would be entitled to in law, and I suppose in equity, and that will have to be final.

I should be very glad indeed to facilitate the granting of your patent and only await the arrival of Mr. Kirkpatrick from England in order to have 40 the new portion of the west 27 acres properly described and inserted in the patent. He is familiar with the whole matter, and examined it upon the spot and his recommendation was therefore carried out in reference to the arbitration.

You say that other firms can claim whole lakes, while you are plundered from all sides. I do not know to what other firms you refer. My constant effort is to keep everybody in that new section within the limits of their just

rights as defined by their agreements, licenses or patents. That the task is a difficult one you will understand. But if they exceed or extend their operations beyond their rights, it is not with the consent or knowledge of this Department.

If the granting of the right to the Milling Company had come before me instead of Mr. Pardee, I think, in the light of subsequent knowledge that it would have been well had the terms upon which they were to receive the right to use this raceway been fixed at the time as nearly to the satisfaction of all parties (notably yourselves) as possible. I, however, saw no other way
 10 out of the difficulty than an arbitration, or settlement by a commission should you fail to agree upon arbitrators. Mr. Kirkpatrick, who examined the premises, as I have said, upon the spot, was unable to form an opinion that would have given satisfaction, and as the time had arrived for a settlement, I made the suggestion for an arbitration or commission.

You are quite mistaken in supposing that the Government or the Department is against you or your firm. I may take the opportunity of saying that the feeling of the Government and of this Department, and of every officer of the Department, is precisely the contrary. Your excellent way of doing business and your fair methods in so far as we have any reason to know have
 20 commended your firm to the good will of all here, and I regret extremely that it turns out that you have not secured ample and adequate compensation for any losses you may have sustained.

Of course it is quite impossible to consider your suggestion that you should be refunded timber dues or that an allowance should be made you by the Government. You have your mill site and adequate accommodation and I shall very cheerfully facilitate the issue of the patent immediately upon the arrival of Mr. Kirkpatrick. I expect his return early in October.

I have the honour, etc.,

“A. S. HARDY.”

30 Messrs. Dick, Banning & Co.
Winnipeg, Man.

Exhibit 82.

(Defendants' Exhibit.)

Letter John Mather to Hon. A. S. Hardy.

Ottawa, 3rd Oct., 1890.

HONOURABLE A. S. HARDY,
Commissioner of Crown Lands,
Ontario.

40 Sir :—

Following up your suggestion when I saw you on 1st inst., I now write as Vice-President of the Lake of the Woods Milling Company, asking for a patent to cover the lands applied for by that company at Keewatin in connection with the waterpower, flour mill and elevators there.

There has already been considerable correspondence with your Department on this matter and plans have been fyled. I now enclose a plan similar to those fyled showing the lands applied for, namely on the mainland and in

*In the
Supreme
Court of
Ontario.*

Ex. 81.
Letter, Hon.
A. S. Hardy
to Dick,
Banning &
Co., 18th
September,
1890.

—continued.

Ex. 82.
Letter, John
Mather to
Hon. A. S.
Hardy, 3rd
October,
1890.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 82.
Letter, John
Mather to
Hon. A. S.
Hardy, 3rd
October,
1890.

rear, or to the north of the Canadian Pacific Railway Station grounds at Keewatin station. These are marked—

C.C.P. Mainland	1.56	acres.
C.C.P.a "	2.90	"
C.C.P.b Island	0.69	"
C.C.P.c "	6.69	"

11.84 acres.

—continued.

Regarding the difficulty had with Messrs. Dick, Banning & Co., who claimed that the Milling Company had encroached on their property with the mill race, and the Milling Company claiming that Dick, Banning & Co. had no property in the land there, your decision, that that matter should be settled by arbitration has been carried out, and I enclose submission for arbitration signed by the two firms, also the award of the arbitrators. 10

I also enclose a plan showing the shape and extent of the land claimed by Messrs. Dick, Banning & Co. and as they alleged appropriated by the Lake of the Woods Milling Company. It lies east of the west boundary of Messrs. Dick, Banning & Co.'s claim, and abuts on and lies along the north boundary of the station grounds of the Canadian Pacific Railway.

The Lake of the Woods Milling Company expect their patent will include the aforementioned piece of land. 20

When the Commission of Enquiry was held at Keewatin, on the matter of claims to land there, it was found that Arthur Torrance had built a house on the land that had been applied for by the Lake of the Woods Milling Company, namely on the part marked C.C.P.a. The Commissioner then suggested that if Arthur Torrance were to leave the village at any time he should offer his house and claim for sale to the Lake of the Woods Milling Company. He left the village in January last and the Milling Company has now got his quit claim, which I also beg to enclose.

All obstacles having now been removed in so far as the Lake of the Woods Milling Company are concerned, I will be much pleased to hear from you at a convenient early date that instructions have been given for the patent to issue. 30

The patent to issue in the name of "The Lake of the Woods Milling Company (Limited) Keewatin."

I have the honour to be, Sir,
Your obedient servant,

"JOHN MATHER,"

Vice-President Lake of the Woods Milling Company (Limited). 40

ENCLOSURES : Seager's plan of land applied for.
Submission of Dick, Banning & Co's. claim to Arbitration.
Arbitrators' award.
Arthur Torrance, his quit claim.
Plan of parcel of land, the value of which was decided by arbitrators.
Business card of the Lake of the Woods Milling Company (Limited).

Part Exhibit 83.
(Defendants' Exhibit.)
Letter John Mather to Hon. A. S. Hardy.

*In the
Supreme
Court of
Ontario.*

453 Theodore Street, Ottawa,
11th Oct., 1890.

Exhibits.
Part Ex. 83.
Letter, John
Mather to
Hon. A. S.
Hardy, 11th
October,
1890.

Sir :

I wrote you on 3rd instant enclosing plans and papers referring to the application made by the Lake of the Woods Milling Company for a patent for lands at Keewatin.

Today I have received from the Mills Messrs. Dick, Banning & Co. receipt for the amount awarded them by the arbitrators (\$1,375.00) also plan with their signature to show what the Company has paid for. Thinking that you might still require these papers as evidence in this matter I take the liberty to enclose them herewith.

I will leave in ten days for the mills at Keewatin and expect to be there for four weeks.

I have the honour to be, Sir,
Your obedient servant,

JOHN MATHER,

Vice-President, Lake of the Woods Milling Company, Limited.

HON. A. S. HARDY,
Commissioner of Crown Lands,
Toronto.

Sketch by J. W. Harris, P.L.S.
dated September 19th, 1890, is
attached.

Part Exhibit 83.
(Defendants' Exhibit.)
Receipt of Dick, Banning & Co.

Pa 11138
Receipt of
Dick, Ban-
ning & Co.,
6th October,
1890.

Keewatin, Oct. 6th, 1890.

Received from the Lake of the Woods Milling Company, Limited, the sum of Thirteen hundred and seventy-five dollars (\$1375) being the amount awarded by arbitrators (Messrs. Rufus Atkinson and George A. Graham) for value of a piece of property used partly by the Lake of the Woods Milling Company, Limited, as a Mill Race, and about twenty feet (20' 0") to the north of race, as per plan attached made by J. W. Harris, Provincial Land Surveyor, Winnipeg, and marked A, dated September 19th, 1890.

In consideration of receiving the above named amount we hereby relinquish all our right and title to said property.

Witness :

GEO. T. HASTINGS.

DICK, BANNING & Co.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 83.
Plan by J.
W. Harris,
P.L.S.
19th Septem-
ber, 1890.

Ex. 84.
Letter,
Aubrey
White,
to John
Mather,
19th Decem-
ber, 1890.

Part Exhibit 83.
(Defendants' Exhibit.)
Plan by J. W. Harris, P.L.S.

See Book of Plans—Plan No. 6.

Exhibit 84.
(Defendants' Exhibit.)
Letter Aubrey White to John Mather.

Dept. of Crown Lands,
Toronto, Dec. 19th, 1890.

Sir :—

Referring to the conversation had at this Department yesterday between the Commissioner of Crown Lands and yourself as to the issue of a patent to the Lake of the Woods Milling Company, Limited, of the portions of land applied for by said Company at Keewatin for the purposes of its business, said application being dated March 3rd, 1887, I am directed to say that it appears from Mr. Kirkpatrick's memo of date July 23rd, 1887, that on portions of the ground certain parties claimed to have made improvements. The names of these parties with the value of improvements are given by him as follows :

George Sutherland, Loc. 4-K (already settled)	\$333	20
Keewatin Paper Co., small house (present value)	150	
Arthur Torrance (No. 3) house	400	
W. H. Clark, hen house, root house and stable (No. 8A)	150	
H. Burton, stable, hog pen and fencing	60	
	\$1,093	

In addition to the above he recommended that where parties had made surveys, and it is considered for the public interests that their applications should not be granted, \$50 be allowed for the cost of survey to be paid by the parties obtaining the patent from the Crown. Under this arrangement one-half of the cost of survey should be borne by your Company in the following cases :

G. R. L. Fellowes, one-half cost survey	\$ 25	
D. H. MacMillan, Winnipeg do.	25	
W. H. Clark do. do.	25	
D. McGregor do. do.	25	
Keewatin Paper Co. do. do.	25	
	125	40

On filing the approved undertaking of the Company, on such form as may be settled between the Company and the Honourable the Commissioner, to duly compensate the above parties and such other persons, if any, as may have up to date made improvements or erected buildings upon any of the said lands, as the Commissioner of Crown Lands may direct, the values or amounts

also to be determined in such manner as the Commissioner may direct, and such undertaking or bond to inure to the benefit of any such person or persons (including those above specifically named) and on paying into the Department the sum of \$10 per acre purchase money, amounting to \$120, being 12 acres, a patent may issue covering the two islands in Winnipeg Bay and the land lying between the Mill Site of Dick, Banning & Company, the north boundary of the Canadian Pacific Railway Station grounds at Keewatin, and the rear line of certain small lots on which houses are erected to the west of said station grounds, and the water's edge of said Winnipeg Bay, the same being shown on Plan by P. L. S. E. Stewart, dated December 20th, 1889, of record in the Department of Crown Lands.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 84.
Letter,
Aubrey
White,
to John
Mather,
19th Decem-
ber, 1890.

I have the honour to be,
Your obedient servant,

(Sgd.) "AUBREY WHITE,"
Asst. Comm.

John Mather, Esq., etc., etc., Ottawa.

Exhibit 12.

(Defendants' Exhibit.)

Crown Patent (Ontario) to Dick and Banning.

Ex. 12.
Crown
Patent
(Ontario)
to Dick and
Banning,
5th January,
1891.

PROVINCE OF ONTARIO.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, &c., &c., &c.

TO ALL TO WHOM THESE PRESENTS SHALL COME—

GREETING :

WHEREAS WILLIAM ROBERT DICK, of the City of Winnipeg, in the Province of Manitoba, Millowner; and MARY BANNING, of the same place, Widow, have contracted and agreed for the absolute purchase of the lands and tenements hereinafter mentioned and described at and for the price and sum of Five Dollars of lawful money of Canada, and of which lands We are seized in right of Our Crown.

NOW KNOW YE that in consideration of the said sum of Five dollars well and truly paid to Our use at or before the sealing of these Our Letters Patent, We have granted, and by these Presents do grant, unto the said William Robert Dick, and Mary Banning in fee simple : ALL that Parcel or Tract of Land, situate, lying and being in the Municipality of Keewatin in the District of Rainy River in the Province of Ontario, containing by admeasurement Twenty-seven acres, be the same more or less, which said Parcel or Tract of Land may be otherwise known as follows, that is to say : being composed of all that tract or parcel of land containing by admeasurement twenty-seven acres be the same more or less, known as Dick, Banning and Company's Mill location "situate between Portage Bay and Winnipeg Bay in the Municipality of Keewatin in the District of Rainy River and Province of Ontario, shown on plan of survey of said Municipality by E. Stewart, Provincial Land Surveyor,

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 12.
Crown
Patent
(Ontario)
to Dick and
Banning,
5th January,
1891.

—continued.

dated 20th December, 1889," of record in the Department of Crown Lands and more particularly described as follows, that is to say Commencing at an iron bar set by Provincial Land Surveyor E. Stewart on the North limit of the right of way of the Canadian Pacific Railway seventy five feet North of the centre line thereof at a distance of twenty chains fifty eight links measured westerly along said limit from the limit between the Municipality of Rat Portage and Keewatin, Thence Westerly along said North limit twenty chains more or less to a point where the additional width for Station Ground at Keewatin has been laid out thence Northerly along a line perpendicular to the said centre line of Railway one hundred and twenty-five feet to an iron bar, Thence Westerly along the North limit of Station Ground so laid out two hundred and eighteen feet to an iron post planted at the distance of twenty feet perpendicular distance from the edge of the Mill race constructed by the Lake of the Woods Milling Company (Limited), Thence Westerly at said perpendicular distance of twenty feet therefrom two hundred and eighty one feet and a half to an iron post, Thence Northerly fifty feet to an iron post, Thence Westerly eighty-five feet to an iron post planted on the West limit of the herein described tract and twenty feet North of edge of said Mill race, Thence due North two chains seventy-five links more or less to the water's edge of Winnipeg Bay, Thence easterly and Northerly along said water's edge to its intersection with the South limit of Mining Location K-83 granted by Letters Patent dated the First day of August in the year of our Lord one thousand eight hundred and ninety to Edward Pattin, Thence due East along the South limit thereof five chains fifty links to the North East angle of herein described tract, Thence due South twelve chains eighty links more or less to the South limit of the Rat Portage and Keewatin Colonization Road, Thence South Westerly along said limit one chain sixty links more or less to an iron bar planted by E. Stewart, Provincial Land Surveyor, Thence due south two chains thirty-three links more or less to the place of beginning. Reserving right of way for the Rat Portage and Keewatin Colonization Road forty feet in width. 10 20 30

Saving, excepting and reserving, nevertheless, unto Us, Our Heirs and Successors, the free uses, passage and enjoyment of, in, over and upon all navigable waters that shall or may be hereafter found on or under, or be flowing through or upon any part of the said Parcel or Tract of Land hereby granted as aforesaid, reserving also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons, together with the right to use so much of the banks thereof, not exceeding one chain in depth from the water's edge as may be necessary for fishery purposes.

GIVEN under the Great Seal of Our Province of Ontario :

WITNESS, the Honourable SIR ALEXANDER CAMPBELL, Knight Commander of Our most distinguished Order of St. Michael and St. George, a Member of Our Privy Council for Canada, Lieutenant-Governor of Our Province of Ontario. 40

AT TORONTO, this Fifth day of January in the year of Our Lord one thousand eight hundred and ninety-one, and in the Fifty-fourth year of Our Reign.

J. M. G.
D. G. R.

BY COMMAND OF THE LIEUTENANT-GOVERNOR IN COUNCIL.

J. M. GIBSON,

Secretary.

ARTHUR S. HARDY,

Commissioner of Crown Lands.

R.R. Ref. No. 101

R.R. Sale, No. 94

} C.L.S.

10 Recorded the 22nd day of January, A.D. 1891.

JOHN F. C. USSHER,

Deputy-Registrar.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 12

Crown
Patent
(Ontario)
to Dick and
Banning
5th January
1891

—continued.

Exhibit 85.

(Defendants' Exhibit.)

Letter Robert Meighen to Hon. A. S. Hardy.

Montreal, June 20th, 1891.

20 HON. A. S. HARDY,
Commissioner of Crown Lands,
Toronto.

Ex. 85.
Letter,
Robert
Meighen to
Hon. A. S.
Hardy,
20th June,
1891.

Dear Sir :—

We have a letter from our Vice-President, Mr. Mather, who has lately been in Toronto, and who has asked for Patent for lands granted for mill site to the Lake of the Woods Milling Company, Limited, and he was told it would soon be issued. He reports that he looked over the plan in the Department made by P. L. S. Stewart, showing the township of Keewatin, and he noticed in some respects the boundaries of the Milling Company's land if granted according to the application would not coincide with the plan in the Department. He has therefore suggested that the description in the Patent to be issued should correspond with the plan of record in the Crown Lands Department. The land referred to is shown on a tracing from the Departmental map and includes the two islands in the Bay. When issuing the Patent will you kindly make the above changes and advise us of the amount necessary to pay for the additional land, and we will remit at once. We now enclose you the plan handed Mr. Mather, and we would like if you would send us a copy of this plan, which of course we will pay for. The land we wish our Patent to cover embraces the area contained within the heavy pink lines on the plan we now return. We would be pleased if you would give this your very earliest attention and favour us with an early reply.

Yours truly,

Lake of the Woods Milling Co. Ltd.

(Sgd.) "ROBERT MEIGHEN,"
President.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 86.
Letter, John
Mather to
Aubrey
White,
26th August,
1891.

Exhibit 86.
(Defendants' Exhibit.)

Letter John Mather to Aubrey White.

KEEWATIN LUMBERING AND MANUFACTURING COMPANY, LIMITED.

Keewatin, Ont., 26th August, 1891.

AUBREY WHITE, ESQ.,

Asst. Commissioner of Crown Lands, Toronto.

Dear Sir :—

Some time ago the Lake of the Woods Milling Company wrote your Department asking for a change in the description of the land applied for at the mill, so as to include a small piece still vacant at the west and in order to connect with the right of way of the Canadian Pacific Railway, accompanying the letter was a sketch showing what the Company wants. As I understand now your Department requires a plan and field notes of the whole made by a P. L. S. before you can give the Patent. Would you please to send me the plan that was enclosed in the letter of the Milling Company, as it would assist a surveyor very much, and I will have a plan and field notes made and sent you at once, as we are very anxious to get the patent for these lands. I found Mr. Blues' map on the "Keewatin" and mailed it to him two days ago. 10

I am, Sir,

Your obedient servant,

"JOHN MATHER,"

Vice-President, Lake of the Woods Milling Company, Limited. 20

Ex. 87.
Agreement
between
Keewatin
Lumbering
& Manufac-
turing Co.
Ltd. and Her
Majesty the
Queen, 24th
November,
1891.

Exhibit 87.
(Defendants' Exhibit.)

**Agreement between Keewatin Lumbering and Manufacturing Co. Ltd.,
and Her Majesty the Queen.**

**AGREEMENT RE TUNNEL ISLAND BETWEEN THE CROWN AND THE KEEWATIN
LUMBER AND MANUFACTURING COMPANY. 30**

**THIS AGREEMENT made and entered into this twenty-fourth day of
November, A.D. 1891,**

BETWEEN :

**THE KEEWATIN LUMBERING AND MANUFACTURING COMPANY, LIMITED.
Of the First Part,**

AND

**HER MAJESTY THE QUEEN, AS REPRESENTED BY
THE PROVINCE OF ONTARIO,**

Of the Second Part.

**WHEREAS Her Majesty has agreed to sell to the said Company and the
said Company have contracted and agreed with Her said Majesty to purchase
a certain island known as Tunnel Island, in the Lake of the Woods, in the
District of Rainy River, in the said Province of Ontario, saving and excepting
the right of way of the Canadian Pacific Railway Company thereon and any
other rights which the said Railway Company may have; the Colonization 40**

road one chain in width, leading to Keewatin, and saving and excepting also, fifty-one acres more or less situated to the south of the right-of-way of the said Railway Company, and adjoining the outlet of the East Branch of the Winnipeg River, bounded on the east and south sides by the waters of the Lake of the Woods, on the west by a due north and south line, extending from the Lake of the Woods to the right-of-way of the said Railway Company, and on the north by the said right-of-way; and also for the purchase of twenty-three acres of land on the south shore of the West Branch of the Winnipeg River at or near the Lower Falls, and composed of a strip of land four chains
 10 in perpendicular width inland from the water's edge and extending from the east limit of Location 227-P, a distance easterly of fifty-eight chains, more or less, to a point at the water's edge of said river, distant about thirteen chains north of the right-of-way of said Railway Company, but such strip shall not exceed in extent twenty-three acres, the said parcels so to be sold containing by admeasurement three hundred and seventy-three acres more or less, together with the water power adjoining thereto on the West Branch or outlet of the Winnipeg River, for the sum of one thousand, six hundred and seventy-eight dollars of lawful money of Canada, upon certain conditions and for certain other considerations hereinafter set forth.

20 Her Majesty has further agreed with the said Company that upon the sale of the unsold land adjoining the said twenty-three acres on the south side of said river, that She will reserve a highway or right-of-way from the present colonization road to the said twenty-three acres at some convenient point to be selected, and also a right-of-way for the Canadian Pacific Railway Company to lay a siding or spur track to such twenty-three acres at some convenient point to be selected, and that she will not make a greater charge for such reserve for such purposes than four dollars and fifty cents per acre.

30 NOW THEREFORE this agreement witnesseth, the said Company shall expend in the construction of works for the purpose of creating a water power the sum of two hundred and fifty thousand dollars, at least one hundred and fifty thousand thereof to be expended within a period of three years from the date of this agreement, the work to be begun within one year from said date, and not less than one-fourth of the said last mentioned sum to be expended within one year from the commencement of the work. The remainder of the two hundred and fifty thousand dollars shall be expended when the Lieutenant-Governor in Council shall so direct.

40 The said Company also covenants with Her Majesty that before executing any portion of said work they will submit to the Lieutenant-Governor in Council plans and statements in detail of the system or scheme proposed to be adopted in carrying out such works, which plans and statements shall not be acted on until they shall have been approved by an Engineer appointed for that purpose by the said Government.

The said Company further covenants with Her Majesty that they will supply to such parties as may require it, water power to the extent of the capacity of the works aforesaid, at a rate per horse power per annum, and will, upon the completion of the said works, or when fit for use, give leases of lands for the erection of buildings and factories upon terms and at a rate per square

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 87.
Agreement
between
Keewatin
Lumbering
& Manufac-
turing Co.
Ltd. and Her
Majesty the
Queen, 24th
November,
1891.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 87.
Agreement
between
Keewatin
Lumbering
& Manufac-
turing Co.
Ltd. and Her
Majesty the
Queen, 24th
November,
1891.

—continued.

foot per annum, the maximum of both of such rates to be fixed and determined by a competent engineer to be appointed by the Lieutenant-Governor in Council for that purpose. Such engineer in fixing the rates aforesaid, may take into account the expenditure which the Company has been called upon to make and the difficulties they have had to encounter in making the water power efficient and in preparing the broken ground along the river bank for mill sites, and otherwise, in the completion of the water power works.

AND WHEREAS the said Company, as assignee of Richard Fuller and others, now hold a Lease from the Government of Canada, dated 22nd July, 1875, or thereabouts, of all of the islands in the Lake of the Woods lying north of the Steamboat Channel leading into the northwest angle of the said Lake, including the islands in White Fish Bay, and of certain lands on the shore or mainland for the term of twenty-one years from said date, and have agreed to surrender to Her Majesty the said islands :

NOW THEREFORE, these presents witness that in consideration of these premises and of the sum of One Dollar now paid, the said Company have surrendered and yielded up, and do hereby surrender and yield up, unto Her Majesty, Her Heirs and Successors, all of the said islands and all of the land on the shore or mainland contained in or covered by said Lease, free and clear from all terms and conditions of the said Lease, in consideration whereof Her Majesty, represented as aforesaid, will grant to the said Company, their successors, or assigns, yearly licenses to cut timber over seven inches in diameter for two years upon such of said islands as lie north of a line to be drawn from Pipestone Point across the said Lake, due west to a point on the opposite shore thereof, and for not more than ten years, upon such of said islands as lie south of said line and on the shore or mainland, and so long only within such period as there shall be timber of the dimensions aforesaid, upon any of the said lands or islands, and upon such only, such licenses to be subject to the payment of the same dues for timber cut as are provided by the Crown Timber Regulations or Orders in Council respecting the payment of dues on logs or other timber.

And it is hereby agreed by and between the said parties hereto that the island known as Sultana Island is in no way to be affected by the terms of this agreement or by the surrender aforesaid.

AND WHEREAS the said Company have erected upon one of the islands aforesaid, known as Coney Island, certain houses or buildings. It is hereby agreed that the said Company shall have the right to remove such of said buildings so erected by them as they still own, either from said island or on to a portion of said island, twelve acres in extent to be selected and granted to them by Her Majesty.

AND IT IS HEREBY AGREED that the bill and expenses of the Engineer to be appointed as and for the purposes hereinbefore provided, shall be borne in manner following, that is to say : The same may be first paid by the Province to the Engineer, and in such case the said Company shall repay the same to the Province upon being furnished with an account thereof, or the Lieutenant-Governor in Council may direct that the same shall be paid in the first

instance directly to the Engineer by the Company, and in such case the Company shall make payment in accordance with such directions.

The said Company shall give a bond to Her Majesty by way of security for the faithful performance of this agreement upon their part—the said Company in the penal sum of twenty thousand dollars and sureties in other twenty thousand dollars.

The word "Company" when used herein shall include the words "Their successors and assigns."

10 IN WITNESS WHEREOF Her Majesty has caused this agreement to be duly signed, sealed and executed by Her Commissioner of Crown Lands for the Province of Ontario, and the said Company have caused the same to be duly sealed with their Corporate Seal and to be signed by the President and Secretary thereof.

Signed, sealed and delivered in the presence of

(Sgd.) F. X. ST. JACQUES.

(Sgd.) FRANK YEIGH,

20

RICHARD FULLER,
President.
(Seal of Company)
(Sgd.) JOHN MATHER,
Acting Sec'y.
(Sgd.) ARTHUR S. HARDY,
Commissioner, Etc.

In the Supreme Court of Ontario.

Exhibits.
Ex. 87.
Agreement between Keewatin Lumbering & Manufacturing Co. Ltd. and Her Majesty the Queen, 24th November, 1891.

—continued.

Exhibit 90.

(Defendants' Exhibit.)

Letter John Mather to Aubrey White.

435 Theodore Street, Ottawa,
7th March, 1892.

Ex. 90.
Letter, John Mather to Aubrey White, 7th March, 1892.

30

Sir :—

I called on Mr. Kirkpatrick the other day and he informed me that the Lake of the Woods Milling Company have not yet sent in a satisfactory plan of the land asked for by them where the flour mill has been built at Keewatin. In conversation with him I find that we will require, to enable a surveyor to define the proper boundaries, a tracing of part of "Stewart's Plan" north of the line of the Canadian Pacific Railway, from the boundary of the property of Messrs. Dick, Banning & Co. westward as far as a little beyond the house of Mr. Brown, near the Station Grounds on the north side of the Railway.

40

Will you please to send me this tracing as soon as you can conveniently do so and oblige, Sir,

Your obedient servant,
"JOHN MATHER,"

Vice-President, Lake of the Woods Milling Company, Limited.

AUBREY WHITE, ESQ.,

Assistant Commissioner of Crown Lands,
Toronto.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 21.
Plan by E.
Seager
10th
March, 1892.

Exhibit 21.

(Defendants' Exhibit.)

Plan by E. Seager.

See Book of Plans—Plan No. 7.

Exhibit 91.

(Defendants' Exhibit.)

Letter John Mather to Hon. A. S. Hardy.

Ex. 91.
Letter, John
Mather to
Hon. A. S.
Hardy
11th. April
1892

KEEWATIN LUMBERING AND MANUFACTURING COMPANY, LIMITED.
Keewatin, Ont.

Sir :—

11th April, 1892. 10

We are at work making surveys and plans for the improvements in connection with the water-power at Tunnel Island. In doing so we find that there is a small island close to the north side of Tunnel Island that is necessary to utilize the water that will be taken across at that point.

I enclose a plan of part of the town of Rat Portage which shows Tunnel Island and the small island we require coloured green, and attached thereto the certificate of Thomas Turnbull, P.L.S., stating that it contains 4.2 acres. I may say that it is a bare granite rock a few feet over the water without any soil or vegetation whatever, and will be used as a portion of the dam to be built there. Will you please to say whether you can include this in the patent to Tunnel Island, or sell it separately? An early answer will oblige.

Sir, Your obedient servant,

(Sgd.) JOHN MATHER,
Manager.

HON. A. S. HARDY,
Commissioner of Crown Lands,
Toronto.

Exhibit 30.

(Defendants' Exhibit.)

Letter of The Lake of the Woods Co., Ltd., to Hon. A. S. Hardy.

Ex. 30.
Letter of
The Lake of
the Woods
Co., Ltd., to
Hon. A. S.
Hardy—
Memoran-
dum at-
tached, 14th
April, 1892.

Montreal, April 14th, 1892. 30

HON. A. S. HARDY,
Commissioner of Crown Lands,
Toronto, Ont.

Dear Sir :—

We are sending you today plan and field notes of the property at Keewatin for which we have made application for a Patent. Will you be good enough to have the Patent issued at once. We believe that we have complied with all the requirements of your Department, as well as settling with all claimants

against the property and paid for all buildings that may have been erected thereon. We hope to have an early reply from you.

Yours truly,

LAKE OF THE WOODS MILLING Co., LTD.

"A. A. HASTINGS,"

General Manager.

Field notes and description of Location C.C.P. and C.C.P.-A District of Rainy River, 1892, enclosed, by Edmund Seager, P.L.S., Rat Portage, 10th March, 1892.

10

MEMORANDUM ATTACHED.

Department of Crown Lands, Toronto, April 29th, 1892.

The within application of the Lake of the Woods Milling Company, Limited, Keewatin, of the City of Montreal, in the Province of Quebec, for the purchase of two blocks of land at Keewatin Railway Station, in the District of Rainy River, and of two islands in Winnipeg Bay, of the Winnipeg River, adjoining, as shown on plan of survey by P. L. S. Seager dated March 10th, 1892, respectively as 200-P (1¾ ac.), 200-P.A. (3½ ac.), Island 200-P.B. or Quarry Island (6 ac.) and Island 200 P.C. (¾ ac.) of record in the Department of Crown Lands, and which said blocks of land are described as follows (see 5036/92), has been already ruled on by the Commissioner Crown Lands under date Dec. 19th, 1890, and a bond approved of by the Commissioner and executed by said Company has been filed and a proper plan of survey has been filed.

20

"GEO. B. KIRKPATRICK."

Let a patent issue if the purchase money of \$10 per acre has been paid.

"A. S. HARDY,"

Commissioner of Crown Lands.

Patent Letters to John Mather, Keewatin, and W. A. Hastings, General Manager, Montreal, April 29/92.

30

For Plan see M.P. Book Vol 1 (R.R.), page 77.

Rainy River No. 166, Patent dated 10th May/92.

Exhibit 20.

(Defendants' Exhibit.)

Crown Patent (Ontario) to The Lake of the Woods Milling Co., Ltd.

PROVINCE OF ONTARIO.

40

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, &c., &c., &c.

TO ALL TO WHOM THESE PRESENTS SHALL COME—

GREETING :

WHEREAS THE LAKE OF THE WOODS MILLING COMPANY, LIMITED, KEEWATIN, of the City of Montreal, in the Province of Quebec, has contracted and agreed for the absolute purchase of the Lands and Tenements hereinafter mentioned and described at and for the price and sum one hundred and twenty

In the Supreme Court of Ontario.

Exhibits. Ex. 30.

Letter of The Lake of the Woods Co., Ltd., to Hon. A. S. Hardy—Memorandum attached, 14th April, 1892.

—continued.

Ex. 20. Crown Patent (Ontario) to The Lake of the Woods Milling Co., Ltd., 10th May, 1892.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 20.
Crown
Patent
(Ontario)
to The Lake
of the Woods
Milling Co.,
Ltd., 10th
May, 1892.

—continued.

dollars of lawful money of Canada, and of which Lands we are seized in right of Our Crown.

NOW KNOW YE, that in consideration of the said sum of one hundred and twenty dollars well and truly paid to Our use at or before the sealing of these Our Letters Patent, We have granted, and by these presents do grant, unto the said THE LAKE OF THE WOODS MILLING COMPANY, LIMITED, KEEWATIN, in fee simple : ALL those parcels or tracts of Land, situate, lying and being in the District of Rainy River in the Province of Ontario, containing by admeasurement Twelve acres be the same more or less, which said Parcels or Tract of Land may be otherwise known as follows, that is to say : being 10 composed of Two Blocks of Land at Keewatin Railway Station in the District of Rainy River, namely 200-P (containing one acre and three quarters of an acre), 200 P.A. (containing three acres and a half), and Two Islands in Winnipeg Bay of the Winnipeg River adjoining namely—Island 200 P.B. or Quarry Island (containing six acres) and Island 200 P.C. (containing three quarters of an acre) as shewn respectively on plan of Survey by E. Seager, Provincial Land Surveyor dated “10th March, 1892” of record in the Department of Crown Lands, and described as follows : that is to say—First as regards Block 200P. Beginning at the North West corner of Dick, Banning and Com- 20 pany’s property as granted by Letters Patent dated the Fifth day of January in the year of Our Lord one thousand eight hundred and ninety one at the Water’s edge of Winnipeg River, thence due South two chains forty five links to an iron post set by Provincial Land Surveyor Stewart in A.D. 1889, at the distance of twenty feet from the edge of the Mill race made by the Lake of the Woods Milling Company, thence North eighty seven degrees four minutes East one chain twenty nine links to an iron post set by Provincial Land Surveyor Stewart A. D. 1889, thence South two degrees fifty six minutes East seventy five and one-half links to an iron post set as aforesaid twenty feet from edge of said Mill race thence South eighty nine degrees fifty six minutes East keeping 30 twenty feet from edge of said Mill race four chains twenty six links and a half to an iron post planted by Provincial Land Surveyor Stewart in A.D. 1889, on the North boundary of Keewatin Railway Station Ground at a point three chains and thirty links from an iron bar planted by Provincial Land Surveyor Stewart in A.D. 1889, at the North East corner of said Station Ground, then Westerly along said North boundary nine chains seventy links more or less to the shore of Winnipeg Bay, thence North Easterly following the shore in all its windings to the place of beginning, containing one acre and three quarters of an acre.

Second as regards Block 200 P.A. Beginning at the intersection of the North boundary of the Canadian Pacific Railway right of way with the shore 40 of Winnipeg Bay West of Keewatin Station Ground , thence Easterly along the North boundary of the said Right of Way one chain twenty seven links to the South west angle of Location S-4, thence Northerly along the West boundary of said Location S-4 fifty-five links to the North West corner thereof, thence North Sixty-two degrees thirty-eight minutes East along the rear boundaries of Locations S-4, S-3, S-2, and S-1, five chains seventy eight links to the North West corner of Keewatin Railway Station Ground, thence Easterly along

North boundary of said Station Ground to its intersection with the shore of Winnipeg Bay, thence Westerly following the shore in all its windings to the place of beginning, containing three acres and a half.

10 Saving, excepting and reserving, nevertheless, unto Us, Our Heirs and Successors, the free use, passage and enjoyment of, in, over and upon all navigable waters which shall or may hereafter be found on or under, or be flowing through or upon any part of the said Parcels or Tracts of Land hereby granted as aforesaid, reserving also right of access to the shores of all rivers, streams and lakes for all vessels, boats, and persons, together with the right to use so much of the banks thereof, not exceeding one chain in depth from the water's edge as may be necessary for fishery purposes.

GIVEN under the Great Seal of Our Province of Ontario :

WITNESS, the Honourable SIR ALEXANDER CAMPBELL, Knight Commander of Our most distinguished Order of St. Michael and St. George, a Member of Our Privy Council for Canada, Lieutenant-Governor of Our Province of Ontario.

AT TORONTO, this Tenth day of May, in the year of Our Lord one thousand eight hundred and ninety-two, and in the fifty-fifth year of Our Reign.

20 BY COMMAND OF THE LIEUTENANT-GOVERNOR IN COUNCIL
 J. M. GIBSON, Secretary. ARTHUR S. HARDY, Commissioner of Crown Lands.
 Recorded the 27th day of May, A.D. 1892.
 JOHN F. C. USSHER, Deputy Registrar.

Exhibit 92.

(Plaintiffs' Exhibit.)

30 Indenture of Assignment, Keewatin Lumbering and Manufacturing Co. Ltd., to The Keewatin Power Co., Ltd.

THIS INDENTURE made this twenty-second day of September, A.D. 1893,
 BETWEEN :
 THE KEEWATIN LUMBERING AND MANUFACTURING COMPANY, LIMITED.

of the First Part,

AND

THE KEEWATIN POWER COMPANY, LIMITED,

of the Second Part.

40 WHEREAS by an agreement bearing date the 24th day of November, A.D. 1891, and made between The Keewatin Lumbering and Manufacturing Company, Limited, and Her Majesty The Queen as represented by the Province of Ontario, after reciting that Her Majesty had contracted to sell to The Keewatin Lumbering and Manufacturing Company, Limited, and the said Company had contracted to purchase from Her Majesty, a certain island known as Tunnel Island in the Lake of the Woods in the District of Rainy River in the Province of Ontario, saving and excepting the right of way of

In the Supreme Court of Ontario.

Exhibits.
 Ex. 20.
 Crown Patent (Ontario) to The Lake of the Woods Milling Co., Ltd., 10th May, 1892.

—continued.

Ex. 92.
 Indenture of Assignment Keewatin Lumbering & Manufacturing Co., Ltd., to The Keewatin Power Co., Ltd., 22nd September, 1893.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 92.

Indenture of
Assignment,
Keewatin
Lumbering &
Manufacturing Co.,
Ltd., to The
Keewatin
Power Co.,
Ltd., 22nd
September,
1893.

—continued.

The Canadian Pacific Railway Company thereon and any other rights which the said Railway Company may have, the Colonization road one chain in width leading to Keewatin and saving and excepting also fifty-one acres more or less situated to the South of the right of way of the said Railway Company and adjoining the outlet of the east branch of the Winnipeg River bounded on the east and south sides by the waters of the Lake of the Woods and on the west by a due north and south line extending from the Lake of the Woods to the right of way of said Railway Company and on the north by the said right of way and also for the purchase of twenty-three acres of land on the south shore of the west branch of the Winnipeg River at or near the Lower Falls 10 and composed of a strip of land four chains in perpendicular width inland from the waters edge and extending from the east limit of location 227-P a distance easterly of fifty eight chains more or less to a point at the waters edge of said River distant about thirteen chains north of the right of way of said Railway Company, but such parcel should not exceed twenty-three acres in extent, the said parcels so contracted to be sold containing by admeasurement three hundred and seventy-three acres more or less, together with the water power adjoining thereto on the west branch or outlet of the Winnipeg River for the sum of sixteen hundred and seventy-eight dollars of lawful money of Canada upon the conditions and for the considerations in the said agreement 20 set out and after further reciting that Her Majesty had agreed with the Keewatin Lumbering and Manufacturing Company, Limited, that upon the sale of the unsold lands adjoining the said twenty-three acres on the south side of said River that she would reserve a high-way or right of way from the present Colonization road to the said twenty-three acres at some convenient point to be selected and also a right of way for the Canadian Pacific Railway to lay a siding or spur track to such twenty-three acres at some convenient point to be selected and that she should not make a greater charge for such reserve for such purpose than at the rate of four dollars and fifty cents per acre and it was amongst other things provided in said agreement that the Keewatin Lumbering and Manufacturing Company, Limited, their successors or assigns should 30 expend in the construction of works for the purpose of creating a water power the sum of Two hundred and fifty thousand dollars at the times and upon the conditions set out in the said agreement.

AND WHEREAS certain promoters of the Keewatin Power Company, Limited, having in contemplation the formation of the said Company for the purpose of constructing works for creating a water power as mentioned in said agreement, agreed with the Keewatin Lumbering and Manufacturing Company Limited for the transfer of the lands and premises described and mentioned in the hereinbefore in part recited agreement to the Keewatin Power Company, Limited, and the President of the Keewatin Lumbering and Manufacturing 40 Company Limited was authorized by resolution of the shareholders of that Company to transfer and convey to the Keewatin Power Company, Limited, all the rights and privileges granted by the hereinbefore in part recited agreement.

AND WHEREAS the Keewatin Lumbering and Manufacturing Company, Limited, Richard Fuller, Alexander Fraser, William Ryan Thistle, and John

Mather entered into a bond with Her Majesty the Queen bearing date the 24th day of November, 1891, for the faithful performance and observance of all the terms conditions and stipulations in the said in part recited condition contained and to be by the Keewatin Lumbering and Manufacturing Company Limited observed, performed and kept and it was a condition of the agreement between the Keewatin Lumbering and Manufacturing Company, Limited, and the promoters of the Keewatin Power Company Limited for the transfer aforesaid that the said Power Company should indemnify and save harmless the Keewatin Lumbering and Manufacturing Company Limited and the other obligors named in the said bond from and against the said bond and all loss, costs, charges, damages and expenses they or any of them might incur or be put to by reason of the said bond.

In the Supreme Court of Ontario.
 Exhibits.
 Ex. 92.
 Indenture of Assignment, Keewatin Lumbering & Manufacturing Co., Ltd., to The Keewatin Power Co., Ltd., 22nd September, 1893.

NOW THIS INDENTURE WITNESSETH that in pursuance of the premises and in consideration of the sum of ONE DOLLAR now paid by the Keewatin Power Company, Limited, to the Keewatin Lumbering and Manufacturing Company, Limited, DOth ASSIGN, TRANSFER AND SET OVER unto the Keewatin Power Company, Limited, all its rights and privileges under the said in part recited agreement and in and to the lands and premises therein mentioned and described and any other lands to be granted in pursuance of said agreement save and except the lands on Coney Island subject to the terms, conditions and stipulations therein contained.

—continued.

AND the Keewatin Power Company Limited for itself and its successors doth hereby COVENANT with the Keewatin Lumbering and Manufacturing Company, Limited, and its successors to observe and perform all the stipulations and agreements set out in the said in part recited agreement and to indemnify and save harmless the Keewatin Lumbering and Manufacturing Company, Limited, and its successors from and against the said in part recited bond and from and against all loss, costs, charges, damages and expenses that it or they may incur or be put to through or by reason of the said bond or through or by reason of the neglect, failure or default of the Keewatin Power Company, Limited, to observe and perform the terms and stipulations in the said in part recited agreement contained.

IN WITNESS WHEREOF the said Companies have hereunto set their CORPORATE SEALS.

Witness : "HARRY B. WITTON" [SEAL] (The Keewatin Power Company, Limited, 40 incorporated 1893.)	"RICHD. FULLER, President" "RICHD. FULLER, President"	[SEAL] (Keewatin Lumbering and Manufacturing Company, Limited.)
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Exhibit 1.

(Plaintiffs' Exhibit.)

In the
Supreme
Court of
Ontario.

Crown Sale Grant (Ontario) to Keewatin Power Company, Limited.

Exhibits.
Ex. 1.
Crown
Sale Grant
(Ontario)
to Keewatin
Power Com-
pany, Ltd.,
18th April,
1894.

Seal }
Province of } "GEORGE A. KIRKPATRICK."
Ontario. }

PROVINCE OF ONTARIO.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain, and Ireland, Queen, Defender of the Faith, &c., &c., &c.

To ALL to whom these Presents shall come, GREETING : 10

WHEREAS by an agreement bearing date the Twenty-fourth day of November in the year of Our Lord one thousand eight hundred and ninety-one and made between THE KEEWATIN LUMBERING AND MANUFACTURING COMPANY, LIMITED, of the First part and Us as represented by the Province of Ontario, of the Second part, after reciting that WE had agreed to sell to the said Company and the said Company had contracted and agreed with Us to purchase a certain Island known as Tunnel Island in the Lake of the Woods in the District of Rainy River in the said Province of Ontario, saving and excepting the right of way of The Canadian Pacific Railway Company thereon and any other rights which the said Railway Company might have, saving and excepting the Colonization Road one chain in width leading to Keewatin, and saving and excepting also Fifty-one acres more or less situated to the South of the right of way of the said Railway Company and adjoining the outlet of the East branch of the Winnipeg River, bounded on the East and South sides by the waters of the Lake of the Woods on the West by a due North and South line extending from the Lake of the Woods to the right of way of the said Railway Company and on the North by the said right of way; and also for the purchase of Twenty-three acres of land on the South shore of the West branch of the Winnipeg River at or near the Lower Falls and composed of a strip of land Four chains in perpendicular width inland from the water's edge and extending from the East limit of Location 227 P. a distance Easterly of Fifty-eight chains more or less to a point at the water's edge of said River distant about Thirteen chains North of the right of way of said Railway Company, but such strip should not exceed in extent Twenty-three acres, the said parcels so to be sold containing by admeasurement Three hundred and seventy-three acres more or less, together with the water power adjoining thereto on the West branch or outlet of the Winnipeg River for the sum of One thousand six hundred and seventy-eight dollars of lawful money of Canada, upon certain conditions and for certain other considerations thereafter set forth and that we had further agreed with the said Company that upon the sale of the unsold land adjoining the said Twenty-three acres on the South side of said River WE would reserve a highway or right of way sixty-six feet in perpendicular width from the present Colonization Road to the said Twenty-three acres at some convenient point to be selected and also a right 20 30 40

- of way One hundred and fifty feet in perpendicular width to lay a siding or spur track to such twenty-three acres at some convenient point to be selected and that WE would not make a greater charge for such reserve for such purposes than at the rate of Four Dollars and fifty cents per acre. It was witnessed that the said COMPANY should expend in the construction of works for the purpose of creating a water power the sum of Two hundred and fifty thousand dollars whereof at least One hundred and fifty thousand dollars was to be expended within a period of Three years from the date of the said agreement the work to be begun within One year from said date and not less than
- 10 One-fourth of the said last mentioned sum to be expended within One year from the commencement of the work the remainder of the Two hundred and fifty thousand dollars to be expended when Our Lieutenant Governor in Council should so direct; and whereas the said Company did also covenant with Us that before executing any portion of said Work they would submit to Our Lieutenant-Governor-in-Council plans and statements in detail of the system or scheme proposed to be adopted in carrying out such works which plans and statements should not be acted on until they should have been approved by an engineer appointed for that purpose and whereas the said Company did further covenant with Us that they would supply to such
- 20 parties as might require it water power to the extent of the capacity of the works aforesaid at a rate per horse power per annum and would upon the completion of the said works or when fit for use give leases of lands for the erection of buildings and factories upon terms and at a rate per square foot per annum, the maximum of both of such rates to be fixed and determined by a competent engineer to be appointed by Our Lieutenant-Governor in Council for that purpose and that such engineer in fixing the rates aforesaid might take into account the expenditure which the Company had been called upon to make and the difficulties they had had to encounter in making the water power efficient and in preparing the broken ground along the river bank for
- 30 mill sites and otherwise in the completion of the water power works.

AND WHEREAS the said Company have applied to Us for and WE have agreed to sell to the said Company an additional width of Two hundred feet on the South shore of the Winnipeg River containing about Fourteen acres in addition to the twenty-three acres hereinbefore mentioned and also about three acres additional lying between the right of way for a railway siding or spur track aforesaid and the West branch of the Winnipeg River;

- AND WHEREAS the said Company have also applied to Us FOR and WE have agreed to sell to the said Company a small island containing four acres situate in the West Branch of the Winnipeg River on the North side of Tunnel
- 40 Island; AND WHEREAS the said Company have submitted to Our Lieutenant-Governor-in-Council a plan and Report of the System or scheme to be adopted in carrying out the works proposed, which plan and report have been approved by Us and whereas the said Company have otherwise in part fulfilled the terms of the agreement hereinbefore in part recited to OUR satisfaction.

AND WHEREAS by deed dated the Twenty-second day of September in the Year of Our Lord one thousand eight hundred and ninety-three the said THE KEEWATIN LUMBERING AND MANUFACTURING COMPANY LIMITED did

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 1.

Crown
Sale Grant
(Ontario)
to Keewatin
Power Com-
pany, Ltd.,
13th April,
1894.

—continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 1.
Crown
Sale Grant
(Ontario) to
Keewatin
Power Com-
pany, Ltd.,
13th April,
1894.

assign transfer and set over unto the **KEEWATIN POWER COMPANY LIMITED** all its rights and privileges under the said in part recited agreement and in and to the lands and premises therein mentioned and described and any other lands to be granted in pursuance of said agreement save and except the lands on Coney Island, subject to the terms, conditions and stipulations therein contained and whereas the said **THE KEEWATIN POWER COMPANY LIMITED** have assumed the burden of the said agreement and have given satisfactory security to Us for the performance by them of all the terms and conditions of the said agreement in as full large and ample a manner as the said **THE KEEWATIN LUMBERING AND MANUFACTURING COMPANY LIMITED** had covenanted to perform the same. 10

—continued.

KNOW YE therefore that in consideration of the premises and of the sum of One thousand seven hundred and thirty-nine dollars and twenty-five cents of lawful money of Canada well and truly paid to Our use at or before the sealing and delivery of these Letters Patent, WE have given and granted and by these presents do give and grant unto the **KEEWATIN POWER COMPANY LIMITED** in fee simple, ALL those parcels of land and land covered with water situate in the Municipality of Rat Portage in the District of Rainy River described as follows, that is to say : (a) All that part of Tunnel Island lying Northerly and Westerly of the right of way of The Canadian Pacific Railway Company containing three hundred and fifteen acres more or less : 20

(b) That block of land situate on Tunnel Island Southerly of the right of way of the Canadian Pacific Railway Company and adjoining the West branch of the Winnipeg River marked K.L.M.Co. on plan of survey by Ontario Land Surveyor E. Seager dated "August 24th, 1892" of record in the Department of Crown Lands as surveyed by him under instructions from said Department dated the Eighth day of August in the Year of Our Lord one thousand eight hundred and ninety-two, containing exclusive of the Colonization road One chain wide leading towards Keewatin crossing said block twenty-seven acres and a half, more or less. 30

(c) A small island situate in the West branch of the Winnipeg River on the North side of Tunnel Island as shown colored Green on sketch prepared by Ontario Land Surveyor Thomas Turnbull dated April 6th, 1892 of record in the Department of Crown Lands containing four acres more or less.

(d) That block of land situate on the South shore of the West branch of the Winnipeg River shown colored Yellow on plan of Village of Norman by Ontario Land Surveyor T. R. Deacon, dated August 23rd, 1893 of record in the Department of Crown Lands as surveyed by him under instructions from said Department dated July 31st, 1893, described as follows :—Commencing at an iron post planted at the intersection of the East limit of Mill Location 227P, granted by Letters Patent dated the Thirtieth of June in the year of Our Lord one thousand eight hundred and ninety-two to Messrs. Ross, Hall and Brown with the water's edge of the West branch of the Winnipeg River, thence due South astronomically along said limit four chains; thence North seventy-nine degrees twenty-four minutes East astronomically six chains, seventy-five links; thence North three degrees, twenty-five minutes East astronomically one chain forty-two links; thence North Eighty-three degrees 40

twenty-four minutes East astronomically forty-five chains thirty-four links to a birch post planted by Ontario Land Surveyor Deacon in the Westerly limit of a railway siding One hundred and fifty feet in perpendicular width laid out by Ontario Land Surveyor Seager as shown on plan of survey of same dated May 21st, 1892, of record in the Department of Crown Lands; thence the following courses and distances along the Western and Southerly limit of said railway siding, viz.: North seventeen degrees thirty-eight minutes West astronomically fifty-five links; thence North fifty-one degrees fifty minutes West astronomically two chains thirty-two links; thence North eighty-two
 10 degrees twenty minutes West astronomically three chains seventy-six links; thence North eighty-six degrees thirty minutes West astronomically three chains forty-seven links to a point or re-entrant angle in the herein described block; thence North sixty-six degrees twenty-four minutes East astronomically five chains sixty-six links to the Easterly limit of said railway siding; thence the following courses and distances along said Easterly limit, viz.: South eighty-two degrees twenty minutes East astronomically two chains eighty-five links, thence South fifty-one degrees fifty minutes East astronomically three chains sixty-nine links; thence South seventeen degrees thirty-eight minutes East astronomically three chains sixty-two links; thence South
 20 nine degrees forty-three minutes West astronomically two chains thirty-three links; thence South forty-five degrees West astronomically five chains eighty-seven links to the North limit of Bulmer's Mill Location; thence due East astronomically along said limit three chains twenty-nine links to the North East angle of said Mill Location; thence due South astronomically along the East limit thereof fifty-three links more or less to the Northerly limit of the right of way of The Canadian Pacific Railway Company; thence Easterly along said limit five chains more or less to the Water's edge of the West Branch of the Winnipeg River; and thence Northerly and Westerly along said water's edge following the turnings and windings thereof to the place of
 30 beginning containing forty acres more or less.

(e) ALL those islets or reefs of rocks and the land under water in said West branch of Winnipeg River between Tunnel Island and the last described block of land together with the water power adjoining thereto on the West branch or outlet of the said Winnipeg River.

The whole herein described land containing three hundred and eighty-six acres and a half more or less.

SUBJECT nevertheless to the performance by the said THE KEEWATIN POWER COMPANY LIMITED of all the terms and conditions of the hereinbefore in part recited agreement of the Twenty-fourth day of November in the year
 40 of Our Lord one thousand eight hundred and ninety-one and subject also to the condition and understanding that nothing herein contained shall be construed as conferring upon the grantees exclusive rights elsewhere upon the said Lake of the Woods or upon other streams flowing into or out of said Lake, or shall confer upon said Company power or authority to interfere with or in any way restrict any powers or privileges heretofore enjoyed by us or which may hereafter be granted or demised to any other person or company

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Ex. 1.
 Crown
 Sale Grant
 (Ontario) to
 Keewatin
 Power Com-
 pany, Ltd.,
 13th April,
 1894.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 1.

Crown
Sale Grant
(Ontario)
to Keewatin
Power Com-
pany, Ltd.,
13th April,
1894.

—continued.

in respect of any other water power on the said Lake of the Woods or on any other stream flowing out of or into the said Lake.

PROVIDED that any such powers or privileges which may hereafter be granted shall not destroy or derogate from the privileges hereby granted.

GIVEN under the GREAT SEAL OF OUR PROVINCE OF ONTARIO:

WITNESS the HONOURABLE GEORGE AIREY KIRKPATRICK, MEMBER of OUR PRIVY COUNCIL for CANADA and LIEUTENANT GOVERNOR of OUR PROVINCE OF ONTARIO.

AT TORONTO this Thirteenth day of April in the year of Our Lord one thousand eight hundred and ninety-four and in the fifty-seventh year of Our 10 Reign.

By Command of the Lieutenant-Governor in Council.

“J. M. GIBSON”

Secretary.

Commissioner of Crown Lands.

Exhibit 13.

(Defendants' Exhibit.)

Transfer, Dick and Banning to Ontario and Western Lumber Co. Ltd.

LAND TITLES ACT.

We, William Robert Dick of the City of Winnipeg in the Province of Manitoba, Lumber Merchant and Mary Banning of the same place, Widow, 20 the registered owners of the freehold land registered in the Office of Land Titles at Rat Portage, as parcel 110, in the Register for Rainy River in consideration of the sum of ——— Dollars paid to me, transfer to

THE ONTARIO AND WESTERN LUMBER COMPANY (LIMITED)
the land hereinafter particularly described, namely :

All that parcel or tract of land situate lying and being in the Municipality of Keewatin in the District of Rainy River and Province of Ontario, containing by admeasurement 27 acres, be the same more or less, which said parcel or tract of land may be otherwise known as follows, that is to say, being composed of all that parcel of land containing 27 acres, more or less, known 30 as Dick, Banning and Co.'s Mill Location situate between Portage Bay and Winnipeg Bay in the Municipality of Keewatin in the District of Rainy River and Province of Ontario, shewn on plan of survey of said Municipality by E. Stewart, P.L.S., dated 20th December 1889, of record in the Department of Crown Lands, and more particularly described as follows, that is to say :—

Commencing at an iron bar set by Provincial Land Surveyor E. Stewart on the North limit of the right of way of the Canadian Pacific Railway 75 feet North of the centre line thereof at the distance of 20 chains 58 links measured Westerly along said limit from the limit between the Municipalities of Rat Portage and Keewatin; thence Westerly along said North limit 20 40 chains, more or less to a point where the additional width for Station Ground at Keewatin has been laid out; thence Northerly along a line perpendicular

Ex. 13.
Transfer,
Dick and
Banning to
Ontario and
Western
Lumber
Company,
Limited,
14th March,
1896.

to the said centre line of railway 125 feet to an iron bar; thence Westerly along the North limit of Station Ground so laid out 218 feet to an iron post planted at a distance of 20 feet perpendicular distance from the edge of the millrace constructed by the Lake of the Woods Milling Company (Limited) thence Westerly at said perpendicular distance of 20 feet therefrom 281 feet and a half to an iron post; thence Northerly 50 feet to an iron post; thence Westerly 85 feet to an iron post planted on the West limit of the herein described tract and 20 feet North of the edge of the said mill race; thence due North 2 chains 75 links, more or less, to the water's edge of Winnipeg Bay; 10 thence Easterly and Northerly along said water's edge to its intersection with the South limit of Mining Location K 83 granted by Letters Patent dated 1st August 1890 to Edward Peltier; thence due East along the South limit thereof 5 chains 50 links to the North East angle of herein described tract; thence due South 12 chains 80 links more or less to the South limit of the Rat Portage and Keewatin Colonization Road; thence South Westerly along said limit 1 chain 60 links more or less to an iron bar planted by E. Stewart, P.L.S.; thence due South two chains 33 links more or less, to the place of beginning.

Reserving right of way for the Rat Portage and Keewatin Colonization 20 Road 40 feet in width, being the whole of the said parcel.

And I, Isabelle Dick wife of the said William Robert Dick hereby bar my dower in the said land.

Dated the Fourteenth day of March one thousand eight hundred and ninety-six.

Witness as to signature of W. R. Dick,
"A. P. COLLIER."

As to signature of Isabelle Dick
and Mary Banning,
"JOHN DICK."

"W. R. DICK"
"MARY BANNING."
"ISABELLE DICK."

30

Exhibit 14.

(Defendants' Exhibit.)

Transfer Ontario and Western Lumber Co. Ltd., to Dick and Banning.

We, The Ontario and Western Lumber Company, Limited, of the Town of Rat Portage in the Province of Ontario, the registered owners of the freehold land registered in the Office of Land Titles at Rat Portage as parcel 110 40 in the Register for the District of Rainy River with an Absolute Title, in consideration of the sum of One dollar paid to us, transfer to William Robert Dick and Mary Banning, carrying on business as Lumber Merchants, under the name and style of Dick, Banning and Co. of the City of Winnipeg in the Province of Manitoba, part of the said lands described as follows, namely :

Commencing at an iron post planted on the South East corner of what is known as the Dick & Banning property and on the Northerly boundary of the Canadian Pacific Railroad Company's right of way; thence Westerly

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 13.
Transfer,
Dick and
Banning to
Ontario and
Western
Lumber
Company,
Limited,
14th March,
1896.

—continued.

Ex. 14.
Transfer
Ontario and
Western
Lumber Co.,
Ltd., to Dick
and Banning
14th April,
1896.

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 14.
Transfer
Ontario and
Western
Lumber Co.,
Ltd., to Dick
and Banning
14th April,
1896.

—continued.

along the Northerly boundary of said right of way seven chains and seventy-five links; thence Northerly parallel with the Easterly boundary of said Dick and Banning property three chains and seventy-five links; thence Easterly in a straight line parallel as near as may be to the said right of way seven chains and seventy-five links to what was formerly the Easterly boundary of said Dick & Banning property; thence Southerly three chains and seventy-five links to the place of beginning, being a part of the said parcel.

Dated the fourteenth day of April one thousand eight hundred and ninety-six.

D. C. CAMERON, [SEAL] 10
President.

Ontario and Western Lumber Co. Ltd.
D. C. CAMERON,
President.

Witness :
A. G. CAMPBELL,

[SEAL]

Exhibit 15.

(Defendants' Exhibit.)

Transfer Ontario and Western Lumber Co. Ltd., to The Rat Portage Lumber Company, Limited.

LAND TITLES ACT.

The Ontario & Western Lumber Company (Limited) the registered owners of the freehold land registered in the Office of Land Titles at Rat Portage as Parcels 387, 110, 189, 19, 254, 381, 201 and 40 in the Register for Rainy River, in the District of Rainy River, for divers valuable considerations paid to it, by The Rat Portage Lumber Company (Limited) TRANSFER to the Rat Portage Lumber Company (Limited) its successors and assigns, the lands and premises set forth and described in the Schedule hereunto annexed, marked "A," being the said parcels 387, 110, 189, 19, 254, 381, 201 and 40 in the register for Rainy River, in the District of Rainy River, free from all encumbrances, except those appearing upon the Register against the said lands. 30

Dated this fifth day of August, A.D. 1896.

D. C. CAMERON,
President.

Witness :
G. R. KAPPELE,

A. G. CAMPBELL, [SEAL]
Secretary.

"A."

This is Schedule "A" referred to in the annexed Transfer under The Land Titles Act, from The Ontario & Western Lumber Company (Limited) to The Rat Portage Lumber Company (Limited) dated the fifth day of August, A.D. 1896. 40

PARCEL 387 : That certain parcel of land registered under The Land Titles Act as Parcel 387 in the Register for Rainy River in the District of Rainy River, and Province of Ontario, namely :—

A portion of the Minnesota and Ontario Lumber Company's Mill Location at Norman, particularly described as follows :—Commencing at an iron bar

Ex. 15.
Transfer,
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Lumber Co.,
Ltd. to The
Rat Portage
Lumber
Company
Limited.
5th August,
1896.

set in boulder on a point in Lake of the Woods at the Western entrance to Bay leading to Bulmer and Company's saw mill; thence Westerly and following the water's edge to a point one chain Southerly from an iron bar planted by E. Stewart, P.L.S., in the limit between the above described location and Cameron and Kennedy's saw mill location; thence North one degree and sixteen minutes West astronomically to the above mentioned iron bar set by E. Stewart, P.L.S., one chain from the water's edge; thence North eighty-seven degrees fourteen minutes East astronomically one chain forty links to the South East angle of Teevin's parcel; thence North one degree and sixteen minutes West four chains and thirty links; thence North eighty-seven degrees and fourteen minutes East astronomically two chains and eighteen links to an iron bar planted by E. Stewart, P.L.S.; thence North one degree and nineteen minutes East astronomically fourteen chains and seventy links to a post planted by T. R. Deacon, O.L.S.; thence South eighty-eight degrees and forty-six minutes East four chains to a post planted by T. R. Deacon, O.L.S.; thence North one degree and nineteen minutes East two chains to a post planted by T. R. Deacon, O.L.S.; thence South eighty-eight degrees and forty-one minutes East seven chains and forty-six links more or less to a post planted by T. R. Deacon, O.L.S. in the Western limit of Bulmer and Company's Location; thence South twenty-eight degrees and fifty-six minutes East along said limit one chain and seventy-seven links more or less to an iron bar planted by E. Stewart, O.L.S., ten feet from the water's edge of a small bay of the Lake of the Woods; thence South Westerly and South Easterly at the uniform distance of ten feet from the water's edge to the place of beginning, at the iron bar in boulder and shown on Plan M-12, containing twenty-five and one-half acres. Subject nevertheless to the reservations provisoes and conditions contained in the General Mining Act and the Acts amending the same and saving and excepting the reservations and exceptions contained in the original Patent from the Crown, namely :—All pine trees standing or being on the said land, as provided by the twelfth Section of the General Mining Act, the free use, passage and enjoyment of, in, over and upon all navigable waters which shall or may hereafter be found on or under or shall or may flow through or upon any part of the said land; and also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons, together with the right to use so much of the banks thereof, not exceeding one chain in depth from the water's edge as may be necessary for fishery purposes.

The title of the said The Ontario and Western Lumber Company is subject also to any unpaid Municipal taxes, charges, rates or assessments imposed for 1892 or afterwards. Subject to the exceptions and qualifications mentioned in Section 24 of the Land Titles Act.

PARCEL 110 : That certain parcel of land registered under Land Titles Act as Parcel 110 in the Register for Rainy River situate in the Municipality of Keewatin in the District of Rainy River, and Province of Ontario, namely : all that parcel of land containing twenty-seven acres, more or less, known as Dick, Banning and Company's Mill Location situate between Portage Bay and Winnipeg Bay in the Municipality of Keewatin in the District of Rainy River and Province of Ontario, shown on plan of survey of said Municipality by E. Stewart, Provincial Land Surveyor, dated 20th December, 1889, of record in the Department of Crown Lands, and more particularly described

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 15.
Transfer,
Ontario and
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Lumber Co.
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1896.

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Court of
Ontario.

Exhibits.
Ex. 15.
Transfer,
Ontario and
Western
Lumber Co.,
Ltd., to Dick
and Banning,
5th August,
1896.

—continued.

as follows :—Commencing at an iron bar set by Provincial Land Surveyor E. Stewart on the North limit of the right of way of the Canadian Pacific Railway seventy-five feet North of the centre line thereof at a distance of twenty chains fifty-eight links measured Westerly along said limit from the limit between the Municipality of Rat Portage and Keewatin; thence Westerly along said North limit twenty chains more or less to a point where the additional width for station ground at Keewatin has been laid; thence Northerly along a line perpendicular to the said centre line of railway one hundred and twenty-five feet to an iron bar; thence Westerly along the North limit of Station Ground so laid out two hundred and eighteen feet to an iron post planted at the distance of twenty feet perpendicular distance from the edge of the Mill Race constructed by the Lake of the Woods Milling Company Limited; thence Westerly at said perpendicular distance of twenty feet therefrom two hundred and eighty-one feet and a half to an iron post; thence Northerly fifty feet to an iron post; thence Westerly eighty-five feet to an iron post planted on the West limit of the therein described tract and twenty feet north of edge of said Mill Race; thence due North two chains and seventy-five links more or less to the water's edge of Winnipeg Bay; thence Easterly and Northerly along said water's edge to its intersection with the South limit of Mining Location K-83 granted by Letters Patent dated the first day of August in the year of our Lord one thousand eight hundred and ninety to Edward Peltier; thence due East along the South limit thereof five chains fifty links to the North East angle of therein described tract; thence due South twelve chains eighty links more or less to the South limit of Rat Portage and Keewatin Colonization Road; thence South Westerly along said limit one chain sixty links more or less to an iron bar planted by E. Stewart, Provincial Land Surveyor; thence due South two chains thirty-three links more or less to the place of beginning. SUBJECT NEVERTHELESS to the reservations and exceptions contained in the original Patent from the Crown, namely :—The right of way for the Rat Portage and Keewatin Colonization Road, the free use, passage and enjoyment of, in, over and upon all navigable waters that shall or may be found on or under or be flowing through or upon any part of said land; also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons, together with the right to use so much of the banks thereof, not exceeding one chain in depth from the water's edge as may be necessary for fishery purposes. The title of the Ontario and Western Lumber Company is subject also to the following : Any unpaid Municipal taxes, charges, rates, assessments unpaid for 1891 or afterwards; subject to the exceptions and qualifications mentioned in Section 24 of the Land Titles Act; saving and excepting that portion transferred to William Robert Dick by transfer

PARCEL 189 : That certain parcel of land registered under the Land Titles Act as Parcel 189 in the Register for Rainy River in the District of Rainy River and Province of Ontario, namely : Mill Location at Norman in the said District containing thirty-three acres, as shown on plan of survey by E. Stewart, Provincial Land Surveyor, dated 20th December, 1889, of record in the Department of Crown Lands described as follows : Commencing at the South West angle of the land granted by Letters Patent dated the sixteenth day of October in the year of our Lord 1891 to the Minnesota and Ontario Lumber Company being a point on the shore of the Lake of the Woods

distant one chain Southerly of an iron bar planted by Provincial Land Surveyor E. Stewart in the year of our Lord 1889; thence one degree sixteen minutes West astronomically passing through said bar five chains thirty links to an iron bar planted by Provincial Land Surveyor E. Stewart in the year of our Lord 1889; thence one degree sixteen minutes West astronomically passing through said bar five chains thirty links to an iron bar planted by Provincial Land Surveyor E. Stewart 1889; thence North eighty-seven degrees fourteen minutes East astronomically three chains fifty-eight links to an iron bar planted by Provincial Land Surveyor E. Stewart A.D. 1889; thence North
 10 one degree nineteen minutes East astronomically crossing the right of way of the Canadian Pacific Railway Company twenty-three chains seventy links to an iron bar planted by Provincial Land Surveyor E. Stewart in the year of our Lord 1889; thence due West astronomically twelve chains more or less to the North limit of said right of way; thence crossing said right of way to the intersection of the Southerly limit of said right of way with the Easterly water's edge of a certain bay running up Northerly from the Lake of the Woods; thence Southerly, Westerly and Easterly following the water's edge of said bay and of the Lake of the Woods to the place of beginning. Reserving therefrom the right of way of the Canadian Pacific Railway and reserving to
 20 the Minnesota and Ontario Lumber Company, their successors and assigns the use of a switch or spur track twenty feet wide as constructed and now in use leading from the Main line of the Canadian Pacific Railway to the Mill of the said Lumber Company. (SAVING AND EXCEPTING the reservations and exceptions contained in the original patent from the Crown, namely, and the free use, passage and enjoyment of, in over and upon all navigable waters which shall or may flow through or upon any part of the said land and also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons, together with the right to use so much of the banks thereof, not exceeding one chain in depth, from the water's edge as may be necessary
 30 for fishery purposes. The title of the said The Ontario and Western Lumber Company is subject also to any unpaid Statutory or Municipal taxes, charges, rates or assessments imposed for 1892 or afterwards. Subject to the exceptions and qualifications mentioned in Section 24 of the Land Titles Act.)

PARCEL 19 : That certain parcel of land registered under the Land Titles Act as Parcel 19 in the Register for Rainy River situate in the Township of Rat Portage in the District of Rainy River and Province of Ontario, namely: The North West part of Mining Location 121-P situated South of the Village of Rat Portage on the shore of the Lake of the Woods in the said Township, containing twenty-two acres, as shewn on plan of survey by E. Seager, Provincial Land Surveyor, dated 13th April, 1889, of record in the Department
 40 of Crown Lands, SUBJECT NEVERTHELESS to the reservations, provisoes and conditions contained in the General Mining Act and Acts amending the same, and saving and excepting the reservations and exceptions contained in the original Patent from the Crown, namely :—All pine trees standing or being on the said land as provided by the Twelfth Section of the General Mining Act, the free use, passage and enjoyment of, in over and upon all navigable waters which shall or may hereafter be found on or under or shall or may flow

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 15.
Transfer,
Ontario and
Western
Lumber Co.,
Ltd., to Dick
and Bannig,
5th August,
1896.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 15.
Transfer,
Ontario and
Western
Lumber Co.,
Ltd. to Dick
and Banning
5th August,
1896.

—continued.

through or upon any part of the said land and also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons together with the right to use so much of the banks thereof, not exceeding one chain in depth from the water's edge, as may be necessary for fishery purposes, reserving five per cent of the above acreage for roads and the right to the Crown to lay out roads where necessary. The Titles of the said The Ontario and Western Lumber Company is subject also to any unpaid Municipal taxes, charges, rates or assessments imposed for 1890 or afterwards. Subject to the exceptions and qualifications mentioned in Section 24 of the Land Titles Act and also subject to an agreement with the Corporation of the Municipality of the Town of Rat Portage. 10

PARCEL 254 : That certain parcel of land registered under the Land Titles Act as Parcel 254 in the Register for Rainy River in the District of Rainy River, and Province of Ontario, namely : Block B as shewn on plan of subdivision of a portion of Mining Location 121-P filed in the Office of Land Titles at Rat Portage as Plan M-3, containing two and three-quarters acres more or less.

Subject nevertheless to the reservations, provisoes and conditions contained in the General Mining Act and the Acts amending the same and saving and excepting the reservations and exceptions contained in the original Patent from the Crown, namely :—All pine trees standing or being on the said land, as provided by the Twelfth Section of the General Mining Act; the free use, passage and enjoyment of, in over and upon all navigable waters which shall or may hereafter be found on or under or shall or may flow through or upon any part of the said land; and also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons, together with the right to use so much of the banks thereof not exceeding one chain in depth from the water's edge, as may be necessary for fishery purposes, reserving also five per cent of the original land as reserved in the original grant from the Crown for roads and the right to the Crown to lay out roads where necessary. 30
The title of the said The Ontario and Western Lumber Company is subject to an Agreement with the Municipality of Rat Portage and is subject also to any unpaid Statutory or Municipal taxes, charges, rates, or assessments imposed for 1890 or afterwards. Subject to the exceptions and qualifications mentioned in Section 24 of the Land Titles Act.

PARCEL 381 : That certain parcel of land registered under the Land Titles Act as parcel 381 in the Register for Rainy River, situate in the Town of Rat Portage in the District of Rainy River and Province of Ontario, namely: That Block of land marked "Mill Reserve" on Plan M-8 filed in the Office of Land Titles at Rat Portage excepting therefrom a strip of 100 feet off of the north boundary : Subject nevertheless to the reservations, provisoes and conditions contained in the General Mining Act and the Acts amending the same, and saving and excepting the reservations and exceptions contained in the original patent from the Crown, namely, all pine trees standing or being on the said land, as provided by the Twelfth Section of the General Mining Act, the free use, passage and enjoyment of, in over and upon all navigable waters which shall or may hereafter be found on or under or shall or may flow 40

through or upon any part of the said land and also right of access to the shores of all rivers, streams and lakes, for all vessels, boats and persons, together with the right to use so much of the banks thereof, not exceeding one chain in depth from the water's edge, as may be necessary for fishery purposes. And reserving also five per cent of the original acreage for roads and the right to the Crown to lay out roads where necessary. The Title of the said The Ontario and Western Lumber Company is subject also to any unpaid Municipal taxes, charges, rates, or assessments imposed for 1893 or afterwards. Subject to the exceptions and qualifications mentioned in Section 24 of the

10 Land Titles Act.

PARCEL 201 : That certain parcel of land registered under the Land Titles Act as Parcel 201, in the Register for Rainy River in the District of Rainy River and Province of Ontario, namely : Island 52-P (containing six acres), Island 52-Pa (containing four-tenths of an acre), and 54-P (containing thirty-nine acres) situate West of Coney Island in the Lake of the Woods in the said District as shown on plan of survey by E. Seager, Provincial Land Surveyor, dated 30th December, 1891, of record in the Department of Crown Lands. Subject nevertheless to the reservations and exceptions contained in the original Patent from the Crown, namely : all gold, silver, copper, lead,

20 iron, or other mines or minerals; all pine trees on said lands; the free use, passage and enjoyment of, in, over and upon all navigable waters which shall or may be on or under or shall or may flow through or upon any part of said land; also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons together with the right to use so much of the banks thereof, not exceeding one chain in depth from the water's edge, as may be necessary for fishery purposes. The title of the said The Ontario and Western Lumber Company is subject also to any unpaid Statutory or Municipal taxes, charges, rates, assessments imposed for 1892 or afterwards, and subject to the exceptions and qualifications mentioned in Section 24 of the

30 Land Titles Act.

PARCEL 40 : That certain parcel of land registered under the Land Titles Act as Parcel 40 in the Register for Rainy River, situate in the Municipality of Rat Portage in the District of Rainy River and Province of Ontario, namely : Bulmer Mill Location at Norman in the Municipality of Rat Portage in the said District, commencing at an iron bar set in large boulder on point in the Lake of the Woods at the Western entrance to bay leading to Bulmer and Company's saw mill; thence North Westerly and North Easterly at the uniform distance of ten feet from the water's edge of a small bay of Lake of the Woods to an iron bar marked "B" on East side and "M" on West side

40 bearing north twenty-eight degrees fifty-six minutes West astronomically from the iron bar in boulder aforesaid; thence on said course five chains and ninety-eight links to an iron bar marked "B" on East side and "M" on West side; thence due North astronomically nineteen chains and sixty links; thence due East astronomically twenty-five chains and seventy-five links more or less to a point in the North limit of the right of way of the Canadian Pacific Railway Company, situated due North astronomically of an iron bar planted fifty-nine links from the water's edge of the Lake of the Woods

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 15.
Transfer,
Ontario and
Western
Lumber Co.
Ltd., to Dick
and Banning,
5th August,
1896.

—continued.

In the Supreme Court of Ontario.
 Exhibits.
 Ex. 15.
 Transfer, Ontario and Western Lumber Co., Ltd., to Dick and Banning, 5th August, 1896.

—continued.

and distant eight chains and forty links from said north limit; thence due South astronomically eight chains and ninety-nine links to the water's edge of said lake; and thence Westerly and Easterly along the water's edge to the place of beginning. Save and except therefrom, however, the following :

(1) A portion of land containing one-half acre, lying South of railway track, being one of the portions transferred to the Electric Light, Telephone and Power Company.

(2) The North East portion of Location containing 2½ acres, described by metes and bounds in transfer.

(3) The reservations and exceptions contained in original Patent from the Crown, namely : Right of way forty feet wide for the Rat Portage and Keewatin Colonization Road. Right of way for the Canadian Pacific Railway, the free use, passage and enjoyment of, in, over and upon all navigable waters that shall or may be found on or under or be flowing through or upon any part of the said land; also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons together with the right to use so much of the banks thereof, not exceeding one chain in depth from the water's edge, as may be necessary for fishery purposes.

The title of the Ontario and Western Lumber Company is subject also to the following :—

(1) An Agreement with a Company to convey to them a right of way from the Canadian Pacific Railway track to the Winnipeg River, not to exceed 2½ acres, across their land.

(2) Any unpaid Municipal taxes, charges, rates or assessments imposed for 1890 or afterwards, and subject to the exceptions and qualifications mentioned in Section 24 of the Land Titles Act.

Witness :

G. R. KAPPELE,

D. C. CAMERON,

President. [SEAL]

A. G. CAMPBELL,

Secretary.

20

30

Ex. 16.
 Transfer, Rat Portage Lumber Co., Ltd., to David L. Mather, 9th March, 1897.

Exhibit 16.

(Defendants' Exhibit.)

Transfer Rat Portage Lumber Co. Ltd., to David L. Mather.

LAND TITLES ACT.

The Rat Portage Lumber Company Limited, the registered owners of the Freehold land registered in the Office of Land Titles at Rat Portage as Parcel 110 in the Register for the District of Rainy River in consideration of the sum of Twenty-three thousand dollars paid to it, transfer to DAVID L. MATHER of the Town of Rat Portage in the District of Rainy River, Gentleman, the land hereinafter particularly described, namely :—That parcel of land known as Dick, Banning & Company's Mill Location situate between Portage Bay and Winnipeg River in the Municipality of Keewatin, in the District of Rainy River and Province of Ontario shown on plan of survey of said Municipality by E. Stewart, Provincial Land Surveyor, dated 20th December, 1889, of

40

record in the Department of Crown Lands and more particularly described as follows :—Commencing at an iron bar set by Provincial Land Surveyor E. Stewart on the North limit of the Right of the Canadian Pacific Railway seventy-five feet North of the centre line thereof at a distance of twenty chains fifty-eight links measured Westerly along said limit from the limit between the Municipality of Rat Portage and Keewatin; thence Westerly along said North limit twenty chains more or less to a point where the additional width for a station ground at Keewatin has been laid; thence Northerly along a line perpendicular to the said centre line of Railway one hundred and twenty-five feet to an iron bar; thence Westerly along the North limit of Station Grounds so laid out two hundred and eighteen feet to an iron post planted at the distance of twenty feet perpendicular distance from the edge of the Mill race constructed by the Lake of the Woods Milling Company Limited; thence Westerly at said perpendicular distance of Twenty feet therefrom two hundred and eighty-one feet and a half to an iron post; thence Northerly fifty feet to an iron post; thence Westerly eight-five feet to an iron post placed in the West limit of the therein described tract and twenty feet North of edge of said Mill race; thence due North two chains seventy-five links more or less, to the water's edge of Winnipeg Bay; thence Easterly and Northerly along said water's edge to its intersection with the South limit of Mining Location K-83, granted by Letters Patent dated the first day of August, 1890, to Edward Peltier; thence due East along the South limit thereof five chains fifty links to the North East angle of the herein described tract; thence due South twelve chains eighty links more or less to the South limit of the Rat Portage and Keewatin Colonization Road; thence South Westerly along said limit one chain sixty links more or less to an iron bar planted by E. Stewart, Provincial Land Surveyor; thence due South two chains thirty-three links more or less to the place of beginning. Excepting therefrom a portion at South East corner transferred to Dick & Banning, April 14th, 1896, now entered in the Register for the District of Rainy River as Parcel 997 and containing three and five one hundredths acres, and shewn on Plan M 26 / Excepting also that portion of the said land described as follows : Commencing at an iron post planted at the North East angle of the Station Grounds of the Canadian Pacific Railway in the Village of Keewatin; thence North six degrees thirty minutes West on the same course as the Eastern boundary of the said Station Grounds, five chains and forty-seven links, to an iron post planted; thence continuing North six degrees thirty minutes West on the same course fifty-three links more or less to the edge of Winnipeg Bay; thence Westerly along the shore of Winnipeg Bay to the Easterly limit of the property of the Lake of the Woods Milling Company Limited; thence along the Easterly limit of the lands of the Lake of the Woods Milling Company to the Northern limit of the Station Grounds of the Canadian Pacific Railway ; thence Easterly along the Northern limit of the said Station Grounds to the place of beginning, containing by admeasurement four acres and eight-tenths of an acre, more or less, including all buildings, tramways, railway sidings, and machinery of all

*In the
Supreme
Court of
Ontario.*

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Exhibits.
Ex. 16.
Transfer,
Rat Portage
Lumber Co.,
Ltd., to
David L.
Mather,
9th March,
1897.

—continued.

*In the
Supreme
Court of
Ontario.*

kinds attached to the freehold and which may be considered as part of the Freehold, being a part of the said parcel.

Dated this 9th day of March, A.D. 1897.

Exhibits.
Ex. 16.
Transfer,
Rat Portage
Lumber Co.,
Ltd., to
David L.
Mather,
9th March,
1897.
—continued.

Witness :

D. H. COOPER,

D. C. CAMERON,
President. [SEAL]
WILLIAM ROBERTSON,
Secy. Treas.

SUBSTITUTED DESCRIPTION ANNEXED.

Description of lands transferred by a certain transfer dated 9th day of March, 1897, from The Rat Portage Lumber Company (Ltd.) to David L. Mather :— 10

All and Singular that certain parcel of land situate lying and being in the Township of Keewatin and District of Rainy River, being composed of that certain portion of the land known as Dick, Banning and Company's Mill Location situate between Portage Bay and Winnipeg River in the Municipality of Keewatin, more particularly described as follows :—Commencing at the point where the South limit of Location K 83 intersects the water's edge of Winnipeg Bay; thence East along the South boundary of K 83, five (5) chains fifty (50) links more or less, to the North East angle of Dick, Banning and Company's Mill Location; thence due South Twelve (12) chains eighty (80) links more or less, to the North limit of the Colonization Road between Rat Portage and Keewatin; thence South fifty degrees (50) thirty minutes (30') West along the North limit of the said Colonization Road one (1) chain sixty (60) links; thence due North seventy (70) links; thence Westerly parallel to the North limit of Canadian Pacific Railway right of way seven (7) chains seventy-five (75) links; thence at right angles Southerly three (3) chains seventy-five (75) links to said North limit of said C.P.R. right of way; thence Westerly along said North limit of said Right of Way twelve (12) chains twenty-five (25) links more or less, to the Easterly limit of the Canadian Pacific Railway Company's Station Grounds at Keewatin; thence North six degrees (6) thirty minutes (30') west along the line of the said East limit of the said Station Grounds produced seven (7) chains eighty-nine (89) links more or less, to the water's edge of Winnipeg Bay; thence Easterly and Northerly along the water's edge of Winnipeg Bay crossing the Mouth of the Mill Race to the place of beginning, as shewn on map or plan hereto annexed being that portion within red borders. 30

Rat Portage,
March 9th, 1897.

THOS. R. DEACON.
Ont. Land Surveyor. 40

Exhibit 22.

(Defendants' Exhibit.)

Transfer Rat Portage Lumber Co., Ltd., to The Lake of the Woods Milling Co., Ltd.*In the
Supreme
Court of
Ontario.*—
Exhibits.
Ex. 22.Transfer,
Rat Portage
Lumber Co.,
Ltd., to The
Lake of the
Woods Mill-
ing Co., Ltd.
9th March,
1897.**LAND TITLES ACT.**

The Rat Portage Lumber Company, Limited, the registered owners of the freehold land registered in the Office of Land Titles at Rat Portage as Parcel 110 in the Register for the District of Rainy River, in consideration of the sum of Two thousand dollars paid to me, transfer to The Lake of the
 10 Woods Milling Company, Limited, the land hereinafter particularly described, namely :—

ALL that certain plot or parcel of land situate lying and being in the Town-
 ship of Keewatin in the District of Rainy River in the Province of Ontario,
 which may be known and described as follows :—Commencing at an iron
 post planted at the North East angle of the Station Grounds of the Canadian
 Pacific Railway in the Village of Keewatin; thence North six degrees thirty
 minutes West on the same course as the Eastern boundary of the said Station
 Grounds five chains and forty-seven links to an iron post planted ; thence
 20 continuing North six degrees thirty minutes west on the same course fifty-
 three links more or less, to the edge of Winnipeg Bay; thence Westerly along
 the shore of Winnipeg Bay to the Easterly limit of the property of the Lake
 of the Woods Milling Company; thence along the Easterly limit of the lands
 of the Lake of the Woods Milling Company to the Northern limit of the
 Station Grounds of the Canadian Pacific Railway; thence Easterly along the
 Northern limit of the said Station Grounds to the place of beginning, con-
 taining by admeasurement four acres, and eight-tenths of an acre, more or
 less as shewn red on the plan hereunto annexed, made by Thos. Turnbull,
 Ontario Land Surveyor, according to the sketch hereto annexed and being
 that portion colored red thereon, being a part of the said Parcel.

30 Dated the 9th day of March, one thousand eight hundred and ninety-
 seven.

Witness :

D. H. COOPER,

D. C. CAMERON,
President.

[SEAL]

WM. ROBERTSON,
Sec. Treas.

Plan by Thomas Turnbull, O.L.S., attached.
 See Book of Plans—Plan No. 8.

Exhibit 93.

(Defendants' Exhibit.)

Letters Patent (Ontario) Incorporating The Ottawa Gold Milling and Mining Company, Limited.**PROVINCE OF ONTARIO.**

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, **QUEEN**, Defender of the Faith, &c., &c., &c.

TO ALL TO WHOM THESE PRESENTS SHALL COME,—

GREETING :

ARTHUR S. HARDY,

Attorney-General.

WHEREAS by the Revised Statute of the Legislature of Our Province of Ontario, entitled "An Act respecting the Incorporation of Joint Stock Companies by Letters Patent," it is provided that the Lieutenant-Governor of Our said Province-in-Council may, by Letters Patent under the Great Seal of Our said Province, grant a Charter to any number of persons, not less than five, who shall petition therefor, constituting such persons, and others who may become shareholders in the Company thereby created, a body corporate and politic, for any purposes or objects to which the legislative authority of the said Legislature extends, except the construction and working of Railways and the business of Insurance other than provided by Section 4 of The Ontario Insurance Act, being Chapter 167 of The Revised Statutes of Ontario, 1887. 20

AND WHEREAS by Petition addressed to Our Lieutenant-Governor of Ontario-in-Council, **JOHN MATHER**, Lumber Merchant, **EDWARD SEYBOLD** and **JAMES GIBSON**, Manufacturers, **WILLIAM ANDREW CLARK**, Express Agent, and **ANGUS WILLIAM FRASER**, Barrister-at-Law, all of the City of Ottawa, in the County of Carleton and Province of Ontario, **HAVE PRAYED** that a Charter may be granted to them, constituting them and such other persons as are or may become shareholders in the proposed Company, a body corporate and politic for the purposes and objects following, that is to say : 30

To carry on, in all its branches, the business of a mining, milling, reduction and development company and, for the said purposes only, (a) To prospect for, open, explore, develop, work, improve, maintain and manage gold, silver, copper, coal, iron and other mines, mineral and other deposits and properties, and to dig for, raise, crush, wash, smelt, assay, analyse, reduce and amalgamate and otherwise treat ores, metals and minerals, whether belonging to the Company or not, and to render the same merchantable, and to sell and otherwise dispose of the same or any part thereof or any interest therein; (b) To acquire by purchase, lease, concession, license, exchange or other legal title, mines, mining lands, easements, mineral properties, or any interest therein, minerals and ores and mining-claims, options, powers, privileges, water and other rights, patent-rights, letters patent of invention, processes and mechanical or other contrivances, and either absolutely or conditionally, and either solely or jointly with others, and as principals, agents, contractors or otherwise, and to lease, mortgage, place under license, hypothecate, sell, dispose of and otherwise deal with the same or any part thereof, 40

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 93.
Letters
Patent
(Ontario)
incorporat-
ing The
Ottawa Gold
Milling &
Mining
Company,
Limited,
9th April,
1897.

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or any interest therein; (c) To construct, maintain, alter, make, work and operate on the property of the Company, or on property controlled by the Company, tramways, telegraph or telephone lines, reservoirs, dams, flumes, race and other ways, water-powers, aqueducts, wells, roads, piers, wharves, buildings, shops, stamping mills, and other works and machinery, plants and electrical and other appliances of every description, and to buy, sell, manufacture and deal in all kinds of goods, stores, implements, provisions, chattels and effects required by the Company or its workmen or servants; (d) To build, acquire, own, charter, navigate and use steam and other vessels; (e) To
 10 take, acquire, and hold as the consideration for ores, metals or minerals sold or otherwise disposed of, or for goods supplied, or for work done by contract or otherwise, shares, debentures, bonds or other securities of or in any other company having objects similar to those of the Company hereby incorporated, and to sell or otherwise dispose of the same; (f) To enter into any arrangement for sharing profits, union of interests, or co-operation with any other person or company carrying on or about to carry on any business or transaction which may be of benefit to the Company hereby incorporated; (g) To purchase or otherwise acquire and undertake all or any part of the assets, business, property, privileges, contracts, rights, obligations and liabilities of any person
 20 or company carrying on any part of the business which the Company hereby incorporated is authorized to carry on, or possessed of property suitable for the purpose thereof, and (h) To do all such acts, matters and things as shall be incidental or necessary to the due attainment of the above objects, or any of them under the name of "THE OTTAWA GOLD MILLING AND MINING COMPANY" (LIMITED).

AND WHEREAS it is further stated by the said Petition that the amount of the stock taken by each of the applicants is as follows :

By the said John Mather and Edward Seybold each the sum of One hundred thousand dollars and by the said James Gibson, William Andrew
 30 Clark and Angus William Fraser each the sum of One hundred dollars.

AND WHEREAS it has been proved to the satisfaction of Our Lieutenant-Governor-in-Council that the said applicants have complied with all the requirements of the said Act, as to matters preliminary to the issue of Letters Patent, and that a notice of the said application containing the particulars required by the sixth section of the said Act has been duly given in The Ontario Gazette, in accordance with the provisions of the said Act.

AND WHEREAS by the Act relating to Mines and Mining Lands, passed in the Fifty-seventh year of Our Reign, it is provided that where application is made to Our Lieutenant-Governor-in-Council for the incorporation by Letters
 40 Patent, under the said The Ontario Joint Stock Companies' Letters Patent Act, of any Company for mining purposes, such Letters Patent may, if the petition of the applicants so requires, contain a provision that no liability beyond the amount actually paid upon stock in such Company by the subscribers thereto or holders thereof shall attach to such subscriber or holder.

AND WHEREAS the petition of the said applicants contains a provision that no liability beyond the amount actually paid upon stock in such Com-

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 93.
Letters
Patent
(Ontario)
incorporat-
ing The
Ottawa Gold
& Mining
Company,
Limited,
9th April,
1897.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 93.
Letters
Patent
(Ontario)
incorporat-
ing The
Ottawa Gold
Milling &
Mining
Company,
Limited,
9th April,
1897.

—continued.

pany by the subscribers thereto or holders thereof shall attach to such subscriber or holder.

NOW KNOW YE that by and with the advice of Our Executive Council of Our Province of Ontario and under the authority of the hereinbefore in part recited Statute and of any other power or authority whatsoever in Us vested in this behalf, WE DO BY THESE OUR LETTERS PATENT CONSTITUTE the said John Mather, Edward Seybold, James Gibson, William Andrew Clark, Angus William Fraser, and each and all such other person or persons as now is, or are, or shall at any time hereafter become a shareholder or shareholders in the said Company under the provisions of the said Act, a body corporate and politic, 10 with perpetual succession and a common seal, by the name of "THE OTTAWA GOLD MILLING AND MINING COMPANY" (LIMITED) and capable forthwith of exercising all the functions of an incorporated company by a special Act of the Legislature of Ontario, and, by their corporate name, of suing and being sued, pleading and being impleaded in all Courts, whether of Law or Equity, and with the powers in the said Act more particularly set forth.

AND WE DIRECT that the CAPITAL STOCK of the said Company be One Million dollars and be divided into One Million shares of One dollar each;

That the operations of the said Company be carried on in the Province of Ontario. 20

THAT the CHIEF PLACE OF BUSINESS of the Company be at the said City of Ottawa and

THAT the said John Mather, Edward Seybold, James Gibson, William Andrew Clark and Angus William Fraser be the FIRST DIRECTORS of the said Company.

AND WE FURTHER DIRECT that the said Company shall be subject to the provisions of said Act, being Chapter 157 of the Revised Statutes of Ontario, 1887, intituled "An Act respecting the Incorporation of Joint Stock Companies by Letters Patent," and to such further and other provisions as the Legislature of Ontario may hereafter deem expedient in order to secure the 30 due management of its affairs and the protection of its shareholders and creditors.

AND WE FURTHER DIRECT that the Charter of the said Company shall be forfeited by non-user during three consecutive years at any one time, or if the Company does not go into actual operation within three years after it is granted; and no declaration of such forfeiture by any Act of the Legislature shall be deemed an infringement of such Charter.

AND WE FURTHER DIRECT that the Charter of the said Company may at any time be declared to be forfeited and may be revoked and made void by Order of Our Executive Council of Our said Province of Ontario on sufficient 40 cause being shown to Us in that behalf, and that such forfeiture, revocation and making void may be upon such conditions and subject to such provisions as to Us may seem proper.

And subject to the eighteenth section of the said Act relating to Mines and Mining Lands WE FURTHER DIRECT that no liability beyond the amount actually paid upon stock in the said Company by the subscribers thereto or holders thereof shall attach to such subscriber or holder.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Our said Province of Ontario to be hereunto affixed.

WITNESS : Colonel Sir Casimir Stainslaw Gzowski, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Administrator of the Government of Our said Province of Ontario.

AT OUR GOVERNMENT HOUSE, in Our City of Toronto, in Our said Province, this ninth day of April, in the year of Our Lord one thousand eight hundred and ninety-seven, and in the sixtieth year of Our Reign.

10

BY COMMAND,
E. J. DAVIS,
Secretary.

In the Supreme Court of Ontario.
—
Exhibits. Ex. 93.
Letters Patent (Ontario) incorporating The Ottawa Gold Milling & Mining Company, Limited, 9th April, 1897.

—continued.

Exhibit 26.
(Defendants' Exhibit.)
Order-in-Council (Ontario)

Ex. 26.
Order-in-Council (Ontario) 3rd June, 1897.

EXECUTIVE COUNCIL OFFICE.

TO HIS HONOUR

THE HONOURABLE GEORGE AIREY KIRKPATRICK, Member of the Queen's Privy Council for Canada, and Lieutenant-Governor of the Province of Ontario.

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REPORT of the Committee of the Executive Council on matters referred to their consideration.

PRESENT :

The Honourable
MR. HARDY, in the Chair.
MR. ROSS,
MR. GIBSON,
MR. HARCOURT,
MR. DRYDEN,
MR. HARTY,

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ON MATTERS OF STATE.

May it please Your Honour :

Upon consideration of the memorandum of the Assistant Commissioner of Crown Lands and the Director of Surveys, dated 27th May, 1897, having reference to the lands heretofore taken and occupied by the Canadian Pacific Railway Company for the road bed stations, station grounds, and other purposes of the said Railway between Fort William in the District of Thunder Bay and Cross Lake in the District of Rainy River, and upon the recommendation of the Honourable the Commissioner of Crown Lands, the Committee of Council advise that in accordance with the suggestions contained

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*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 26.
Order-in-
Council
(Ontario)
3rd June,
1897.

—continued.

in the said memorandum, and in pursuance of the Act of the Legislature of Ontario, 59 Victoria, Chapter 11, the lands set out in paragraphs numbers 1, 2, 3, 4 and 5 of the said memorandum be vested in the Government of the Dominion of Canada, subject to the conditions and limitations specified in section 2 of the said Act, and to the right of the Dick, Banning Lumber Company, or their assigns, to use the land on which the mill race is situated passing under and across the right of way of the said railway at Keewatin Station for the purposes of the mill of the said Company east of the said Station as the same has been heretofore used, but so as not to damage or injure the track or property of the said railway, and so that no enlargement or extension of the said mill race beyond its present capacity shall be made without the consent of the railway company. Provided also that the said Railway Company shall with respect to the parties who were found in August, 1887, in occupation of portions of the said station grounds at Keewatin Station, grant to the said parties leases from year to year of the lands so occupied by them respectively until such lands shall be required for the uses of the Company, and in the case of James Fraser shall either grant him a lease as aforesaid of the land occupied by him or at his option, to be exercised within one month after the date hereof, pay to the said James Fraser the sum of Twelve Hundred Dollars (\$1200) being the estimated value of his improvements on the land so occupied by him, possession to be given up by the said James Fraser to the said Company immediately after such payment. 10

Respectfully submitted,

A. S. HARDY,
Chairman.

1st June, 1897,

J. LONSDALE CAPREOL,
Asst. C.E.C.

Approved and ordered 3rd June, 1897.

Part Exhibit 27.

(Defendants' Exhibit.)

Order-in-Council (Canada).

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Part Ex. 27.
Order-in-
Council
(Canada)
29th July,
1897.

P. C. 2282.

Certified a true copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 29th July, 1897.

On a Memorandum dated 23rd July, 1897, from the Acting Minister of Railways and Canals representing that the Canadian Pacific Railway Company having urged the fulfilment by the Dominion Government of the condition of their contract of the 21st of October, 1880, ratified by the Act 44 Victoria, Chapter 1, for the conveyance to them of the lands occupied for road-bed, stations, station grounds and other purposes of their railway between Fort William and the western boundary of the Province of Ontario at Cross Lake, as shewn on plans of the completed line of the said railway filed in the Department of Railways and Canals under dates the 5th of March and the 30th of April, 1897, an Order of the Executive Council of the said Province has been passed under date the 3rd June, 1897, transferring to the Dominion 40

Government the said lands, in conformity with the express provisions in that regard of the Provincial Act 59 Victoria, Chapter 11, which enacted that the Order-in-Council making the transfer might lay down certain limitation and conditions; also that any agreements, leases or conveyances affecting the lands made by the Government of Ontario before the passing of the Act, should remain valid; and otherwise defining and limiting the transfer, excluding therefrom gold and silver mines, and saving certain rights of the public in respect of highways.

10 The Minister states that the said Provincial Order-in-Council accordingly lays down certain restrictions, protecting the rights of squatters on the land, and in the case of one of them stipulating that the Railway Company shall either grant him a lease of the land occupied by him, or pay him within one month after the date of the said Order, at his option, the sum of \$1200 for his improvements. The Order further protects the interests of a certain lumber company in respect of their mill race, which passes under the right-of-way.

20 The Minister further states that though the Provincial Government appear to be strictly within their rights in passing this conditioned Order, it would seem to be a question whether the Dominion Government, in transferring to the Company the rights thereby acquired, will be held to have carried out fully and sufficiently the requirements of the Company's contract, such contract not having contemplated a conditional conveyance.

30 The Minister further states that under date the 8th July, 1897, however, the Ottawa solicitors of the Company have written, stating on behalf of the Company, that they will waive any objection they might have to the restrictions contained in the Order in Council of the Ontario Government, and will be satisfied if the Patents are issued subject thereto; and the Department of Justice to whom the question had been referred, have advised that in view of this intimation from the Company there is no necessity for consideration of the matter; and that the Letters Patent to the Company can certainly be made subject to the conditions of the Ontario Order-in-Council if necessary (but suggesting certain features in their preparation.)

40 The Minister therefore recommends that authority be given for the issue of Letters Patent, to be prepared by the Department of Justice, conveying to the Company the lands referred to in the said Order, a copy of which is hereto attached, provided the Company carry out the intimation given by their Solicitors and formally accept such Letters Patent as in full compliance with the said condition of their contract, and as relieving the Government of any further liability thereunder, insofar as the railway between Fort William and the western boundary of Ontario is concerned; the interests of the several parties affected and safeguarded by the said Order to be fully protected in such Letters Patent, if not first disposed of otherwise to the satisfaction of the said parties.

The Committee submit the above recommendation for Your Excellency's approval.

RUDOLPHE BOUDREAU,
Clerk of the Privy Council.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 27.
Order-in-
Council
(Ontario)
3rd June,
1897.

—continued.

*In the
Supreme
Court of
Ontario.*

Part Exhibit 27.
(Defendants' Exhibit.)
Order-in-Council (Ontario).

Exhibits.
Part Ex. 27.
Order-in-
Council
(Ontario)
3rd June,
1897.

DEPARTMENT OF ATTORNEY-GENERAL, ONTARIO.

Copy of an Order-in-Council approved by His Honour the Lieutenant-Governor, the 3rd day of June, A.D. 1897.

—continued.

Upon consideration of the memorandum of the Assistant Commissioner of Crown Lands, and the Director of Surveys, dated 27th May, 1897, having reference to the lands heretofore taken and occupied by the Canadian Pacific Railway Company for the road bed, stations, station grounds, and other purposes of the said railway, between Fort William in the District of Thunder Bay, and Cross Lake in the District of Rainy River, and upon the recommendation of the Honourable the Commissioner of Crown Lands, the Committee of Council advise that in accordance with the suggestions contained in the said memorandum, and in pursuance of the Act of the Legislature of Ontario, 59 Victoria, Chapter 11, the lands set out in the paragraphs numbers 1, 2, 3, 4 and 5 of the said memorandum be vested in the Government of the Dominion of Canada, subject to the conditions and limitations specified in section 2 of the said Act, and to the right of the Dick, Banning Lumber Company, or their assigns, to use the land on which the mill race is situated passing under and across the right of way of the said railway at Keewatin Station for the purposes of the mill of the said Company east of the said station as the same has been heretofore used, but so as not to damage or injure the track or property of the said railway, and so that no enlargement or extension of the said mill race beyond its present capacity shall be made without the consent of the Railway Company, provided also that the said Railway Company shall with respect to the parties who were found in August, 1887, in occupation of portions of the said station grounds at Keewatin Station, grant to the said parties leases from year to year of the lands so occupied by them respectively until such lands shall be required for the uses of the Company, and in the case of James Fraser shall either grant him a lease as aforesaid of the land occupied by him, or at his option, to be exercised within one month after the date hereof, pay to the said James Fraser the sum of Twelve Hundred Dollars (\$1200) being the estimated value of his improvements on the land so occupied by him, possession to be given up by the said James Fraser to the said Company immediately after such payment.

Certified,

LONSDALE CAPREOL,
Asst. Clerk Executive Council.

Foregoing is a true copy of document attached to O. C. P. C. 2282, 29 July, 1897. RUDOLPHE BOUDREAU, C.P.C.

Exhibit 24.
(Defendants' Exhibit.)
Plan by G. McPhillips.

See Book of Plans—Plan No. 9.

Exhibit 17.
(Defendants' Exhibit.)

Transfer D. L. Mather to Ottawa Gold Milling and Mining Co. Ltd.

LAND TITLES ACT.

10 I, David Low Mather, of the town of Rat Portage, in the District of Rainy River, Lumberman, the registered owner of the freehold land registered in the office of Land Titles, at Toronto, as Parcel 1261 in the Register for Rainy River, in consideration of the sum of one Dollar paid to me, transfer to THE OTTAWA GOLD MINING AND MILLING COMPANY (LIMITED) of the City of Ottawa, in the Province of Ontario, the land hereinafter particularly described, namely :

20 All and Singular that certain parcel of land situate lying and being in the township of Keewatin and District of Rainy River and being composed of that certain portion of the land known as Dick, Banning and Company's Mill Location, situate between Portage Bay and Winnipeg River in the Municipality of Keewatin, more particularly described as follows :—

30 Commencing at the point where the South limit of Location K-83 intersects the water's edge of Winnipeg Bay; thence East along the South boundary of K-83 five chains (5) fifty (50) links, more or less to the North East angle of Dick, Banning and Company's Mill Location; thence due South twelve (12) chains eighty (80) links more or less to the North limit of the Colonization Road between Rat Portage and Keewatin; thence South fifty (50) degrees, thirty (30) minutes West along the north limit of the said Colonization Road one (1) chain sixty (60) links; thence due North seventy (70) links; thence Westerly parallel to the North limit of the Canadian Pacific Railway right of way seven (7) chains seventy-five (75) links ; thence at right angles
40 Southerly three (3) chains seventy-five (75) links to the said North limit of said Canadian Pacific Railway right of way; thence Westerly along said North limit of said right of way twelve (12) chains twenty-five (25) links more or less to the Easterly limit of the Canadian Pacific Railway Company's Station Grounds at Keewatin; thence North six (6) degrees thirty (30) minutes West along the line of the said East limit of the said Station Grounds produced seven (7) chains eighty-nine (89) links more or less to the water's edge of Winnipeg Bay; thence Easterly and Northerly along the water's edge of Winnipeg Bay crossing the mouth of the mill race to the place of beginning, being the whole of the said parcel.

40 And I, Catherine K. Mather, wife of the said David Low Mather, hereby bar my dower in the said land.

Dated the tenth day of August, one thousand eight hundred and ninety-seven.

Witness :
H. A. C. MACHIN.

D. L. MATHER.
C. K. MATHER.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 24.
Plan by G.
McPhillips,
23rd Decem-
ber, 1898.

Ex. 17.
Transfer, D.
L. Mather to
Ottawa Gold
Milling and
Mining Co.,
Ltd., 10th
August,
1897.

*In the
Supreme
Court of
Ontario.*

Exhibit 9.

(Plaintiffs' Exhibit.)

Agreement between Keewatin Power Company, Limited, and Commissioner of Public Works.

Exhibits.
Ex. 9.
Agreement
between
Keewatin
Power Com-
pany, Ltd.,
and Com-
missioner of
Public
Works,
22nd June,
1898.

THIS AGREEMENT made the 22nd day of June, A.D. 1898, BETWEEN The Keewatin Power Company, hereinafter called the Company, of the First part and Her Majesty, represented herein by the Commissioner of Public Works, hereinafter called the Commissioner of the Second part.

WHEREAS the Company have constructed a dam across the west branch of the Winnipeg River at Tunnel Island at or near the Lake of the Woods.

AND WHEREAS for the purpose of improving the navigation of the said lake it is expedient that the said dam should be improved by the addition of stop-logs and otherwise.

AND WHEREAS it has been agreed by and between the parties hereto that in consideration of the sum of Four Hundred Dollars and other stipulations and conditions herein contained that the said company will make all the necessary improvements, and will also permit the same to be used for the improvement of such navigation as aforesaid :—

NOW THIS INDENTURE WITNESSETH as follows :—

The Company covenant and agree to put in all necessary stop-logs, to fill the different openings a sufficient height to maintain the water of the Lake of the Woods at ordinary summer level, together with not less than two windlasses or winches furnished with chains, racking and other necessary and latest appliances for raising or lowering the stop-logs so far as the same may be required to properly regulate the height of the water, such winches or windlasses to be of such construction as to enable any of the logs to be raised with ease by four men.

The company also covenant to provide and lay all such tracks as may be necessary to enable the winches or windlasses to be easily moved from opening to opening throughout the entire length of the dam, and that they will put in all the stop-logs and properly test the appliances for taking them out and replacing them to the satisfaction of the engineer to be named by the Government of the Province, and that they will place the Commissioner in possession of the entire plant in thorough working order complete in every respect for use by him or the officers or servants of his Department for the purpose aforesaid on or before the twenty-fifth (25) day of August, 1898, and that they will also renew or repair the stone work and other permanent portions of the dam from time to time as may in the opinion of such engineer have become unsafe or unfit for further service.

The company also, covenant and agree that they will provide a stop-log platform of sufficient size to receive all the stop-logs when taken out of the different openings in the dam.

The company further covenant and agree that the Commissioner shall have the right to regulate the height of the water and to control the dam as may be necessary.

In consideration of the foregoing covenants the Commissioner agrees to

pay to the Company the sum of Four thousand Dollars, two thousand dollars when the work is completed to the satisfaction of the Government Engineer and certified to by him, and two thousand dollars on the first day of May, 1899.

The Commissioner also agrees to appoint and pay the Caretaker and such workmen as may be required to regulate the stop-logs to be placed in the dam as aforesaid.

10 It is further agreed that should the company require to use the dam for power purposes they may terminate this agreement on giving one month's notice in writing to that effect, and thereafter the Commissioner shall be relieved from further charge of the said dam, but it shall nevertheless be the duty of the Company to maintain the water at ordinary summer level for such purposes as aforesaid at all proper time and times thereafter.

It is also agreed that the Commissioner is not to be responsible for damages occasioned by reason of the water being raised higher than ordinary summer level unless the same is raised for the purposes of and at the instance of the Government or by their servants or agents.

20 It is further agreed that should the Commissioner desire to do so he shall be entitled to surrender the charge of the dam to the company at any time on giving one month's notice in writing and thereafter all further responsibility on the part of the Commissioner and the Government shall cease.

It is also agreed that on such surrender the stop-logs and the appliances connected therewith shall be delivered over in good repair, damage arising from ordinary wear and tear excepted.

IN WITNESS WHEREOF the said The Keewatin Power Company has hereunto affixed its corporate seal, and the said the Commissioner of Public Works has hereunto set his hand and the seal of the Department of Public Works, the day and year first above written.

30 Witness : (Sgd.) J. A. CULHAM.
Witness : (Sgd.) ROBT. McCALLUM.

(Sgd.) RICH. FULLER,
President.
[SEAL]

(Sgd.) WM. HARTY,
[SEAL]
Comm. Public Works for Ontario.

Part Exhibit 25.

(Defendants' Exhibit.)

Transfer Canadian Pacific Railway Company to The Lake of the Woods Milling Co. Ltd.

40 THIS INDENTURE made in duplicate the SECOND day of June in the year of our Lord one thousand nine hundred and two.
IN PURSUANCE OF THE ACT RESPECTING SHORT FORMS OF CONVEYANCES.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 9.
Agreement
between
Keewatin
Power Com-
pany, Ltd.,
and Com-
missioner of
Public
Works,
22nd June,
1898.

—continued.

Part Ex. 25.
Transfer,
Canadian
Pacific Rail-
way Com-
pany to The
Lake of the
Woods Mil-
ling Co. Ltd.
with plan
attached.
2nd June,
1902.

In the
Supreme
Court of
Ontario.

BETWEEN :

THE CANADIAN PACIFIC RAILWAY COMPANY,
of the First Part.

Exhibits.
Part Ex. 25
Transfer,
Canadian
Pacific Rail-
way Com-
pany to The
Lake of the
Woods Mil-
ling Co. Ltd.
with plan
attached.
2nd June,
1902

AND

THE LAKE OF THE WOODS MILLING COMPANY, LIMITED,
Of the Second Part.

WITNESSETH, that in consideration of One Dollar of lawful money of Canada, now paid by the said party of the second part to the said party of the first part (the receipt whereof is hereby by it acknowledged) and other valuable considerations the said party of the first part DOTH GRANT unto the said party of the second part, its successors and assigns forever. 10

ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the Village of Keewatin in the District of Rainy River and Province of Ontario, being parts of the Station Grounds of the party of the first part at Keewatin not required for the purposes of the party of the first part and which may be described as follows :

FIRSTLY,—All that part of the said station grounds lying north of a line drawn from a point in the Easterly limit of the wider portion of the said station grounds, being a point distant on a course north six degrees thirty minutes West astronomically at right angles to the main track of the Canadian Pacific Railway at Keewatin aforesaid Eight-five (85) feet from Station No. 137 on the centre line of the said main track of the Canadian Pacific Railway as it is at present constructed and as shown on a plan of said Station Grounds prepared by G. McPhillips, P.L.S. and O.L.S., dated the Twenty-third day of December, 1898, and filed in the Department of Railways and Canals, thence Westerly parallel with the centre line of the main track of the said railway and everywhere distant eight-five (85) feet at right angles Northerly therefrom to the West limit of the said Station Grounds. 20

AND SECONDLY,—All that portion of the said Station Grounds lying South of a line drawn from a point about opposite Station 137-40 on the centre line of the main track of the said railway and near Bridge 108 ½ of the said railway and on the West side of the mill race to the mill of the party of the second part and where a line parallel with the said centre line as now constructed and distant seventy-five (75) feet at right angles Southerly therefrom would intersect the shore of Portage Bay, an arm of the Lake of the Woods; thence Westerly and parallel with the centre line of the main track of the said railway and everywhere distant seventy-five (75) feet at right angles Southerly therefrom to a point distant Easterly along the said line 624.44 feet from the Westerly limit of the said Station Grounds as shewn on said plan. 30 40

The lands hereby intended to be conveyed are shown coloured red on the plan hereto attached.

TO HAVE AND TO HOLD unto the said party of the second part, its successors and assigns to and for its and their sole and only use forever, Subject Nevertheless to the reservations, limitations, provisoes and conditions expressed in the original Grant thereof from the Crown.

—continued.

IN WITNESS WHEREOF the said parties hereto have hereunto affixed their Corporate Seals and the hands of their proper officers.

Signed, Sealed and Delivered } THE CANADIAN PACIFIC RAILWAY COMPANY,
 in the presence of T. G. SHAUGHNESSY,
 W. CAMPBELL OSWALD. } President.
 C. DRINKWATER,
 Secretary.

For Plan attached to this transfer, see Book of Plans—Plan No. 10.

*In the
 Supreme
 Court of
 Ontario.*

Exhibits.
 Part Ex. 25
 Transfer,
 Canadian
 Pacific Rail-
 way Com-
 pany to The
 Lake of the
 Woods Mil-
 ling Co. Ltd.
 with plan
 attached.
 2nd June,
 1902.

—continued.

10

Part Exhibit 25.
 (Defendants' Exhibit.)

Letter The Lake of the Woods Milling Co. Ltd. to The Canadian Pacific Railway Company.

Montreal, 8th July, 1902.

TO THE CANADIAN PACIFIC RAILWAY COMPANY :

In consideration of your delivering to us, in escrow, the undersigned Lake of the Woods Milling Company, duly executed, the conveyance from your Company to us of the land in the village of Keewatin, described in the said conveyance which has already been prepared and approved of, we undertake not to register same until after the patent from the Crown to your Company of this and other lands, has been issued, and if, for any reason, you fail to procure patent, we undertake to return the conveyance on demand, and we will, if necessary and on demand by you, execute a re-conveyance of the land to you. In the meantime we will hold it in escrow.

THE LAKE OF THE WOODS MILLING COMPANY.
 (Signed) ROBT. MEIGHEN,
 President.

Part Ex. 25.
 Letter, The
 Lake of the
 Woods Mil-
 ling Co. Ltd.
 to The Cana-
 dian Pacific
 Railway
 Company,
 8th July,
 1902.

30

Exhibit 11.

(Defendants' Exhibit.)

Letters Patent (Canada) Incorporating The Keewatin Flour Mills Company, Limited.

CANADA.

BY THE HONOURABLE RICHARD WILLIAM SCOTT, Secretary of State of Canada.

To all to whom these presents shall come, or whom the same may in anywise concern.

GREETING :—

WHEREAS in and by Chapter 15 of II Edward VII and known as "The Companies Act, 1902," it is amongst other things in effect enacted, that the Secretary of State may, by Letters Patent under his Seal of office, grant a

Ex. 11.
 Letters
 Patent
 (Canada)
 incorporat-
 ing The Kee-
 watin Flour
 Mills Com-
 pany, Ltd.,
 23rd January
 1904.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 11.
Letters
Patent
(Canada)
incorporat-
ing The Kee-
watin Flour
Mills Com-
pany, Ltd.,
23rd January
1904.

Charter to any number of persons, not less than five, who having complied with the requirements of the Act apply therefor, constituting such persons and others who thereafter become shareholders in the Company thereby created, a body corporate and politic for any of the purposes or objects to which the Legislative Authority of the Parliament of Canada extends, except the construction and working of railways, or of Telegraph or Telephone lines, or the business of Banking and the issue of paper money or the business of Insurance, or the business of a loan company, upon the Applicants therefor establishing to the satisfaction of the Secretary of State due compliance with the several conditions and terms in and by the said Act set forth and thereby made conditions precedent to the granting of such Charter. 10

—continued. AND WHEREAS John Mather, Manufacturer; Angus William Fraser, One of His Majesty's Counsel learned in the law; Robert Montgomery Cox, Lumber Merchant; all of the City of Ottawa, in the Province of Ontario; Edwin C. Whitney, Lumberman, of Whitney, in the Province of Ontario; David Low Mather, Lumberman, of Rat Portage, in the Province of Ontario; The Honourable James Drummond McGregor, Wholesale Merchant, of New Glasgow, in the Province of Nova Scotia; Robert Laird Borden, one of His Majesty's Counsel learned in the law, of the City of Halifax, in the said Province of Nova Scotia; George Burn, Manager of the Bank of Ottawa; 20
Erskine Henry Bronson, Lumberman; and John Coates, President of the Ottawa Gas Company, all three of the City of Ottawa aforesaid, have applied for a charter under the said Act, constituting them and such others as may become shareholders, in the company thereby created a Body Corporate and Politic, under the name of

“THE KEEWATIN FLOUR MILLS COMPANY” (LIMITED)

for the purposes hereinafter mentioned, and have satisfactorily established the sufficiency of all proceedings required by the said Act to be taken, and the truth and sufficiency of all facts required to be established previous to granting of such Letters Patent, and have filed in the Department of the Secretary of State a duplicate of the Memorandum of Agreement executed by the said applicants in conformity with the provisions of the said Act. 30

NOW KNOW YE that I, the said Richard William Scott, Secretary of State of Canada, under the authority of the hereinbefore in part recited Act, Do by these Letters Patent constitute the said John Mather, Angus William Fraser, Robert Montgomery Cox, Edwin C. Whitney, David Low Mather, The Honourable James Drummond McGregor, Robert Laird Borden, George Burn, Erskine Henry Bronson, and John Coates, and all others who may become shareholders in the said Company, a Body corporate and politic, by the name of 40

“THE KEEWATIN FLOUR MILLS COMPANY” (LIMITED)

with all the rights and powers given by the said Act and for the following purposes and objects, namely :—

To carry on the business of purchasing, selling, storing, shipping and dealing in grain, and manufacturing, buying and selling flour and other products of grain, with power to transact all business of a like nature, and to acquire by purchase, lease or otherwise, and to build, own, sell, lease, mortgage, convey, improve and operate mills, factories, offices, hydraulic, electric and other power for the purposes of said business; to construct, acquire, operate, hire, lease, make, sell or otherwise dispose of elevators for elevating wheat, grain or other products and with power to acquire, lease and utilize hydraulic, electric or other power for the purposes of the said business and generally to

10 carry on an elevator and storage business to have the right to use the funds of the Company, or such portion of them as the directors may decide, in the purchase of the capital stock of other corporations doing business of a like nature, to construct, acquire, charter, sell, lease, operate and otherwise dispose of all kinds of steam or sailing vessels, barges, boats or other vessels, wharves, docks, workshops, stations, and other buildings and carry on a transportation business on the waters of the inland lakes and rivers of the Dominion of Canada, which may be advantageous to the business of the Company; to acquire and hold shares in any ship or ships in connection with the company's business, and to manage, navigate and operate the same; and to acquire,

20 shares in any company incorporated for the purpose of owning, managing and operating any ship or ships, and to lease, hire and charter any such ships; to enter into any arrangements for sharing profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise, with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which this company is authorized to engage in or carry on, and to take or otherwise acquire shares and securities of any such company and to sell, hold, re-issue with or without guarantee or otherwise deal in the same; to amalgamate with any other company having objects altogether or in part similar to those of this company; to acquire any business

30 of the nature or character which this company is authorized to carry on and the good-will thereof upon such terms as to the payment of the same by the issue of stock or bonds of the company or otherwise as may be agreed upon.

The operations of the company to be carried on throughout the Dominion of Canada and elsewhere.

The place within the Dominion of Canada which is to be the chief place of business of the said company is the City of Ottawa, in the Province of Ontario.

The capital stock of the said company shall be Two MILLION dollars divided into TWENTY THOUSAND shares of ONE HUNDRED dollars each, subject

40 to the increase of such capital stock under the provisions of the said Act.

That the said John Mather, Angus William Fraser, Robert Montgomery Cox, Edwin C. Whitney, David Low Mather, The Honourable James Drummond McGregor, Robert Laird Borden, George Burn, Erskine Henry Bronson and John Coates are to be the first or provisional directors of the said company.

PROVIDED ALWAYS that nothing in these presents expressed or contained shall be taken to authorize the construction or working of railways, or of

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 11.
Letters
Patent
incorporat-
ing The Kee-
watin Flour
Mills Com-
pany, Ltd.,
23rd January
1904.

—continued.

*In the
Supreme
Court of
Ontario.*

telegraph or telephone lines, or the business of Banking, and the issue of paper money, or the business of Insurance, or the business of a Loan Company, by the said company.

Exhibits.
Ex. 11.
Letters
Patent
incorporat-
ing The Kee-
watin Flour
Mills Com-
pany, Ltd.,
23rd January
1904.

GIVEN under my hand and seal of office, at Ottawa, this twenty-third day of January, 1904.

[L.S.]

R. W. SCOTT,
Secretary of State.

10

—continued

Ex. 23.
Crown
Patent
(Canada)
to Canadian
Pacific Rail-
way Com-
pany,
29th March,
1904.

Exhibit 23.

(Defendants' Exhibit.)

Crown Patent (Canada) to Canadian Pacific Railway Company.

JOHN J. MCGEE,
Deputy Governor.

CANADA.

20

—continued.

[SEAL]

EDWARD VII, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

TO ALL TO WHOM THESE PRESENTS SHALL COME,—

GREETING :—

WHEREAS, under the provisions of An Act of our Parliament of the Dominion of Canada, thirty-seven Victoria, Chapter fourteen, and the Acts therein referred to, and an Act respecting the Public Works of Canada, thirty-one Victoria, Chapter twelve and Acts amending the same, Our Government of the Dominion of Canada constructed that part of the Canadian Pacific Railway extending from a place known as the Town plot of Fort William in our Province of Ontario to a place which is now the boundary line between Our Province of Ontario and Our Province of Manitoba, hereinafter called the Railway between the Town Plot of Fort William and Manitoba. And Whereas the said Government for the purposes and requirements of the said Railway and Construction thereof, and prior to, and during such construction, in fact took and appropriated the lands hereinafter described and intended to be granted hereby and built thereon the said Railway between the Town Plot of Fort William and Manitoba.

And whereas during the construction of the said Railway between the Town Plot of Fort William and Manitoba, our said government of the Dominion of Canada entered into a contract dated the 21st day of October, 1880, confirmed by an Act of Our said Parliament of Canada forty-four, Victoria, Chapter one, whereby our said Government agreed among other things that upon the completion of the said railway between the town plot of Fort William and Manitoba, we should convey to the Canadian Pacific Railway Company

40

with a suitable number of station buildings and with water service, but without equipment, the said Railway between the Town Plot of Fort William and Manitoba.

Now KNOW YE that we do by these presents grant, convey and assure unto the Canadian Pacific Railway Company, its successors and assigns the said railway between the Town Plot of Fort William and the Province of Manitoba.

And all and singular those certain parcels or tracts of land lying and being in the Province of Ontario, and which may be more particularly described
10 as follows :—

FIRSTLY, All and Singular those certain parcels or tracts of land lying and being in the Village of Keewatin in the District of Rainy River in the Province of Ontario, being part of the Canadian Pacific Railway Station Grounds described as follows :—

(A) Commencing on the Southerly side of the centre line of the Canadian Pacific Railway in the Municipality of Keewatin, in the Province of Ontario, at a point on the production Southwards of the limit between Dick and Banning's location and Fraser's location, situate on and adjoining the North limit of the right of way of said Railway as shown on plan of survey by
20 E. Stuart, Ontario Land Surveyor, dated the twentieth of December, one thousand eight hundred and eighty-nine of record in the Crown Lands Office, Toronto, one hundred and thirty-one and a half ($131\frac{1}{2}$) feet measured Southwards along said production from said North limit, said production intersecting said centre line of railway at chainage 123 plus 95, as shown on a plan of that part of said railway in the District of Rainy River from Winnipeg River to Cross Lake, filed in the Department of Railways and Canals on the fifth day of March, one thousand eight hundred and ninety-seven; thence assuming said production of limit between said locations to be a true meridian, South eighty-four (84) degrees and thirty minutes West three hundred and
30 twenty (320) feet; thence South five (5) degrees and thirty minutes (30) East sixty-five (65) feet more or less, to the shore line of Portage Bay; thence Easterly along said shore line eight hundred and seventy (870) feet more or less; thence North five (5) degrees and thirty minutes West one hundred and fifty (150) feet more or less; thence South eighty-four (84) degrees and thirty minutes West four hundred and seventy (470) feet to the place of beginning containing one acre and a half ($1\frac{1}{2}$) more or less as shown on a plan prepared by Joseph Doupe, Dominion Land Surveyor, dated June twenty-seventh, one thousand eight hundred and ninety-eight, and filed in the Department of Railways and Canals.

(B) Commencing on the Northerly limit of Station Grounds three
40 hundred and fifty-five (355) feet easterly from the North West angle of said Station Grounds; thence Southerly at right angles to said Northerly limit of Station Grounds one hundred and fifteen (115) feet; thence Easterly one hundred and sixty-one and two-tenths (161.2) feet; thence Northerly at right angles to the said Northerly limit of Station Grounds one hundred and thirty-four and six-tenths (134.6) feet to said Northerly limit; thence Westerly along said northern limit, one hundred and sixty (160) feet to the place of beginning,

*In the
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—
Exhibits.
Ex. 23.
Crown
Patent
(Canada)
to Canadian
Pacific Rail-
way Com-
pany.
29th March,
1904.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 23.

Crown
Patent
(Canada)
to Canadian
Pacific Rail-
way Com-
pany,
29th March,
1904.

—continued.

containing forty-six hundredths of an acre (46) more or less, as shewn on a plan prepared by Joseph Doupe, Dominion Land Surveyor dated August 8th, one thousand eight hundred and ninety-eight, and filed in the Department of Railways and Canals.

Provided always and the grant of the said lands more particularly described in sub-paragraphs (a) and (b) immediately preceding is subject to the condition that the Company shall grant to all parties who were in August, one thousand eight hundred and eighty-seven in occupation of portions thereof, leases from year to year of the portions of said lands so occupied by them respectively until the same shall be required for the uses of the Company. 10

SECONDLY, All and Singular that certain parcel or tract of land lying and being in the Village of Keewatin in the District of Rainy River in the Province of Ontario, known as the Canadian Pacific Railway Station Grounds, described as follows :—

Commencing at an iron bar planted on the line between the town of Rat Portage in the Municipality of Keewatin at the point where the said line is intersected by the northerly line of the right of way of the Canadian Pacific Railway which said point is distant seventy-five feet at right angles Northerly from the centre line of the main track of the said railway as it is at present constructed; thence Westerly along the Northerly line of the right of way of the said railway parallel with the centre line of the main track of the said railway and everywhere distant seventy-five feet at right angles Northerly therefrom two thousand and six hundred and seventy-eight feet and twenty-eight hundredths of a foot (2678.28) to an iron bar planted at the point where the additional width of the Station Ground commences which said last mentioned point is distant seventy-five feet (75) on a course of north six degrees and thirty minutes west astronomically or at right angles to the course of the main track of said railway from Station one hundred and thirty-seven on the centre line of said main track of the Canadian Pacific Railway as it is at present constructed; thence North six degrees and thirty minutes West one hundred and twenty five feet (125) to an iron bar planted at the North Easterly angle of the wider portion of the said Station Grounds; thence south eighty-two degrees and twenty minutes west two hundred and eighteen (218) feet to an iron bar planted at the easterly point of an irregular tract of land heretofore conveyed by the Dick and Banning Company to the Lake of the Woods Milling Company; thence South seventy-eight (78) degrees and thirty minutes West one thousand eight hundred and two feet and eight hundredths of a foot (1802.08) more or less to an iron bar, at the north-westerly angle of the said Station Ground which said iron bar also marks the north-easterly angle of a parcel of land known and described as One S (1 S) in accordance with a survey and plan made by E. Stewart, Provincial Land Surveyor, thence South twelve degrees and six minutes East along the line between the said station grounds and the said parcel of land known as One S (1 S) one hundred and twenty-five feet to an iron bar at the South-easterly angle of the said parcel of land known as One S (1 S); thence continuing the same course of south twelve degrees and six minutes East astronomically seventy-five feet (75) to Station one hundred and fifty-seven (157) on the centre line of the main 40

track of the said Canadian Pacific Railway as it is at present constructed; thence continuing the same course of South twelve (12) degrees and six minutes East one hundred feet (100) to the South-westerly angle of the said station grounds; thence north seventy-eight (78) degrees and thirty minutes east (N. 78 30' E) parallel to the centre line of the main tract of the said Canadian Pacific Railway nine hundred and fifteen feet and sixty-four hundredths of a foot (915.64) to an iron post; thence South forty-five (45) degrees East one hundred and fifty-one and five-tenths of a foot (151.50) to an iron post; thence continuing South forty-five (45) degrees East fourteen feet (14) to the water's edge of Portage Bay, an arm of the Lake of the Woods; thence Easterly along the water's edge of Portage Bay to a point about opposite station 137 plus 90 on the centre line of the main track of the said railway and near bridge No. 108½ of the said railway where a line parallel to the centre line of the tract of the Canadian Pacific Railway as at present constructed and distant southerly seventy-five (75) feet in a right angled direction therefrom would intersect the shore of the said bay; thence easterly across an arm of Portage Bay on a course parallel with the centre line of the main track of the said railway as at present constructed five hundred and forty (540) feet more or less to the water's edge of the said Bay; thence Southerly Easterly and Northerly along the water's edge of the said Portage Bay to an iron post planted on the shore of the said Bay on the line between the Town of Rat Portage and the Municipality of Keewatin; thence North astronomically along the line between the Town of Rat Portage and the Municipality of Keewatin sixty-six feet to an iron bar on the Southerly line of the right of way of the Canadian Pacific Railway; thence continuing North astronomically along the said line between the Town of Rat Portage and the Municipality of Keewatin one hundred and fifty-three feet eight inches (153' 8") to the place of beginning, containing by admeasurement twenty-five acres, and seven-tenths of an acre (25.7) be the same more or less, and shewn on a plan prepared by G. McPhillips, Dominion Land Surveyor and Ontario Land Surveyor, dated the twenty-third day of December one thousand eight hundred and ninety-eight and filed in the Department of Railways and Canals, saving and excepting thereout and therefrom the two parcels of land hereinbefore firstly described.

Provided that in respect of that parcel or tract of land secondly described, the Dick, Banning Lumber Company or their assigns be allowed to use the portion of the above secondly described lands on which their mill race is situate passing under and across the right of way of the railway for the purpose of the mill of the said Company, such use to be the same as it was on and prior to the third day of June one thousand eight hundred and ninety-seven, but so as not to damage or injure the track or property of the Railway Company and so that no enlargement or extension of the said mill race beyond its capacity of the third day of June, one thousand eight hundred and ninety-seven shall be made without the consent of the Railway Company.

THIRDLY. All and Singular those certain parcels or tracts of land and premises situate, lying and being in the District of Thunder Bay, in the Province of Ontario, taken for, occupied by and composing the completed rail-

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 23.

Crown
Patent
(Canada)
to Canadian
Pacific Rail-
way Com-
pany,
29th March,
1904.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. 23.
Crown
Patent
(Canada)
to Canadian
Pacific Rail-
way Com-
pany,
29th March,
1904.

—continued.

way of the Canadian Pacific Railway Company from mileage 998.2 to mileage 1033.85 of the said railway from Montreal as now located and constructed. The said parcels or tracts of land and premises (which include land covered with water where delimited or indicated by the plan), are shown on a plan of the said completed railway from Rebecca Street in the Town Plot of Fort William, Westward to the Northern limit of the Dawson Road Survey (being mileage 998.2 to mileage 1033.85) filed in the Department of Railways and Canals at the City of Ottawa on the thirtieth day of April one thousand eight hundred and ninety-seven and registered in the Registry Office for the District of Thunder Bay on the fifth day of July, one thousand eight hundred and ninety-seven as plan number ninety-two, as lands taken for the right of way of the said railway and for station grounds, ballast pits, sidings, water privileges and extra lands required for the purposes of the railway ; Also all and singular those certain parcels or tracts of land and premises situate, lying and being in the District of Thunder Bay in the Province of Ontario, taken for, occupied by and composing and completed railway of the Canadian Pacific Railway Company from mileage 1033.85 to mileage 1109.6 of the said Railway from Montreal as now located and constructed. The said parcels or tracts of land and premises (which include land covered with water where delimited or indicated by the plan) are shewn on a plan of the said completed railway from the north limit of the Dawson Road Survey Westward to English River (being mileage 1033.85 to mileage 1109.6) filed in the Department of Railways and Canals at the City of Ottawa on the fifth day of March one thousand eight hundred and ninety-seven and registered in the Registry Office for the District of Thunder Bay on the tenth day of March one thousand eight hundred and ninety-seven as plan number ninety-one as lands taken for the right of way of the said Railway and for station grounds, ballast pits, sidings, water privileges and extra lands required for the purposes of the Railway. 10 20

Also all and singular those certain parcels or tracts of land and premises situate, lying and being in the District of Rainy River in the Province of Ontario, taken for, occupied by and composing the completed railway of the Canadian Pacific Company from mileage 1109.6 to mileage 1225.5 of the said railway from Montreal as now located and constructed. The said parcels or tracts of land and premises (which include land covered with water where delimited or indicated by the plan) are shown on a plan of the said completed railway from Shebandowan Westward to Eagle River (being mileage 1102.3 to mileage 1225.5) filed in the Department of Railways and Canals at the City of Ottawa on the fifth day of March one thousand eight hundred and ninety-seven and registered in the Registry Office for the District of Rainy River on the twenty-third day of March, one thousand eight hundred and ninety-seven as plan number twenty-eight as lands taken for the right of way of the said railway and for Station grounds, ballast pits, sidings, water privileges and extra lands required for the purposes of the railway. 30 40

A tract or parcel of land of irregular figure situate on the Northern side of the said railway about one mile Westerly from Ignace Station and containing a superficies of one hundred and twelve acres and six-tenths of an acre (112.6)

and shewn on said plan of said completed railway from Shebandowan Westward to Eagle River, the limits of said tract of land being more particularly described as follows, viz.: Commencing at a point sixty-six feet (66) North Easterly from the centre line of the main track of said Railway measured normally to said centre line at chainage eighteen hundred and eighty-seven; thence due East five hundred and ninety-five (595) feet; thence due north two thousand six hundred and forty feet (2640); thence due West twenty-six hundred and forty feet (2640'); thence due South about one thousand feet (1000') to a point distant sixty-six feet (66') Northerly from said centre line measured normally thereto; thence in an Easterly and South Easterly direction parallel to and at a normal distance of sixty-six feet North Easterly from said centre line a distance of about two thousand six hundred and eighty feet (2680') to the point of commencement.

Also all and singular those certain parcels or tracts of land and premises situate, lying and being in the District of Rainy River in the Province of Ontario, taken for, occupied by and composing the completed railway of the Canadian Pacific Railway Company from mileage 1225.5 to mileage 1291.7 of the said Railway from Montreal as now located and constructed. The said parcels or tracts of land and premises (which include lands covered with water where delimited or indicated by the plan) are shown on a plan of the said completed railway from Eagle River to Rat Portage (being mileage 1225.5 to mileage 1291) filed in the Department of Railways and Canals at the City of Ottawa on the fifth day of March one thousand eight hundred and ninety-seven, and registered in the Registry Office for the District of Rainy River on the twenty-third day of March, one thousand eight hundred and ninety-seven, as plan number twenty-nine; as lands taken for the right of way of the said Railway and for station grounds, ballast pits, sidings, water privileges and extra lands required for the purposes of the railway.

And also all and singular those certain parcels or tracts of land and premises situate, lying and being in the District of Rainy River in the Province of Ontario, taken for, occupied by and composing the completed Railway of the Canadian Pacific Railway Company from mileage 1291.7 of said Railway from Montreal to the Eastern boundary of the Province of Manitoba as now located and constructed. The said parcels or tracts of land and premises (which include land covered with water here delimited or indicated by the plan) are shown on a plan of the said completed railway from Winnipeg River to Cross Lake, (being mileage 1291 to mileage 1327.9) filed in the Department of Railways and Canals, at the City of Ottawa on the fifth day of March, one thousand eight hundred and ninety-seven and registered in the Registry Office for the District of Rainy River on the Twenty-third day of March one thousand eight hundred and ninety-seven as plan number thirty, as lands taken for right of way of the said Railway and for station grounds, ballast pits, sidings, water privileges and extra lands required for the purposes of the railway, saving and excepting thereout and therefrom those certain parcels of lands and premises hereinbefore first and secondly described.

To have and to hold the same unto and for the use of the Canadian Pacific Railway Company, its successors and assigns forever.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 23.

Crown
Patent
(Canada)
to Canadian
Pacific Rail-
way Com-
pany,
29th March,
1904.

—continued.

*In the
Supreme
Court of
Ontario.*

*Exhibits.
Ex. 23.*

*Crown
Patent
(Canada)
to Canadian
Pacific Rail-
way Com-
pany,
29th March,
1904.*

—continued.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

WITNESS, John Joseph McGee, Esquire, Deputy of Our Right Trusty and Right Well-Beloved Cousin and Councillor The Right Honourable Sir Gilbert John Elliott Earl of Minto and Viscount Melgund of Melgund, County of Forfar in the Peerage of the United Kingdom, Baron Minto of Minto, County of Roxburgh, in the Peerage of Great Britain, Baronet of Nova Scotia, Knight Grand Cross of our Most Distinguished Order of Saint Michael and Saint George, etc., etc., Governor General of Canada.

At Our Government House in our City of Ottawa this twenty-ninth day 10
of March in the year of Our Lord, one thousand nine hundred and four, and
in the fourth year of Our Reign.

BY COMMAND,

JOSEPH POPE,

Under Secretary of State.

HENRY ROBERT EMMERSON,

Minister of Railways and Canals.

*Ex. 18.
Transfer,
Ottawa Gold
Milling and
Mining Co.
to Keewatin
Flour Mills
Co., Ltd.,
19th April,
1905.*

Exhibit 18.

(Defendants' Exhibit.)

Transfer Ottawa Gold Milling and Mining Co. Ltd. to Keewatin Flour Mills Co. Ltd

20

LAND TITLES ACT.

The Ottawa Gold Milling and Mining Company, Limited, the registered owner of the land registered in the Office of Land Titles at Rat Portage for Rainy River as parcel 1261 in the register for Rainy River situate in the municipality of Keewatin, in the District of Rainy River, and Province of Ontario, namely :—That portion of the land patented as Dick, Banning and Company's Mill Location situate between Portage Bay and Winnipeg River, in the Municipality of Keewatin, particularly described as follows :—Com- 30
mencing at the point where the South limit of Location K 83 intersects the water's edge of Winnipeg Bay; thence East along the South Boundary of K 83 five chains fifty links, more or less to the North East angle of Dick, Banning and Company's Mill Location; thence due South twelve chains and eighty links more or less to the North limit of the Colonization Road between Rat Portage and Keewatin, thence South fifty degrees thirty minutes West along the North limit of the said Colonization Road one chain sixty links; thence due North seventy links; thence Westerly parallel to the North limit of the Canadian Pacific Railway right of way seven chains, seventy-five links; thence 40
at right angles Southerly three chains, seventy-five links to the said North limit of said Canadian Pacific Railway right of way; thence Westerly along said North limit of said right of way twelve chains twenty-five links more or less to the Easterly limit of the Canadian Pacific Railway Company's Station Grounds at Keewatin; thence North six degrees thirty minutes West along the line of the said East limit of the said Station Grounds produced seven chains

eighty-nine links, more or less, to the water's edge of Winnipeg Bay; thence Easterly and Northerly along the water's edge of Winnipeg Bay, crossing the mouth of the mill race, to the place of beginning. Saving and excepting the reservation and exceptions contained in the original Patent from the Crown, namely, the free use, passage and enjoyment of, in, over and upon all navigable waters which shall or may hereafter be found on or under or be flowing through or upon any part of the said lands, and also right of access to the shores of all rivers, streams and lakes, for all vessels, boats and persons, together with the right to use so much of the banks thereof, not exceeding one chain in depth from the water's edge, as may be necessary for fishery purposes. (Subject to a Charge No. 4210 dated 25th of January, 1900, in favour of The Bank of Ottawa for \$45,000.00 and interest).

In consideration of \$190,000.00 paid to The Ottawa Gold Milling and Mining Company, Limited, the said The Ottawa Gold Milling and Mining Company, Limited, transfers such land to the **KEEWATIN FLOUR MILLS COMPANY, LIMITED.**

Dated the 19th day of April, A.D. 1905.

THE OTTAWA GOLD MILLING AND MINING COMPANY, LIMITED.

Witness :
20 J. GOODWILL GIBSON,

JOHN MATHER,
President.

JAMES GIBSON,
Secretary.

[SEAL]

Exhibit 2.

(Plaintiffs' Exhibit.)

Plan by John Kennedy.

Not printed

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 18.
Transfer,
Ottawa Gold
Milling and
Mining Co.
to Keewatin
Flour Mills
Co., Ltd.,
19th April,
1905.

—continued.

Ex. 2.
Plan by John
Kennedy,
30th January
1906.

Exhibit 95.

(Defendants' Exhibit.)

30 **Letter H. P. Hill to The Lake of the Woods Milling Co. Ltd.**

THE KEEWATIN POWER COMPANY, LIMITED.

Secretary-Treasurer's Office, 110 Wellington St.,
Ottawa, November 9th, 1911.

Lake of the Woods Milling Co.,
Keewatin, Ont.

Dear Sirs :

Mr. D. L. Mather has asked me to have transferred to your credit in the Bank of Ottawa, Keewatin, the sum of \$333.33, being 1/3 of the expense of closing up the leak in the dam. I have given the necessary instructions to-day.

Yours very truly,

40

H. P. HILL,
Sec. Treas.

Ex. 95.
Letter, H. P.
Hill to The
Lake of the
Woods Mil-
ling Co. Ltd.,
9th Novem-
ber, 1911.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.

Ex. 94.
Map of the
Northern
part of the
Lake of the
Woods and
Shoal, 1911.

Ex. 7.
Order-in-
Council
(Ontario)
2nd October,
1913.

Exhibit 94.

(Plaintiffs' Exhibit.)

Map of the Northern part of the Lake of the Woods and Shoal Lake.

Not printed.

Exhibit 7.

(Plaintiffs' Exhibit.)

Order-in-Council (Ontario).

ONTARIO.

EXECUTIVE COUNCIL OFFICE.

Copy of an Order-in-Council approved by His Honour the Lieutenant- 10
Governor, the 2nd day of October, A.D. 1913.

Upon consideration of the memorandum of the Deputy Minister of
Lands and Forests, dated 2nd October, 1913, in connection with the application
of the Keewatin Power Company Limited to have any further expenditure
under the agreement of the 24th day of November, 1891 with the Keewatin
Lumbering and Manufacturing Company Limited released, and upon the
recommendation of the Honourable the Minister of Lands, Forests and Mines,
the Committee of Council advise that he be authorized to release the condition
of further expenditure under the said agreement, and that the bond for Forty 20
thousand dollars (\$40,000) given by the Keewatin Power Company Limited
as security for the performance of the conditions of the said agreement be
cancelled and returned to the said company.

Certified,

LONSDALE CAPREOL,

Clerk, Executive Council.

Exhibit 8.

(Plaintiffs' Exhibit.)

Release by Minister of Lands, Forests and Mines.

Ex. 8.
Release by
Minister of
Lands,
Forests and
Mines,
17th October
1913.

Whereas by agreement dated the 24th day of November, 1891, made 30
between Her late Majesty Queen Victoria and The Keewatin Lumbering and
Manufacturing Company it was among other things stipulated that the said
company should expend upon certain works in connection with a water power
on Tunnel Island in the Lake of the Woods a sum of \$250,000, of which
\$150,000 should be expended within three years from said date and the remain-
ing \$100,000 should be directed by the Lieutenant Governor in Council.

And Whereas on 22nd September, 1893, the said company assigned all its
property and interests to The Keewatin Power Company Limited which
assumed the burden of performing all the stipulations contained in said agree-

ment and gave a bond to Her said Majesty in the sum of \$40,000 for the due and full performance thereof.

And Whereas The Keewatin Power Company Limited has expended in and upon the works provided for by said agreement the sum of \$127,000 and has satisfactorily shown that the said expenditure has been amply sufficient for all the purpose contemplated by said agreement and that any further expenditure is not necessary.

10 And Whereas by order of the Lieutenant-Governor in Council dated the 2nd day of October, 1913, the Minister of Lands, Forests and Mines was authorized to release the condition of further expenditure under the said agreement and to cancel the said bond.

Now, therefore, know all men by these presents that I, William Howard Hearst, Minister of Lands, Forests and Mines for the Province of Ontario, do hereby in pursuance of the authority conferred on me by the said Order-in-Council release and discharge the said The Keewatin Power Company Limited from any further expenditure of money under the said agreement and I do hereby also in pursuance of the said authority cancel the said bond for \$40,000 and do release and discharge the sureties named therein from all liability thereunder.

20 In witness whereof I do hereto set my hand and seal of office at Toronto, this 17th day of October, A.D. 1913.

Signed, sealed and delivered
In presence of
(Sgd.) JANET GARVIE.

(Sgd.) W. H. HEARST,
Minister of Lands, Forests
and Mines.

Exhibit 105.

(Defendants' Exhibit.)

Blue-print showing outlets.

See Book of Plans—Plan No. 11.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 8.
Release by
Minister of
Lands,
Forests and
Mines,
17th October
1913.

—continued.

Ex. 105.
Blue print
showing
outlets.
February,
1914.

Exhibit 102.

(Plaintiffs' Exhibit.)

Extract from International Joint Waterways Commission Report

EXTRACT FROM ENGINEERS' REPORT TO INTERNATIONAL JOINT
COMMISSION RELATING TO OFFICIAL REFERENCE RE LAKE
OF THE WOODS LEVELS, DATED SEPTEMBER 1ST, 1915.

(Page 158.)

Discharge through Mill "A"—Lake of the Woods Milling Company.

The turbine installation from 1887 to date has been as follows :

1887. 2-60" "Standard New American" turbines manufactured by the
Dayton Globe Iron Works were installed. The manufacturers' full gate dis-
40 charge rating for each 60" wheel under 20 foot head, is 209 c. f. s.

1888. 1-22" "Standard New American" turbine, manufactured by the
Dayton Globe Iron Works was installed. This wheel was used in the genera-

Ex. 102.
Extract
from Inter-
national
Joint Water-
ways Com-
mission
Report,
1st Septem-
ber, 1915.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 102.
Extract
from Inter-
national
Joint Water-
ways Com-
mission
Report,
1st Septem-
ber, 1915.

—continued.

tion of electric power for the lighting of the plant. The manufacturers' full gate discharge rating for this wheel under 20 foot head is 28 c.f.s.

1896. 1-60" turbine was removed.

2-66" "Standard New American" turbines of the Dayton Globe.

Iron Works were installed. The manufacturers' full gate discharge rating for each 66" wheel under 20 foot head is 267 c.f.s.

1905. March and April, 2 units of 33" twin runner horizontal, "Special New American" turbines, manufactured by Wm. Kennedy & Sons, Owen Sound, Ont., were installed. Each unit was direct-connected to a 240 K.W.D. C. Generator, manufactured by the Canadian General Electric Company. 10
The manufacturers' full gate discharge rating for each unit under 20 foot head is 196 c.f.s.

1-33" single runner horizontal "Special New American" turbine, manufactured by Wm. Kennedy & Sons, Owen Sound, Ont., direct-connected to a fire pump was installed. The manufacturers' full gate discharge rating for this wheel under 20 foot head is 98 c.f.s.

1912. The remaining 60" and the two 66" "New American" turbines were removed. One horizontal unit, consisting of two pairs of 60" runners, manufactured by J. M. Voith & Co., was installed.

The present installation together with the manufacturers' rating based 20 on a 20 foot head is, therefore, as follows :

One unit consisting of 2 pairs of 60" runners, rated at 2400 H.P. and connected by rope drive to the mill.

One unit consisting of a single 22" vertical turbine, rated at 95 H.P., for the operation of the machine shop.

Two units each consisting of a pair of 33" runners, each unit rated at 360 H.P. and direct-connected to a 240 K.W.D.C. Generator.

One unit consisting of a single 33" horizontal turbine, rated at 180 H.P. connected to a fire pump.

Exhibit 4.

(Plaintiffs' Exhibit.)

30

Extract from Evidence of William A. Matheson given before International Joint Commission.

EXTRACT FROM EVIDENCE GIVEN AT HEARINGS OF INTERNATIONAL
JOINT COMMISSION RE LEVELS OF THE LAKE OF THE WOODS
(WINNIPEG, FEBRUARY 4TH, 1916.)

TESTIMONY OF MR. WILLIAM A. MATHESON, OF WINNIPEG, CANADA.

William A. Matheson, after being duly sworn, testified as follows :

Mr. Wilson : Mr. Matheson, you are the general manager of the Lake of the Woods Milling Co.?

Mr. Matheson : Yes, sir.

Mr. Powell : Is your statement, Mr. Wilson limited simply to your mills ?

40

Ex. 4.
Extract from
evidence of
William A.
Matheson,
given before
International Joint
Commission,
4th February
1916.

Mr. Wilson : Yes, sir; to the mills and the barrel factory that is connected with them.

Mr. Powell : When we were at Kenora somebody undertook to get a complete statement of the capital invested in the different industries there.

Mr. Wilson : That is the purpose of this statement.

Mr. Powell : But that is only a portion of the industries. There are other industries than the Lake of the Woods milling establishment. Some one promised to give us a comprehensive statement of all the industries at the foot of the lake.

10 Mr. Tawney : That information has not been furnished.

Mr. Wilson : It was not I who promised that, sir. Mr. Matheson, do you verify the statement that I now show you ?

Mr. Matheson : I do.

(The statement verified by the witness is copied into the record in full as follows :)

Winnipeg, Canada, February 3, 1916.

The International Joint Commission,
City.

20 Gentlemen : We give below valuation of Lake of the Woods Milling Co.'s property in Keewatin :

Mill C.....	\$1,164,000
Mill A.....	1,980,000
	<hr/>
	\$3,144,000

(This valuation includes barrel factory, office building, and storehouses.)

Average number of men employed at the mills and barrel factory, about.....	350
Average yearly pay roll, about.....	\$250,000
Daily output for 1914-1915—barrels....	7,500-9,000
30 Value of products manufactured, 1914-1915, about.....	\$15,000,000

At present we are using from 3,400 to 3,700 horsepower. Are installing machinery to increase output of Mill A approximately 1,000 barrels, which will make the total capacity of Mill A 5,000 barrels and of both mills 10,000 barrels per day.

We expect to further increase the mills from time to time to use our full installed horsepower of 5,700.

Yours truly,

LAKE OF THE WOODS MILLING CO. (LTD.),

W. A. MATHESON, General Manager.

40 Mr. Wilson : I think Mr. Matheson also desires to say something with respect to statements made by some of the witnesses here that the milling industry did not intend to extend at Keewatin, but intended to go west and put up their mills on the prairies. At any rate, the directors have not heard of that or considered it. That is correct, is it not, Mr. Matheson ?

Mr. Matheson : That is correct.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Ex. 4.

Extract from
evidence of
William A.
Matheson
given before
International
Joint
Commissioner,
4th February
1916.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 4.
Extract from
evidence of
William A.
Matheson,
given before
International
Joint
Commissioner,
4th February
1916.

—continued.

Mr. Wyvell : How many cubic feet per second are you using on an average now there ?

Mr. Matheson : I do not think I should attempt to answer that question.

Mr. Wyvell : You spoke of the years being from 1914 to 1915. Is that your business year from June 30 of one year to June 30 of the next year ?

Mr. Matheson : From September.

Mr. Magrath : Is there anyone here representing the town of Kenora ?

Mr. Keefer : Yes, sir. I would state that I received a letter asking me, in the absence of their town solicitor, to look after their interests. The Mayor and the engineer have been here, but they decided that inasmuch as Mr. Acres is here they would leave him to present their case. He can do so now if you wish. 10

Mr. Tawney : We have heard Kenora.

Mr. Keefer : It is just on the one question of what level is required so far as their plant is concerned.

Mr. Tawney : We asked for and they promised to furnish the commission with a statement showing the aggregate value of all plants and the investments of various interests at Kenora, the milling industry, the lumber industry, the value of docks and everything else, so we could get some idea of the amount of money the people in that vicinity have invested in the use of these waters. It was first called for three years ago. 20

Mr. Keefer : I will endeavor to see that the information is furnished you.

Exhibit 6.

(Plaintiffs' Exhibit)

Extract from Minute Book of Keewatin Power Co. Ltd.

EXTRACTS FROM PLAINTIFFS' MINUTE BOOK

(Filed by Plaintiff).

(Page 143)—Minutes of a Meeting of the Directors of the Keewatin Power Co. Ltd., held at the Secretary's office on the 25th day of Feby. 1916.

Present : Mr. Geo. Burn, Mr. A. G. Mather and Dr. Robertson. 30

The Secretary reported that he had received certain letters on connection with the contract for the sale of the assets of the Coy., to Mr. E. W. Backus, which letters he read to the Board as follows :—

Letter from Mr. Backus, dated Feby. 11th 1916.

Letter from Mr. Glyn Osler, dated 17th February, 1916.

Further letter from Mr. Osler, dated 21st February, 1916, and letter from Mr. D. L. Mather, dated 19th Feby., 1916.

The secretary also reported that he had been making some investigations into the statement contained in the letter from Mr. E. W. Backus and that there was a possibility that the Lake of the Woods Milling Co. might obtain an easement to divert water through one of their artificial channels if quick action was not taken and that he had accordingly issued a writ against the Lake of the Woods Milling Co. asking for an order or declaration that the said Coy. had no right to divert any water and asking for an injunction. 40

Ex. 6.
Extract from
Minute Book
of Keewatin
Power Co.,
Ltd., 25th
February,
1916.

(Page 144).—The Secretary also suggested that he proceed to obtain all the data and information which he could with reference to the matter set out in the correspondence read and after this information was obtained that he should place the facts before some Toronto Counsel and obtain his advice as to the rights of this Coy. and as to what steps should be taken.

It was then moved, seconded and carried that this Board ratify the action of the Secretary-Treasurer in issuing the writ against the Lake of the Woods Milling Co. Ltd., and also that he be instructed to obtain all information available and then obtain the opinion and advice of Counsel and when this is done to call a Meeting of the Shareholders of the Company, so that the matter can be explained fully to them, and authority obtained for the course of action to be taken by this Coy.

There being no further business the Meeting ajourned.

(Sgd.) GEO. BURN,

Prest.

(Page 145).—Minutes of a Meeting of the Directors of the Keewatin Power Company, Limited, held at the Secretary's Office on Saturday, March 25th, at 10 o'clock.

There were present :—

20 Mr. George Burn,
J. W. Robertson, LLD., and
Mr. A. G. Mather.

The Secretary read the opinion of Mr. I. F. Hellmuth, K.C., on the matters in dispute with Mr. Backus, and also correspondence he had received from Mr. F. H. Keefer, K.C., and Mr. R. A. Mather.

The Secretary was instructed to proceed with the litigation along the lines approved of by Mr. Hellmuth and was further instructed to attend the meeting of the International Joint Commission to be held at Washington on April 4th, 1916.

30 It was decided that Mr. Burn should make enquiry in regard to the professional standing of Mr. R.A. Ross, of Montreal, and if his enquiries were satisfactory the Secretary was instructed to retain Mr. Ross if possible to act as Consulting Engineer in the various matters in dispute.

There being no further business the meeting adjourned.

(Sgd.) GEO. BURN,

Prest.

Exhibit 101.

(Plaintiffs' Exhibit.)

Manitoba Hydrometric Survey Records from 1912 to 1924. (10 books.)

Not printed.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 6.

Extract from
Minute Book
of Keewatin
Power Co.,
Ltd., 25th
February,
1916.

—continued.

Ex. 101.
Manitoba
Hydrometric
Survey
Records
from 1912 to
1924 (10
books).

*In the
Supreme
Court of
Ontario.*

Exhibit 101a.
(Plaintiffs' Exhibit.)
List of Extracts from Exhibit 101.

Exhibits.
Ex. 101a.
List of
Extracts
from Exhibit
101

DEPARTMENT OF THE INTERIOR—CANADA.
DOMINION WATER POWER BRANCH.

Water Resources Paper No. 4.....	Pages 46-91	
Hydrometric data for Lake of the Woods Outlets and Guage records.		
Water Resources, Paper No. 19, 1913-1915.....	Pages 17-40	
Hydrometric data for Lake of the Woods Outlets..	Pages 252-54, 178-206	10
Water Resources, Paper No. 22 Calendar year 1916.....	Pages 15-49	
Hydrometric data for Lake of the Woods Outlets.....	Pages 181-190	
Water Resources, Paper No. 24—Jan. 1916 to Oct. 1, 1918.		
Hydrometric data for L. of the W. Outlets.....	Pages 9-28; Page 145	
Water Resources, Paper No. 26, Oct. 1, 1918, to Sept. 30, 1919...	Pages 17-28	
Hydrometric data for L. of the W. Outlets.....	Pages 81, 83, 85, 86	
Water Resources, Paper No. 31, Oct. 1, 1919—Sept. 30, 1920.		
Hyrometric data for L. of the W. Outlets.....	Pages 52-64	
Water Resources, Paper No. 36, Oct. 1, 1920—Sept. 30, 1921.		
Hydrometric data for L. of the W. Outlets.....	Pages 28-40	20
Water Resources, Paper No. 40, Oct. 1, 1921—Sept. 30, 1922.....	Pages 29-41	
Hydrometric data for Lake of the W. Outlets.		
Water Resources, Paper No. 44, Oct. 1, 1922, to Sept. 30, 1923...	Pages 25-36	
Hydrometric data for Lake of the W. Outlets.		
Water Resources, Paper No. 46, Oct. 1, 1923, to Sept. 30, 1924.		
Hydrometric data for Lake of the W. Outlets.....	Pages 22-34	
Hydrometric data covers—actual discharge measurements by meter and daily guage heights. This forms the basis of computing the daily discharge in cubic feet per second.		30

Ex. 3.
Photograph
of plaintiff's
power house
and the
Norman
Dam 25th
October
1926.

Exhibit 3.
(Plaintiffs' Exhibit.)
Photograph of Plaintiff's Power House and the Norman Dam.

Not printed.

40

Ex. 100.
Summary of
Flour output
records of
defendants.

Exhibit 100.
(Plaintiffs' Exhibit.)
Summary of Flour output records of defendants.

Not printed.

Exhibit 100a.

(Plaintiffs' Exhibit.)

Keewatin Water Elevations, and output records in 1925.

Not printed.

*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 100a.
Keewatin
Water Ele-
vations and
output
records in
1925.**Exhibit 107.**

(Plaintiffs' Exhibit.)

Summaries from Evidence and Exhibits 100 and 101.Ex. 107.
Summaries
from evi-
dence and
Exhibits
100 and 101**MILL "A."**

10	Date	Installed Water Wheel Capacity	Milling Capacity Bbls. per Day	Maximum Monthly Output (From Ex. 100)			Average Bbls. per day for Maximum Month	
				Year	Month	Bbls.		
		(At 20 ft. Head)						
	1888	446 cfs.						
	1893 to 1899	773 cfs.	1800	1899	Nov.	53,531	2050	Rec. p. 268 p. 261
	1900 to 1901	"	2800	1901	Dec.	68,286	2630	Rec. p. 262
20	1902 to 1905	"	3400	1902	Oct.	92,505	3420	Rec. p. 263
	1906 to 1909	1263 cfs.	"	"	"	"	"	Rec. p. 523
		Electric power and fire pump added.						Rec. p. 219 p. 224
	1910 to 1911	1263 cfs.	3600	"	"	"	"	p. 263 Rec. p. 523
	1912 to 1915	1870 cfs.	"	1914	Sept.	101,338	3900	Rec. p. 273
			"					
30	1916 to 1925	"	5000	1925	Oct.	130,754	4850	Rec. p. 264

MILL "A."

In the
Supreme
Court of
Ontario.

MAXIMUM FLOUR OUTPUT IN BARRELS, COMPILED FROM EXHIBIT No. 100.

Exhibits.
Ex. 107.
Summaries
from evi-
dence and
Exhibits 100
and 101.

—continued.

YEAR	MONTH	OUTPUT	
1893	Nov.	40,176	
1894	Oct.	51,333	
1895	May	44,686	
1896	Oct.	46,608	
1897	Nov.	50,549	
1898	Nov.	48,773	10
1899	Nov.	53,531	
1900	Nov.	50,491	
1901	Dec.	68,286	
1902	Oct.	92,505	
1903	Oct.	82,002	
1904	Dec.	76,279	
1905	Nov.	88,065	
1906	Nov.	88,353	
1907	Aug.	84,981	
1908	Oct.	76,621	20
1909	Oct.	79,791	
1910	Nov.	74,111	
1911	Oct.	65,324	
1912	Dec.	76,047	
1913	Jan.	79,489	
1914	Sept.	101,338	
1915	Dec.	117,008	
1916	Aug.	99,720	
1917	Nov.	119,521	
1918	Jan.	118,165	
1919	Dec.	105,422	
1920	Nov.	97,687	30
1921	Nov.	101,292	
1922	Nov.	130,679	
1923	Oct.	117,543	
1924	Oct.	113,825	
1925	Oct.	130,754	

MILL "C."

MAXIMUM FLOUR OUTPUT IN BARRELS, COMPILED FROM EXHIBIT No. 100. 40

YEAR	MONTH	PRODUCTION
1907	Nov.	46,453
1908	Nov.	85,494
1909	Nov.	95,417
1910	June	85,622
1911	May	79,831
1912	Oct.	112,935
1913	Jan.	96,154
1914	Sept.	115,854
1915	Dec.	136,938

YEAR	MONTH	PRODUCTION
1916	Jan.	117,245
1917	Nov.	118,866
1918	Oct.	113,979
1919	Dec.	104,379
1920	Jan.	106,208
1921	Sept.	97,807
1922	Nov.	120,505
1923	Oct.	118,631
1924	May	103,985
1925	Oct.	123,942

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 107.
Summaries
from evi-
dence and
Exhibits 100
and 101.
—continued.

10

MILL "A" SHUT-DOWNS
EXHIBIT 100

1889. (Over 1 month)	Half of Feb. $\frac{3}{4}$ of May. $\frac{1}{3}$ of December.	1904.	$\frac{1}{2}$ of April.
1890. (Over 1 month)	$\frac{1}{3}$ of June. All of September.	1905.	$\frac{1}{2}$ of May.
1891.	$\frac{1}{3}$ of June.	1907.	$\frac{1}{2}$ of December.
1893. (Over 1 month)	$\frac{1}{3}$ of March. $\frac{1}{4}$ of April. $\frac{1}{3}$ of July. $\frac{1}{3}$ of August.	1908.	January to last week in July. (7 months) $\frac{1}{2}$ of August.
1894.	$\frac{1}{2}$ of March. $\frac{1}{3}$ of December.	1909.	$\frac{2}{3}$ of January. (Nearly 2 mos.) $\frac{1}{4}$ of April. $\frac{1}{4}$ of May. $\frac{1}{2}$ of August.
30 1895. (Over 1 month)	$\frac{1}{3}$ of February. $\frac{1}{3}$ of March. $\frac{1}{2}$ of April. $\frac{1}{3}$ of August.	1910.	$\frac{3}{4}$ of April. (3 months) All of May and June. $\frac{1}{4}$ of August.
1896.	$\frac{1}{3}$ of April. $\frac{1}{3}$ of August.	1911.	$\frac{1}{4}$ of January. (1 $\frac{1}{2}$ months) All of April. $\frac{1}{4}$ of September.
1897.	$\frac{1}{2}$ of March.	1912.	$\frac{3}{4}$ of June. (Over 5 months) All of July. August, September. Oct. and $\frac{3}{4}$ Nov.
40 1898. (1 month)	$\frac{1}{2}$ of April. $\frac{1}{2}$ of September.	1913.	$\frac{3}{4}$ of April.
1899.	$\frac{1}{3}$ of April.	1914.	$\frac{1}{3}$ of November.
1900.	$\frac{1}{3}$ of September. $\frac{1}{3}$ of December.	1915.	$\frac{1}{3}$ of May. (2 $\frac{1}{2}$ months) $\frac{1}{4}$ of June. All of July and August.
1902.	$\frac{1}{3}$ of April.		
1903.	$\frac{1}{3}$ of March.		

TOTAL OUTFLOW FROM LAKE OF THE WOODS THROUGH ALL OUTLETS

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 107
Summaries
from evi-
dence and
Exhibits 100
and 101
—continued.

Year Oct. 1 to Sept. 30	Exhibit No. 101 Book Number	Page	Discharge Cu. ft. per sec.	
1912	4	91	6,960	
1913	4	91	11,870	
1914	4	91	12,510	
1915	19	40	14,160	
1916	22	49	24,854	
1917	24	29	14,970	
1918	24	29	7,386	
1919	26	29	14,016	
1920	31	62	13,760	
Cal. yr. 1921	36	28 & 34	10,778	E. Br. 738 W. Br. 10,040
1922	40	28 & 35	12,929	E. Br. 829 W. Br. 12,100
1923	44	25 & 31	10,990	E. Br. 2,410 W. Br. 8,580
1924	46	22 & 28	9,707	E. Br. 4,050 W. Br. 5,657

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WATER USED BY MILLS "A" AND "C"

Cu. ft. per sec.

Year	Book Number of Exhibit No. 101.	Pages	Mill "A"		Mill "C"	
			Normal	Maximum	Normal	Maximum
1913	4	66 and 71	750-800	885	650-700	749
1914	4	66 and 72	800-850	963	650-800	868
1915	19	26 and 27	900-1000	1030	650-900	947
1916	22	27 and 36	900-1300	1485	900-1200	1267
Flood 1917	24	19	800-1200	1402	800-1000	1118
1918	24	20	800-1150	1225	700-1100	1240
1919	26	23 and 24	1100-1350	1443	850-1000	1143
1920	31	56 and 57	1000-1200	1473	700-850	948
1921	36	32 and 33	900-1100	1249	800-1000	1098
1922	40	33 and 34	950-1100	1280	850-1000	1088
1923	44	29 and 30	1000-1300	1370	900-1100	1132
1924	46	25 and 26	1000-1200	1286	900-1100	1133

30

Exhibit 96.

(Plaintiffs' Exhibit.)

Certified Copy of Ledger Entries of the Lake of the Woods Milling Co. Ltd.

CERTIFIED COPY OF ENTRIES IN OLD PRIVATE LEDGER, 1889.
"A. C. McMILLAN," Asst. Treasurer.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 96.
Certified
copy of
Ledger
Entries of
the Lake of
the Woods
Milling Co.,
Ltd.

MILL AND ELEVATOR No. 1 ACCOUNT :			
	1889.		
10	June 1.	To Cost.....	\$264,759.82
	1890.		
	April 30.	" D. Pringle.....	125.00
	" "	" Hutchison.....	1,121.95
	Aug. 31.	" Arbitration A/c.....	8,932.94
	1891.		
	Aug. 31.	" Betterments A/c.....	10,516.04
	1892.		
	Aug. 31.	" do.	7,417.22
	1893.		
	Aug. 31.	" Mill Prop. Imp. A/c.....	8,373.82
	1895.		
20	Aug. 31.	" Carpenter Shop.....	1,266.67
			<hr/>
			\$302,513.46
MILLERS' HOUSE ACCOUNT.			
	1889.		
	June 1.	To Cost.....	3,001.12
ELEVATOR No. 2 ACCOUNT.			
	1889.		
	June 1.	To Cost.....	35,094.78
BARREL FACTORY BUILDING ACCOUNT.			
	1889.		
	June 1.	To Cost.....	12,573.66
	Aug. 31.	" I. Mather Land.....	750.00
30	1895		
	Aug. 31.	" 1 Bbl. Trusser off machine 1 Windlass.....	640.98
	" "	" 1-25 Kilo Motor; 1.30 Kilo Dynamo at mill.	2,492.02
	" "	" Belting.....	214.06
	" "	" 10 Sett. Heater pipes.....	512.37
	" "	" Shafting.....	122.85
	" "	" Friction Pulley.....	88.00
			<hr/>
			\$17,393.94
LAND ACCOUNT.			
	1889.		
	June 1.	To Cost.....	333.00
40	OFFICE BUILDING ACCOUNT.		
	1889.		
	June 1.	To Cost.....	1,548.08
LODGING HOUSE ACCOUNT.			
	1889.		
	June 1.	To Cost.....	1,723.71
DWELLING HOUSE ACCOUNT.			
	1889.		
	June 1.	To Cost.....	16,253.57

**CERTIFIED COPY OF ENTRIES IN PRIVATE LEDGER, PROPERTY A/C,
COVERING ADDITIONS TO PROPERTY AT KEEWATIN, ONT.,
FROM 1905 TO 1927.
"A. C. McMILLAN," Asst. Treasurer.**

ADDITIONS TO PROPERTY ACCOUNT, KEEWATIN.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 96.
Certified
copy of
Ledger
Entries of
the Lake of
the Woods
Milling Co.,
Ltd.

—continued.

1905.	Sheds, Keewatin Mill and Elevator.....	\$ 1,868.77	
	Elevator Additions, Keewatin.....	8,860.70	
	Power House, Keewatin.....	15,919.11	
1906.	Elevator Additions, Keewatin.....	6,130.04	10
	New Power House.....	24,016.30	
	Barrel Factory Additions.....	2,488.64	
1907.	Steamer Verbena.....	10,984.33	
1908.	Water Wheel governor.....	868.00	
	25 H.P. Motor.....	430.19	
1910.	New Office, Keewatin.....	14,000.00	
1913.	Keewatin Lumber Co., for Lot A.....	750.00	20
	" " " " Lot B.....	300.00	
	J. Milliard, House.....	1,425.00	
	W. McRoberts.....	875.00	
	Option Paid.....	50.00	
	H. J. Thordgerson, Lots.....	750.00	
	Water Lot.....	120.00	
1914.	Islands.....	40.00	
	Lots in Town of Kenora.....	3,000.00	
	Water Lot, Mill A.....	607.50	
	Water Lot, Mill C.....	150.00	
1916.	Increased Capacity at Mill A.....	18,175.76	30
1919.	Mill A. Train Shed.....	10,424.25	
1921.	Sprinkler System.....	65,045.14	
1922.	Keewatin Bakery.....	25,249.66	
1923.	Carter Disc Separators.....	7,733.00	
	Mill C—Packing floor.....	11,435.03	
	Keewatin Lots.....	700.00	
1924.	Nordyke Sifters.....	3,825.36	40
	" " (Duty).....	1,331.97	
	" " (Freight).....	267.85	
	Mill C. Packing floor.....	784.46	
	Meal Dryer.....	450.00	
	" " (Duty).....	152.44	
	" " (Freight).....	98.54	

1925.	Grinding and Fluting Machine.....	2,438.00	In the Supreme Court of Ontario.
	New Warehouse, Keewatin.....	38,192.23	—
1927.	Wheat Dryer.....	12,121.51	Exhibits.
1912 {	New Water Wheels, Mill A.....	98,750.00	Ex. 96
	Brick Annex, Mill A.....	47,315.74	Certified copy of
	New Stave Sheds.....	13,229.88	Ledger
10	1 Story on Bag Warehouse.....	3,914.34	Entries of the Lake of the Woods Milling Co., Ltd.
	Keewatin Hotel and Furnishings.....	9,719.72	
	Mill A. Train Shed.....	15,437.04	
	Memorial Building.....	67,705.34	

—continued

Exhibit 97.

(Defendants' Exhibit.)

Photograph showing Mills "A" and "C" from Portage Bay.

Not printed.

Ex. 97.
Photograph
showing
Mills "A"
and "C"
from Portage
Bay.

Exhibit 98.

(Defendants' Exhibit.)

Photograph showing Mills "A" and "C" from Portage Bay.

Not printed.

Ex. 98.
Photograph
showing
Mills "A"
and "C"
from Portage
Bay.

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Exhibit 99.

(Defendants' Exhibit.)

Photograph of Mill "A" from Darlington Bay.

Not printed.

Ex. 99.
Photograph
of Mill "A"
from Dar-
lington Bay

Exhibit 103.

(Defendants' Exhibit.)

Photograph of Mill "C" from Portage Bay.

Not printed.

Ex. 103.
Photograph
of Mill "C"
from Portage
Bay.

Exhibit 104.

**Tracing regarding Mill "C."
See Book of Plans—Plan No. 12.**

Ex. 104.
Tracing
regarding
Mill "C",
April, 1927.

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Exhibit 106.

(Defendants' Exhibit.)

Examination of Harding Rideout, de bene esse.

Printed in Part 1, page 325.

Ex. 106.
Examination
of Harding
Rideout *de
bene esse*,
18th April,
1927.