

22, 1934

In the Privy Council

No. of 1933.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

BETWEEN :

UNITED GAS AND FUEL COMPANY OF HAMILTON LIMITED

AND

THE CORPORATION OF THE CITY OF HAMILTON,

(Plaintiffs) APPELLANTS,

AND

DOMINION NATURAL GAS COMPANY LIMITED,

(Defendant) RESPONDENT.

RECORD OF PROCEEDINGS

BLAKE & REDDEN,
17 Victoria Street, S.W. 1

for the Appellants.

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Lloyd's Building,
Leadenhall Street,
London E.C. 3

for the Respondent.

HAMILTON:
HAMILTON TYPESETTING COMPANY, LIMITED
1933

RECORD OF PROCEEDINGS.

In The Privy Council

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AND

THE CORPORATION OF THE CITY OF HAMILTON,
(*Plaintiffs*) APPELLANTS.

AND

DOMINION NATURAL GAS COMPANY LIMITED,
(*Defendant*) RESPONDENT.

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

PART I

PLEADINGS, EVIDENCE, JUDGMENTS, Etc.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
1.	Statement of Claim	14th December, 1931	1
2.	Statement of Defence	7th March, 1932 ..	2
3.	Reply	15th March, 1932 ..	9
4.	Opening Proceedings at Trial	30th May, 1932	11
	PLAINTIFFS' EVIDENCE		
5.	SAMUEL H. KENT		
	Examination	30th May, 1932	26
	Cross-Examination	30th May, 1932	30
	Re-Examination	30th May, 1932	37
6.	WILLIAM TYRRELL		
	Examination	30th May, 1932	37
	Cross-Examination	30th May, 1932	44
7.	EUGENE W. KING		
	Examination	30th May, 1932	46
	Cross-Examination	30th May, 1932	49
	Re-Examination	30th May, 1932	55

II.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
8.	MATTHEW BYRNES		
	Examination	30th May, 1932	56
	Cross-Examination	30th May, 1932	62
	Re-Examination	30th May, 1932	66
9.	Discussion as to Exhibits	31st May, 1932	66
10.	HERBERT G. HENRY		
	Examination	31st May, 1932	67
	Cross-Examination	31st May, 1932	68
11.	JAMES A. MARSHALL		
	Examination	31st May, 1932	69
	Cross-Examination	31st May, 1932	69
	DEFENDANT'S EVIDENCE		
12.	WILLIAM L. McFAUL		
	Examination	31st May, 1932	70
	Cross-Examination	31st May, 1932	87
	Re-Examination	31st May, 1932	92
13.	SAMUEL H. KENT		
	(Recalled)	31st May, 1932	97
14.	JOHN F. CARMODY		
	Examination	31st May, 1932	98
	Cross-Examination	31st May, 1932	99
15.	WILLIAM L. McFAUL		
	(Recalled)		
	Re-Examination	31st May, 1932	99
	Re-Cross-Examination	31st May, 1932	101
	Re-Examination	31st May, 1932	102
	Re-Cross-Examination	31st May, 1932	105
16.	HERBERT L. BARR		
	Examination	31st May, 1932	105
17.	W. J. AIKENS		
	Examination	31st May, 1932	107
	Cross-Examination	31st May, 1932	108
18.	MRS. ABBIE ALLAN		
	Examination	31st May, 1932	109
	Cross-Examination	31st May, 1932	110
19.	CHARLES LINDSAY		
	Examination	31st May, 1932	110
20.	ALFRED BROUGHTON		
	Examination	31st May, 1932	111
	Cross-Examination	31st May, 1932	111
	Re-Examination	31st May, 1932	114
	Re-Cross-Examination	31st May, 1932	115
	Re-Examination	31st May, 1932	115
	Re-Cross-Examination	31st May, 1932	115
	Re-Examination	31st May, 1932	116

III.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
21.	ERNEST STAMMERS		
	Examination	31st May, 1932	116
	Cross-Examination	31st May, 1932	119
22.	CHARLES M. SIEGER		
	Examination	31st May, 1932	122
	Cross-Examination	31st May, 1932	124
	Re-Examination	31st May, 1932	133
23.	JOHN PEEBLES		
	Examination	31st May, 1932	136
	Cross-Examination	31st May, 1932	138
24.	Discussion	1st June, 1932	139
25.	Discussion After Argument	1st June, 1932	140
26.	Reasons for Judgment of Wright, J.	8th July, 1932	142
27.	Judgment of Wright, J.	8th July, 1932	150
28.	Order of Wright, J.	8th July, 1932	151
29.	Notice of Appeal	20th August, 1932 ..	155
30.	Reasons for Judgment of The Court of Appeal for Ontario	24th April, 1933	156
	Mulock, C. J. O.		156
	Magee, J. A.		169
	Middleton, J. A.		169
	Masten J. A.		169
	Fisher, J. A.		169
31.	Order of The Court of Appeal for Ontario..	24th April, 1933	170
32.	Order of Middleton, J. A.	17th May, 1933	171

PART II EXHIBITS

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
1.	Proclamation	2nd July, 1891	172
2.	Order of The Ontario Railway and Municipal Board	3rd Sept., 1908	202

IV.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
3.	Order of The Ontario Railway and Municipal Board	27th Sept., 1909	204
	Order of The Ontario Railway and Municipal Board	21st March, 1910 ...	225
4.	Order of The Ontario Railway and Municipal Board	11th January, 1910 .	223
5.	Order of The Ontario Railway and Municipal Board	18th January, 1912 .	227
6.	Order of The Ontario Railway and Municipal Board	17th November, 1913	229
7.	Order of The Ontario Railway and Municipal Board	26th January, 1914 .	229
8.	Order of The Ontario Railway and Municipal Board	18th March, 1920 ..	240
9.	Order of The Ontario Railway and Municipal Board	22nd December, 1922	279
10.	Order of The Ontario Railway and Municipal Board	11th March, 1924 ..	285
11.	Order of The Ontario Railway and Municipal Board	6th May, 1925	300
12.	Order of The Ontario Railway and Municipal Board	11th Sept., 1928	314
13.	Order of The Ontario Railway and Municipal Board	28th February, 1929	324
14.	By-law No. 30 of the City of Hamilton	1910	211
15.	By-law No. 400 of the City of Hamilton	26th Sept., 1904	176
	Agreement between The Ontario Pipe Line Company Limited and The Corporation of the City of Hamilton	24th October, 1904 .	185
16.	By-law No. 443 of the City of Hamilton	13th March, 1905 ..	194
17.	By-law No. 2590 of the City of Hamilton	29th November, 1921	271
	Agreement between United Gas and Fuel Company of Hamilton Limited and The Corporation of the City of Hamilton	15th December, 1921	278
18.	By-law No. 2564 of the City of Hamilton	21st October, 1921 .	267
19.	Certificate of Result of Vote	15th November, 1921	271

V.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
20.	By-law No. 4168 of City of Hamilton	24th March, 1931 ..	344
	Agreement between The Corporation of the City of Hamilton and United Gas and Fuel Company of Hamilton Limited	24th March, 1931 ..	345
21.	Order of The Ontario Railway and Municipal Board	11th Sept., 1928	317
22.	By-law No. 2416 of the City of Hamilton	29th Sept., 1920	244
	Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited and The Corporation of the City of Hamilton	29th Sept., 1920	245
23.	By-law No. 2466 of the City of Hamilton	5th April, 1921	252
	Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited and The Corporation of the City of Hamilton	5th April, 1921	253
24.	By-law No. 2503 of the City of Hamilton	10th May, 1921	256
	Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited and The Corporation of the City of Hamilton	10th May, 1921	257
25.	By-law No. 2522 of the City of Hamilton	28th June, 1921	261
	Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited and The Corporation of the City of Hamilton	28th June, 1921	262
26.	By-law No. 2540 of City of Hamilton	25th August, 1921 ..	265
	Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited and The Corporation of the City of Hamilton	25th August, 1921 ..	266
27.	By-law No. 2567 of City of Hamilton	25th October, 1921 .	268
	Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited and The Corporation of the City of Hamilton	25th October, 1921 .	269
28.	Resolution of Hamilton City Council	12th October, 1920 .	248
29.	Letter from City Engineer	5th May, 1914	236
	List enclosed with letter of 5th May, 1914		237
	Letter from City Engineer	11th June, 1914	237
	Other letters referred to but not printed	1914	
30.	Letter, City Engineer to Dominion Natural Gas Company	30th November, 1914	238

VI.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
31.	Letter, City Engineer to Dominion Natural Gas Company	21st May, 1915	238
32.	3 letters from City Engineer referred to but not printed	1915	238
33.	Letter, City Engineer to Dominion Natural Gas Company Limited	5th Sept., 1917	239
	Letter, City Engineer to Dominion Natural Gas Company Limited	19th October, 1917 .	239
34.	Map showing lines of Dominion Natural Gas Company, specifically described in Barton Township franchise of October, 1904 (By-law 533). See Book of Plans.		
35.	Plan showing streets in existence east of Sherman Avenue previous to September 27, 1909, with Dominion Natural Gas Company's lines known to be in existence at that date. See Book of Plans.		
36.	Map showing annexations. See Book of Plans.		
37.	Map showing annexations and streets opened since annexations. See Book of Plans.		
38.	Plan showing portions of Township of Barton annexed to the City of Hamilton since October 26th, 1904—also United Gas and Fuel Company Limited lines in existence east of Sherman Avenue, as of May 8, 1928. See Book of Plans.		
39.	Plan showing portions of Township of Barton annexed to the City of Hamilton since October 26th, 1904, and permissions granted by City of Hamilton to Dominion Natural Gas Co. Ltd. from 1914 to Oct. 14, 1931 (incl.). See Book of Plans.		
40.	Plan showing portions of Township of Barton annexed to the City of Hamilton since October 26th, 1904—and also Dominion Natural Gas Company's original distribution lines in Barton Township and lines laid in City without permits. See Book of Plans.		
41.	By-law No. 533 of Township of Barton	26th October, 1904 .	186
	Agreement between Dominion Natural Gas Company Limited and The Corporation of the Township of Barton	19th November, 1904	192

VII.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
42.	Supplementary list of Permissions	1923 1927 1930	351
43.	Agreement between Dominion Natural Gas Company Limited and The Ontario Pipe Line Company Limited	25th Sept., 1905	195
	Letter, Dominion Natural Gas Company Limited to United Gas and Fuel Company Limited	22nd Sept., 1924	292
	Letter, Dominion Natural Gas Company Limited to United Gas and Fuel Company Limited	22nd October, 1924 .	294
	Letter, Dominion Natural Gas Company Limited to United Gas and Fuel Company Limited	22nd November, 1924	296
	Letter, Dominion Natural Gas Company Limited to United Gas and Fuel Company Limited	26th December, 1924	298
44.	Letter, City Engineer to Dominion Natural Gas Company Limited	2nd June, 1923	282
	Letter, Dominion Natural Gas Company Limited to City Engineer	8th June, 1923	282
45.	Letter, Dominion Natural Gas Company Limited to City Engineer	22nd Sept., 1923	283
	Letter, City Engineer to Dominion Natural Gas Company Limited	26th Sept., 1923	284
	Letter, Dominion Natural Gas Company Limited to City Engineer	1st October, 1923 .	284
	Letter, Dominion Natural Gas Company Limited to City Engineer	1st October, 1923 .	285
46.	Letter, City Engineer to Dominion Natural Gas Company Limited	30th August, 1924 ..	290
	Letter, City Engineer to Dominion Natural Gas Company Limited	5th Sept., 1924	290
47.	Permit	30th August, 1924 ..	291
	Permit	5th Sept., 1924	292
	Permit	1st December, 1924	297
	Permit	11th December, 1924	298
48.	4 letters from City Engineer of Hamilton referred to but not printed	1925	300
49.	Letter, City Engineer to Dominion Natural Gas Company Limited	12th June, 1926	303
	Letter, Harley & Sweet to City Engineer	31st July, 1926	304
50.	Permits, referred to but not printed	1926	302

VIII.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
51.	Permit to cut pavement Similar permits referred to but not printed ..	16th August, 1926 ..	305
52.	Letter, City Engineer to Dominion Natural Gas Company Limited Letter, City Engineer to Dominion Natural Gas Company Limited Other letters referred to but not printed	23rd March, 1926 .. 10th August, 1926 ..	302 305
53.	Petition	22nd June, 1926	303
54.	Letter, Dominion Natural Gas Company Limited to City Engineer Letter, Dominion Natural Gas Company Limited to City Engineer Letter, Dominion Natural Gas Company Limited to City Engineer Other letters referred to but not printed	4th May, 1927 22nd October, 1927 . 22nd October, 1927 .	306 309 310
55.	Letter, City Engineer to Dominion Natural Gas Company Limited Letter, City Engineer to Dominion Natural Gas Company Limited Letter, City Engineer to Dominion Natural Gas Company Limited Letter, City Engineer to Dominion Natural Gas Company Limited Other letters referred to but not printed	21st May, 1927 18th June, 1927 12th Sept., 1927 23rd November, 1927	307 308 308 311
56.	Permits referred to but not printed	1927	306
57.	Permits to cut pavements referred to but not printed	1927	306
58.	Letters from Dominion Natural Gas Com- pany Limited to City Engineer referred to but not printed Letter, Dominion Natural Gas Company Limited to City Engineer	1928 8th November, 1928	311 322
59.	Letter, City Engineer to Dominion Natural Gas Company Limited Letter, City Engineer to Dominion Natural Gas Company Limited Other letters referred to but not printed	30th April, 1928 8th December, 1928	312 323
60.	Permits referred to but not printed	1928	311
61.	Permits to cut pavements referred to but not printed	1928	311
62.	Order from Dominion Natural Gas Company Limited to City Engineer	14th November, 1928	323

IX.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
63.	Letter, City Engineer to Dominion Natural Gas Company Limited	5th April, 1929	328
	Letter, F. R. Waddell to C. N. Stewart, Secretary Board of Works	5th April, 1929	329
	Letter, City Engineer to Dominion Natural Gas Company Limited	19th October, 1929 .	335
	Other letters referred to but not printed		
64.	Letter, Dominion Natural Gas Company Limited to City Engineer	17th April, 1929	329
	Letter, Dominion Natural Gas Company Limited to City Engineer	18th October, 1929 .	335
	Letter, Dominion Natural Gas Company Limited to City Engineer,	23rd November, 1929	338
	Other letters referred to but not printed		
65.	Permits and Permits to cut pavements referred to but not printed	1929	324
66.	Letter from H. Barr to C. M. Sieger	2nd November, 1929	336
67.	Letter, Dominion Natural Gas Company Limited to City Engineer	4th February, 1930	339
	Letter, Dominion Natural Gas Company Limited to City Engineer	9th May, 1930	343
	Letter, Dominion Natural Gas Company Limited to City Engineer	7th November, 1930	343
	Other letters referred to but not printed		
68.	Letters and notices from City Engineer referred to but not printed	1930	339
69.	Permits referred to but not printed	1930	339
70.	Letter, T. Simpson to W. L. McFaul	14th March, 1930 ..	340
71.	Letter, Dominion Natural Gas Company Limited to City Engineer	23rd March, 1931 ..	349
	Letter, Dominion Natural Gas Company Limited to City Engineer	8th April, 1931	351
	Other letters referred to but not printed		
72.	Letter, City Engineer to Dominion Natural Gas Company Limited	4th April, 1931	350
	Other letters referred to but not printed		
73.	Permits referred to but not printed	1931	344
74.	Letter, Dominion Natural Gas Company Limited to City Engineer	16th October, 1929 .	333
	Letter, Dominion Natural Gas Company Limited to City Engineer	18th October, 1929 .	334
	Letter, City Engineer to Board of Control ..	19th October, 1929 .	336

X.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
75.	Letter, City Engineer to Board of Control ... Copy of letter, T. Simpson to City Engineer.. (Original of this letter is Ex. 70)—See Record, p. 340.	17th March, 1930 .. 14th March, 1930 ..	341
76.	Letter, H. Barr to W. L. McFaul	1st April, 1930	342
77.	Letter, H. Barr to W. L. McFaul	6th November, 1929	337
78.	Letter, City Engineer to Board of Control ..	14th August, 1929 ..	330
79.	Minutes of Meeting of Barton Township Council	6th November, 1905	202
80.	Letter, T. H. Simpson to Alfred G. E. Bryant. Letter, T. H. Simpson to Alfred G. E. Bryant. Letter, R. H. Davies to Lee, Simpson & Mc- Callum	20th November, 1920 3rd December, 1920 11th December, 1920	249 250 251
81.	Letter, T. H. Simpson to Alfred G. E. Bryant. Dominion Natural Gas Company's Plan show- ing annexed area, lines, etc.	13th December, 1920	252
82.	Province of Ontario map showing natural gas pipe lines in south-western Ontario		
83.	Letters Patent (Ontario) incorporating the Dominion Natural Gas Company Limited	12th October, 1904 .	183

No. 1.
Statement of Claim

IN THE SUPREME COURT OF ONTARIO

(Writ issued the 14th day of December, 1931)

*In the
Supreme Court
of Ontario*

No. 1
Statement of
Claim, 14th
December,
1931.

BETWEEN :

UNITED GAS AND FUEL COMPANY OF HAMILTON, LIMITED,
AND THE CORPORATION OF THE CITY OF HAMILTON,
Plaintiffs,

— AND —

10 DOMINION NATURAL GAS COMPANY LIMITED,
Defendant.

1. The United Gas and Fuel Company of Hamilton, Limited (herein referred to as the Plaintiff Company), is a body corporate incorporated under the laws of the Province of Ontario. The Corporation of the City of Hamilton is a municipal corporation in Ontario. The Dominion Natural Gas Company, Limited, is a body corporate incorporated under the laws of the Province of Ontario.

20 2. The Plaintiff Company, under By-law 400 passed by the City of Hamilton on 26th September, 1904, has had and still has a franchise or right to enter upon the streets, public squares, lanes and public places of the City of Hamilton for the purpose of supplying gas to the inhabitants thereof. It has established an extensive system of mains throughout the said City and has supplied the inhabitants with gas continuously since 1904.

30 3. The Township of Barton lies adjacent to the City of Hamilton and from time to time since September, 1904, and particularly in or about the years 1909, 1912, 1920, 1923 and 1924, portions of the Township have been annexed to the City, whereupon the Plaintiff Company, acting within its rights, extended its system of mains into the annexed territory and served the inhabitants with gas.

4. In or about the year 1928 the Defendant, without any permission or authority so to do, entered upon the streets, public squares, lanes and public places of parts of the City of Hamilton which in 1904 formed part of the Township of Barton and proceeded to dig trenches and lay mains and pipes and thereafter supplied and is still supplying the inhabitants of the City with gas.

5. By agreement dated 24th March, 1931, between the City of Hamilton and the Plaintiff Company the exclusive franchise or right was

In the
Supreme Court
of Ontario

No. 1
Statement of
Claim, 14th
December,
1931.

—continued

granted to the Plaintiff Company to enter upon the streets, public squares, lanes and public places of the City of Hamilton and to dig trenches and to lay mains and pipes necessary for the transportation and distribution of gas in the said City. The said agreement and By-law No. 4168 authorizing the same were ratified and confirmed by Chapter 100 of the Statutes passed by the Legislature of the Province of Ontario, 1931.

6. The Defendant is violating the rights of the Plaintiffs and each of them and unless restrained will continue so to do.

7. By reason of the matters aforesaid, the Plaintiff Company has sustained damages by the wrongful acts of the Defendant to the amount 10 of at least \$85,000.00.

The Plaintiffs therefore claim:

- (a) A declaration that the Defendant is wrongfully maintaining its mains in the streets, public squares, lanes and public places in the City of Hamilton, and wrongfully supplying gas to the inhabitants of the said City.
- (b) An injunction restraining the Defendant from continuing to so use the said streets, public squares, lanes and public places and from continuing to supply gas to the inhabitants of the City of Hamilton. 20
- (c) A mandatory order requiring the Defendant to remove its mains and other property from the streets, public squares, lanes and public places of the City of Hamilton.
- (d) That the damages sustained by the Plaintiff Company be assessed, and the amount thereof paid with interest.
- (e) Such further and other relief as may be proper.

The Plaintiff proposes that this action be tried at the City of Toronto.

Delivered this 14th day of December, A.D. 1931, by Kerr, McNevin & Kerr, Bank of Montreal Building, Chatham, Ontario, Solicitors for the Plaintiffs. 30

No. 2
Statement of
Defence, 7th
March, 1932.

No. 2. Statement of Defence

NOTE
Parts under-
lined (as indi-
cated)

show amend-
ments made
pursuant to the
order of
Rose,
C. J. H. C.
dated 16th
February, 1932

1. Excepting as hereinafter specifically admitted the defendant denies all the allegations in the plaintiffs' Statement of Claim and puts the plaintiffs to the proof thereof.

2. No rights enforceable by the plaintiff City Corporation have been invaded by the defendant and the defendant will so contend at the trial of this action.

2 (b). This action is commenced and carried on by the Plaintiff Company in its own name and that of the Corporation of the City of Hamilton, and the Corporation of the City of Hamilton is only a formal party to this action, and no relief can be given hereunder beyond such relief as could be given to the Plaintiff Company if it had not joined the said Corporation as co-Plaintiff.

*In the
Supreme Court
of Ontario*

No. 2.
Statement of
Defence, 7th
March, 1932.

—continued

3. The said Statement of Claim does not disclose any cause of action in the Plaintiff Company, and the defendant at the trial will contend that the Plaintiff Company has no right to maintain this action.

NOTE

*Parts under-
lined (as indi-
cated)*

10 4. If the Plaintiff Company at the trial of this action contends that it has the right to maintain this action under the provisions of the City of Hamilton Act, 1931, then the defendant will contend that the Plaintiff Corporation never had any right to institute or maintain such an action but if the Plaintiff Corporation ever had such a right then such right is not assignable at law and any assignment attempted to be made of such right of action in the Agreement Schedule "B" and the said Act is ineffective and a nullity and that Section 4, subsection (2) of the said Act does not create and vest such a right in the Plaintiff Company but only confirms such rights as are conferred by clause 2 of the Agreement therein
20 mentioned and no right to litigate the questions herein raised is or could be lawfully assigned by the Plaintiff Corporation to the Plaintiff Company.

*show amend-
ments made
pursuant to
the order of
Wright, J.,
dated 8th July,
1932.*

30 4 (a). Since the said districts (parts of the Township of Barton which now forms part of the City of Hamilton) were annexed to the City of Hamilton, the defendant has spent upwards of \$4,000,000 in leasing and developing natural gas producing territory, in building main pipe lines to conduct gas from the fields to Hamilton, and in laying and keeping main lines of pipes and service pipes in the said districts to supply the inhabitants with natural gas. All the expenditure above described was made in the belief that the defendant had a perpetual franchise which entitled it to lay down pipes in the streets and to distribute gas in the said district parts of Hamilton, and if the plaintiffs succeed in this action the defendant will suffer the loss of its entire investment. The said expenditure was made with the knowledge, consent and approval of the Plaintiff Corporation, such knowledge, consent and approval being contained, given and expressed in a vast number of letters and written permits sent and given to the defendant by the City Engineer and other officials of the Plaintiff Corporation bearing various dates between the dates of said annexations and the year 1932 too numerous to mention in this Defence; all of such letters and written permits now in the
40 possession of the defendant will be produced at any time for the inspec-

NOTE

*Parts under-
lined (as indi-
cated)*

*show amend-
ments made
pursuant to
the order of
Rose, C.J.H.C.,
dated 16th
February, 1932*

*In the
Supreme Court
of Ontario*

*No. 2.
Statement of
Defence, 7th
March, 1932.*

—continued

NOTE

*Parts under-
lined (as indi-
cated)*

*show amend-
ments made
pursuant to
the order of
Rose, C.J.H.C.,
dated 16th
February, 1932*

tion of the plaintiffs, the contents and dates of which are well known to the Plaintiff Corporation.

Before the defendant put down any pipes in the City streets it applied to and received written permission to lay the said pipes and they were laid under the supervision of the City Engineer. A large proportion of the said expenditure was made at the request and in performance of an Agreement made between the plaintiffs on the one side and the defendant on the other.

The said written permission to lay the said pipes was contained in many letters and written permits signed by the City Engineer of the City of Hamilton and by other officials of the Plaintiff Corporation sent and given to the defendant by the said City Engineer and other officials of the Plaintiff Corporation which will be produced at any time for the inspection of the plaintiffs, the contents and dates of which are well known to the Plaintiff Corporation. 10

The said Agreement referred to is the Agreement contained in By-law No. 2466 of the said City of Hamilton passed on the 5th day of April, 1921, and the defendant relies upon the said Agreement as set out in the said By-law and on the By-law itself.

The Plaintiff Corporation never has since the annexations objected to or disputed the rights of the defendant to lay pipes or sell gas in the said districts or any of them but on the contrary has always admitted such rights and has assessed and collected business and property taxes on the offices and plant of the defendant in the said districts. 20

4 (b). The Plaintiff Corporation has by its conduct and by its inaction in the preceding paragraphs recited induced this defendant to make the expenditures in this Defence alleged, and it would be inequitable and unjust to permit the plaintiffs now to dispute the right of the defendant to do any or all of the acts complained of in this action.

The Plaintiff Corporation has been guilty of such laches in asserting its alleged rights that it should not now be heard to maintain this action. 30

By reason of its conduct, laches, consents, acquiescences, encouragement and request to and in regard to the defendant and of the facts in this Statement of Defence set forth the Plaintiff Corporation and the Plaintiff Company are estopped from asserting that the defendant is wrongfully maintaining its mains in the streets, public squares, lanes and public places in the City of Hamilton and wrongfully supplying gas to the inhabitants of the said City.

4 (c). As a further defence to this action the defendant alleges that the Defendant Company by leave and license of the Plaintiff Corporation entered upon the streets, public squares, lanes and public places and dug trenches and laid mains and pipes necessary for the transportation and distribution of gas in the said districts and if the said leave and license is revocable (which the defendant denies and asserts that such leave and license are irrevocable) the Plaintiff Corporation did not before the making of the Agreement in the Statement of Claim mentioned, or before action, revoke or attempt to revoke the said leave and license and for this reason, if not for any other, this action is not maintainable.

The said leave and license of the Plaintiff Corporation referred to in this paragraph was given to the defendant by the said Agreement contained in the said By-law No. 2466 hereinbefore mentioned and in the said By-law and in the said written consents, approvals and permits signed by the City Engineer and other officials of the said City of Hamilton referred to in the preceding paragraphs hereof and the defendant further relies upon the verbal directions and consents made and given by the City Engineer of the said City of Hamilton and officials of his department on many occasions during the laying of the said pipes and the digging of the said trenches hereinbefore referred to. The dates of the said verbal directions and consents the said defendant is not in a position to give, no record of the same having been kept, but the said directions and consents were made and given on many occasions between the dates of the said annexations and the year 1932.

5. In reply to paragraph 2 of the Statement of Claim the Plaintiff Company has no right under said By-law 400 to enter upon the streets, public squares and public places of that part of the City of Hamilton which was not part of the City of Hamilton when By-law 400 was enacted for the purposes therein mentioned.

6. In reply to paragraph 3 of the Statement of Claim the Plaintiff Company was not within its rights when it extended its system of mains into the annexed territory mentioned in said paragraph 3.

7. In reply to paragraph 4 of the Statement of Claim the Defendant Company ever since the 26th October, 1904, has from time to time entered upon the streets, public squares, lanes and public places of part of the Township of Barton and of the City of Hamilton which in 1904 formed part of the Township of Barton and proceeded to dig trenches and has dug trenches and laid pipes and mains and thereafter supplied and is still supplying inhabitants of those parts of the City of Hamilton with gas under the authority of By-law No. 533 of the Township of Barton and such other authority as enured to the said defendant on the passing of the said By-law.

*In the
Supreme Court
of Ontario*

No. 2.
Statement of
Defence, 7th
March, 1932.

—continued

NOTE

*Parts under-
lined (as indi-
cated)*

*show amend-
ments made
pursuant to
the order of
Rose, C.J.H.C.,
dated 16th
February, 1932*

*In the
Supreme Court
of Ontario*

No. 2.
Statement of
Defence, 7th
March, 1932.

—continued

8. If it is found that the defendant cannot justify any of the acts complained of in this action under said By-law 533 then the defendant alleges, as the fact is, that all trenches which were dug and all main pipes which were laid and all gas which has been supplied by the Defendant Company in any part of the City of Hamilton were dug and were laid and was supplied and is still being supplied to the inhabitants with the knowledge, consent, permission, authority or acquiescence of the Plaintiff Corporation and the Plaintiff Corporation and the Plaintiff Company are estopped from denying the right to the Defendant Company to now maintain its mains and pipes in the said City or to supply gas to the inhabitants of the said City as aforesaid. 10

9. During part of the time between 1904 and the commencement of this action under an agreement between the Plaintiff Company and the Defendant Company made with the knowledge and at the request of the Plaintiff Corporation the Plaintiff Company acted as distributors of the defendant's gas in part of the annexed districts and because and on account of the said Agreement the Defendant Company was not as active in laying pipes and distributing gas to the said inhabitants as it would otherwise have been during the currency of the said Agreement.

NOTE

*Parts under-
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*show amend-
ments made
pursuant to
the order of
Fose, C.J.H.C.,
dated 16th
February, 1932*

10. The defendant submits that the granting of the relief asked in paragraphs (a), (b) and (c) in the Statement of Claim is within the discretion of This Honourable Court and because the Statement of Claim discloses no ground for its exercise, and because of the facts herein alleged, and the evidence which will be given at the trial, the defendants pray this Honourable Court not to exercise that discretion in favour of the plaintiffs herein, but to dismiss this action with costs. 20

11. In answer to paragraph 1 of the Plaintiffs' Reply the defendant says that:

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the order of
Wright, J.,
dated 8th July,
1932.*

(a) The plaintiffs, and each of them, by reason of the matters alleged in paragraph 4 (a), 4 (b), 4(c), 8 and 9 of the Statement of Defence, and by reason of the facts hereinafter set out, are estopped from denying that said By-law Number 533 was passed and was effective to give the defendant the right to extend its lines, and to dig trenches and to lay pipes and mains on any streets, public squares, lanes and public places in those portions of the City of Hamilton which were annexed from the Township of Barton, or which came into existence subsequent to the passing of the said By-law. 30

(b) The defendant, in pursuance of said by-law Number 533, entered into an agreement with the Township of Barton, dated the 19th day of November, 1904, and in and by the said agreement the defendant formally accepted the power and privileges granted to it by the said By-

law, and became bound to perform, observe and comply with all the agreements obligations, terms and conditions in said By-law contained, and the said By-law thereupon came into full force and effect in accordance with the terms thereof. The franchise rights, powers and privileges granted by the said By-law thereupon vested in the defendant, and have ever since been vested, and are now vested in the defendant.

*In the
Supreme Court
of Ontario*

*No. 2.
Statement of
Defence, 7th
March, 1932.*

—continued

10 (c) On September 25th, 1905, the defendant and the Plaintiff Company (which was then operating under the name of The Ontario Pipe Line Company) with the knowledge and approval of the Plaintiff Corporation, entered into an agreement under seal, whereby the defendant agreed to construct a pipe line for conveying natural gas to points on the City limits of the City of Hamilton, and to supply gas to the said company for nineteen years, and in and by the said agreement the right of the defendant to dig trenches and to lay mains on the streets within the limits of such parts of the Township of Barton as might subsequently be annexed by the City of Hamilton and to supply gas to the inhabitants of such parts was expressly recognized.

NOTE
*Parts under-
lined (as indi-
cated)
show amend-
ments made
pursuant to
the order of
Wright, J.,
dated 8th July,
1932.*

20 (d) The agreement referred to in the preceding paragraph hereof was from time to time extended by agreements under seal between the Plaintiff Company and the defendant, dated respectively September 22nd, 1924, October 22nd, 1924, November 22nd, 1924, and December 26th, 1924, and in and by each of such extending agreements, the right of the defendant to distribute and supply gas within the limits of the said City of Hamilton was expressly recognized.

30 (e) The Plaintiff Corporation entered into agreements under seal with the Plaintiff Company and the defendant bearing date respectively September 29th, 1920, April 5th, 1921, May 10th, 1921, June 28th, 1921, August 25th, 1921, and October 25th, 1921, for fixing the price to be charged by the defendant and by the Plaintiff Company to users of gas in the City of Hamilton, each of which agreements was duly approved and authorized by By-law of the Plaintiff Corporation; and in and by each of said agreements the existence of the said By-law Number 533, and of the right of the defendant thereunder to dig trenches, and to lay pipes and mains on the streets and other places in those parts of the City of Hamilton which were annexed from the Township of Barton, and to supply gas to the inhabitants of those parts of the City of Hamilton was expressly recognized and approved.

(f) The defendant relying on the construction placed upon the said By-law 533 by the plaintiffs as aforesaid, and believing that the said By-

*In the
Supreme Court
of Ontario*

*No. 2.
Statement of
Defence, 7th
March, 1932.*

—continued

NOTE

*Parts under-
lined (as indi-
cated)*

*show amend-
ments made
pursuant to
the order of
Wright, J.,
dated 8th July,
1932.*

law was effective to give the defendant the right to do the acts com-
plained of, entered on various streets and public places in those parts of
the City of Hamilton which had been annexed from the Township of
Barton, and expended large sums of money in so doing, and supplied gas
to the Plaintiff Company and to the inhabitants of such areas; and if the
said By-law is not, on any construction thereof, effective to give the
defendant such rights (which the defendant does not admit but denies)
the plaintiffs should not now be permitted to set up such a construction
and are estopped as aforesaid.

12. In further answer to paragraph 1 of the Plaintiffs' Reply as 10
amended, the defendant says:

(a) The rights and obligations of the defendant in respect of the
matters alleged in said paragraph 1 of the amended Reply are covered by
the said agreement of the 19th day of November, 1904, between the de-
fendant and the Township of Barton, and the said By-law Number 533,
and a substantial part of the area covered by the said agreement and
By-law is still within the said Township of Barton and under the exclus-
ive jurisdiction of the said Township of Barton, and the said Township
is directly interested in and would be affected by any adjudication by this
Court on the matters alleged in said paragraph. The defendant submits 20
that the Township of Barton is a proper and necessary party to any pro-
ceedings involving the determination of the matters alleged in said para-
graph.

(b) The Township of Barton is the only person entitled to question
the observance of the provisions of the said agreement and By-law re-
ferred to in said paragraph 1 of the amended Reply, and the said Town-
ship has never questioned, and is not now questioning the observance of
the said provisions.

(c) The defendant denies that the provisions of paragraphs four,
six and twenty-two of the said By-law were not observed, and denies that 30
the rights conferred by the said By-law expired at the end of ten years
or at any time, and alleges that the said rights are now in full force and
effect.

(d) The defendant further alleges that if the provisions of para-
graphs four, six and twenty-two of the said By-law, or any of them, were
not observed (which the defendant does not admit, but denies), that such
non-observance was waived and acquiesced in by the Township of Barton,
and that it is not now open to the plaintiffs, or to the said Township to
claim that said provisions were not observed.

(e) The defendant further pleads, in answer to said paragraph 1 of the amended Reply, the provisions of section 353 of The Municipal Act, R. S. O. (1927) Ch. 233.

13. In answer to paragraph 4 of the plaintiffs' Reply the defendant says:—

The defendant denies the allegations contained in paragraph 4 of the Reply herein, and alleges, as the fact is, that for more than twenty years the Plaintiff Company never questioned the defendant's rights and privileges to enter upon the streets and other public places in the annexed areas of the Township of Barton and supply gas to the inhabitants of such areas, but, on the contrary, repeatedly and continuously recognized such rights and privileges; in or about the year 1926 or 1927 the control of the Plaintiff Company changed hands, and ever since such change of control, the Plaintiff Company has endeavoured to prevent the issue by the Plaintiff Corporation of permits to the defendant for the laying of pipes and mains, and to obstruct and prevent the defendant from carrying on its business in such annexed areas, and to secure legislation to extinguish or curtail the defendant's rights and privileges therein, with a view of forcing the defendant to purchase the Plaintiff Company at a price beyond its real value.

Delivered as amended this 7th day of March, 1932, by Messrs. Harley & Sweet, of Brantford, in the County of Brant, Solicitors for the defendant.

**No. 3
Reply**

The plaintiffs deny that a By-law numbered 533 was passed by the Township of Barton or if passed was effective to give to the defendant the right to extend its lines or to dig trenches or to lay pipes and mains on any streets, public squares, lanes and public places which were not in the Township of Barton at the date the work was done or which were not in existence at the time of the passing of the said By-law; or to supply gas to the inhabitants of the City of Hamilton. In addition, the provisions of paragraphs four, six and twenty-two of the By-law were not observed, and the rights, if any, conferred by the By-law terminated at the end of ten years, and as to any area annexed to the City of Hamilton at the date of annexation.

*In the
Supreme Court
of Ontario*

—
No. 2.
Statement of
Defence, 7th
March, 1932.

NOTE

*Parts under-
lined (as indi-
cated)*

*show amend-
ments made
pursuant to
the order of
Wright, J.,
dated 8th July,
1932.*

No. 3.
Reply.
15th March,
1932.

*In the
Supreme Court
of Ontario*

No. 3.
Reply.
15th March,
1932.

—continued

NOTE

*Parts under-
lined (as indi-
cated)*

*show amend-
ments made
pursuant to
the order of
Fose, C.J.H.C.,
dated 16th
February, 1932*

2. The plaintiffs deny that any consent, permission or authority was given by the Corporation of the City of Hamilton as alleged in paragraphs 8 4(a), 4(b) and 4(c) of the Statement of Defence but on the contrary it refused to give such consent, permission or authority. Under the Municipal Franchises Act, R. S. O. 1927, Chapter 240, the consent, permission or authority could not be given without a by-law assented to by the Municipal electors and no such by-law was passed and no such assent was given.

3. If any consent, permission or authority was given by the City of Hamilton it was not irrevocable and had been revoked prior to the com- 10
mencement of this action.

4. Any agreement such as referred to in paragraph 9 of the de-
fendant's Statement of Defence terminated in April, 1925, and from and
after said date the Plaintiff Company supplied to the residents of the
annexed area artificial gas and the defendant did not enter upon the
streets, public squares, lanes and public places of the said annexed area
or attempt to serve the residents of said area with gas until 1928. The
defendant in 1928 after failing in an effort to acquire control of the
Plaintiff Company commenced the acts now complained of in an effort
to harrass the Plaintiff Company in the conduct of its business and bring 20
about a sale to it of the said business.

Delivered as amended this 15th day of March, A.D. 1932, by Kerr,
McNevin & Kerr, Bank of Montreal Bldg., Chatham, Ontario, Solicitors
for the plaintiffs.

No. 4.

Opening Proceedings At Trial

IN THE SUPREME COURT OF ONTARIO.

BETWEEN:

UNITED GAS AND FUEL COMPANY OF HAMILTON LIMITED
AND THE CORPORATION OF THE CITY OF HAMILTON,
Plaintiffs,

—and—

DOMINION NATURAL GAS COMPANY LIMITED,
Defendant.

10

Being an Action tried before THE HON. MR. JUSTICE WRIGHT, at
Hamilton, Ont., May 30, 1932, *et seq.*

APPEARANCES:

W. N. TILLEY, Esq., K.C.,
J. A. McNEVIN, K.C.,
O. M. WALSH, Esq.,

} *Counsel for the Plaintiffs.*

N. W. ROWELL, Esq., K.C.,
G. LYNCH-STANTON, Esq., K.C., AND
T. H. SIMPSON, Esq., K.C.,

} *Counsel for the Defendant.*

20

TRANSCRIPT OF EVIDENCE.

May 30, 1932:

MR. TILLEY: My Lord, the action is one to have determined the rights, if any, of the Dominion Natural Gas Company to maintain mains and pipes for supplying gas in the City of Hamilton, and to supply gas to the inhabitants of Hamilton; the plaintiffs being the United Gas and Fuel Company, which has a franchise dating back to 1904, and in 1930 or 1931 they obtained an exclusive franchise; and the other plaintiff is the City of Hamilton itself.

I think the rights of the Plaintiff Company do not come into question, its right to supply and maintain pipes and so on. The Defendant Company claims to be entitled to supply gas and to maintain its pipes under a so-called franchise from the Township of Barton, Barton being an adjoining municipality to the City of Hamilton. From time to time areas of Barton have been brought within the City limits, and the question arises, first, whether the Dominion Company has a franchise granted by Barton; and secondly, whether the franchise serves to enable them to maintain pipes and so on, after the annexation. It is the sort of question that has been up many times without very much authority about it.

HIS LORDSHIP: Were there some Toronto Street Railway cases?

MR. TILLEY: There was one Toronto Street Railway case. Your

*In the
Supreme Court
of Ontario*

No. 4.
Opening
proceedings
at trial.
30th May,
1932.

*In the
Supreme Court
of Ontario*

No. 4.
Opening
proceedings
at trial.
30th May,
1932.

—continued

Lordship will remember that that turned upon the language and provisions of the agreement; the Privy Council saying that it would be unthinkable that they intended in the particular case to burden the railway company with carrying for five cents any distance the city limits might be carried to. There were questions arose there with regard to the language of the document, and the same sort of question in a different form will arise here, and then the legislation will have to be considered.

HIS LORDSHIP: Is the sole point here, in the first instance, whether the Defendant Company has a franchise in Barton; and then, whether it is valid after annexation? 10

MR. TILLEY: Does it benefit them now for the Hamilton areas?

The particular activity that caused the dispute occurred in 1928. There were some minor extensions before, but in 1928 a very active campaign was started by the Dominion Company by way of inducing subscribers or customers of the United Company to cancel their agreements and take gas from the Dominion Company.

HIS LORDSHIP: Is that at all in issue here, or is it just the larger question?

MR. TILLEY: It is really the larger question that we are concerned with here. I assume that if your Lordship came to the conclusion that the plaintiffs were entitled to damages, that it would be referred, because the basis on which damage would have to be ascertained would be a matter that would have to be first considered, and I would think it would be an interminable hearing to go on and take all the contracts that were made, and find out what the damages would be. No doubt these things will straighten themselves out when the rights of the parties are declared. 20

The statement of claim asks by way of prayer at the end for the payment of \$85,000 damages, but that I think is not the right way to proceed, because that brought the damages to the date of the commencement of the action, and the matter is continuing, and the assessment would have to be down to the date of the assessment. I would ask your Lordship to permit that to be amended, merely asking that the damages be assessed. 30

HIS LORDSHIP: I suppose that could not prejudice the defendants in any way. It would have to be a new action every time.

MR. TILLEY: Yes, I think the right way would be to ask in our prayer—

HIS LORDSHIP: Is there any objection to that, Mr. Rowell?

MR. ROWELL: There are a number of amendments, certain ones asked by the defendants, and my learned friend has certain other amendments he has given us notice that he intends to present. 40

HIS LORDSHIP: Perhaps the case is not ready for trial.

MR. ROWELL: It perhaps would facilitate the matter if all the amendments were before your Lordship; that is, those suggested on each side.

MR. TILLEY: I will put mine before your Lordship, if that is the natural order. I ask first that Clause "D" of the prayer at the end be amended to read that the damages sustained by the Plaintiff Company be

assessed, and the amount thereof paid with interest.

HIS LORDSHIP: You have not any serious objection to that, Mr. Rowell?

MR. ROWELL: I do not think we can urge objection to that.

HIS LORDSHIP: That amendment will be allowed.

MR. TILLEY: The other amendment, a part of it is pure oversight, and the other I think is really not necessary, but my friend has had notice of it for some time. If your Lordship will just look at the record, paragraph one of the reply,

10 "The plaintiffs deny that a By-law numbered 533 was passed by the
 "Township of Barton or if passed was effective to give to the defend-
 "ant the right to extend its lines or to dig trenches or to lay pipes
 "and mains on any streets, public squares, lanes and public places
 "which were not in the Township of Barton at the date the work was
 "done or which were not in existence at the time of the passing of
 "the said by-law."

And then I should have added there, "Or to supply gas to the inhabitants
 "of the City of Hamilton."

I refer to the pipes.

20 HIS LORDSHIP: They could not supply the gas unless they had the pipes.

MR. TILLEY: No. Then in addition there are three provisions of the By-law requiring things to be done in advance. I think my friend would have to show that they were done without any special plea, but I do not want any doubt about it; so I ask to add,

"In addition, the provisions of paragraphs four, six and twenty-two
 "of the By-law were not observed and the rights, if any, conferred
 "by the by-law terminated at the end of ten years and as to any area
 "annexed to the City of Hamilton at the date of annexation."

30 It is more formal than anything else, because those are the issues.

HIS LORDSHIP: Mr. Rowell, what amendments are you asking?

MR. ROWELL: I am asking first an amendment to the statement of defence, to insert as paragraph 2(b) the section mentioned in the notice,—

"This action is commenced and carried on by the Plaintiff Company
 "in its own name and that of the Corporation of the City of Hamil-
 "ton, and the Corporation of the City of Hamilton is only a formal
 "party to this action and no relief can be given herein beyond such
 "relief as could be given to the Plaintiff Company if it had not joined
 "the said Corporation as co-plaintiff or for such other amendment
 40 "as may be proper."

HIS LORDSHIP: That is only a matter of result.

MR. ROWELL: It is a little more than that, my Lord. The plaintiff's action, we submit, and the only basis on which it can be brought is under Ch. 100 of 21 Geo. V., which is an Act confirming a By-law and an agreement made between the Corporation of the City of Hamilton and the Plaintiff Company, and under the provisions of that agreement, which is an agreement granting the franchise—if your Lordship will look at

*In the
 Supreme Court
 of Ontario*

—
 No. 4.
 Opening
 proceedings
 at trial.
 30th May,
 1932.

—continued

*In the
Supreme Court
of Ontario*

No. 4.
Opening
proceedings
at trial.
30th May,
1932.

—continued

Schedule "B", the first paragraph, your Lordship will see,—

"1. The consent, permission and authority of the Corporation of
"the City of Hamilton are hereby given and an exclusive franchise
"for a period of ten years from and after the date hereof is hereby
"granted to The United Gas & Fuel Company of Hamilton, Limited
"(except as to and to the extent of any existing rights and privileges
"that may now be held by the Dominion Natural Gas Company
"Limited under By-law Number 533 of the Township of Barton and
"the Agreement entered into pursuant to the said By-law, and by the
"Manufacturers Natural Gas Company Limited—"

10

and so on.

And then Section 2 which deals with the question of the action, your Lordship will see,—

"The City Corporation shall not during the said period of ten years
"grant any rights, licenses, privileges or franchises to any other
"company, firm or individual to conduct, distribute, supply or sell
"gas within the limits of the said City Corporation as from time to
"time existing during the said period, and if during the said period
"any company, firm or individual, including the Dominion Natural
"Gas Company Limited or the Manufacturers Natural Gas Company 20
"Limited or the Southern Ontario Gas Company Limited or any of
"them or any of their respective successors or assigns, shall without
"due license, permission and authority, conduct, distribute, supply or
"sell gas within the said limits, or shall commence to dig trenches,
"lay pipes, solicit contracts for the sale of gas, or otherwise prepare
"to conduct, distribute, supply or sell gas within the said limits, then
"the Company shall have the right to take such action in any Court
"of competent jurisdiction or otherwise as it may be advised to
"prevent such conducting, distribution, supply or sale of gas and/or
"to determine or to have the question determined as to whether or 30
"not the company, firm or individual (including the Dominion Nat-
"ural Gas Company Limited or the Manufacturers Natural Gas
"Company Limited or the Southern Ontario Gas Company Limited,
"or any of them or any of their respective successors or assigns) as
"the case may be, has due license, permission and authority to so
"conduct, distribute, supply or sell gas and/or has existing rights
"and privileges which justify it in so doing and all the rights of the
"City Corporation in the premises are hereby assigned to the com-
"pany and the City Corporation agrees that this Agreement shall
"not be effective until the Legislature of the Province of Ontario 40
"shall have enacted a statute conferring upon the company the right
"to take all action contemplated by the provisions of this paragraph
"2 and in accordance with the intention thereof."

HIS LORDSHIP: That Act was passed?

MR. ROWELL: That Act was passed. Sub-Section 2 of Section 4 of
the Act is,—

"The said company shall have and may exercise all the rights con-

“ferred by clause 2 of the said agreement in the same manner and
 “to the same extent as if such rights were specifically set forth in
 “and granted by this Act, and all such action may be taken by the
 “said company in its own name or in the name of the said corpora-
 “tion, and any action so brought or taken by the said company under
 “the provisions of said clause 2 shall be at its own expense.”

*In the
 Supreme Court
 of Ontario*

—
 No. 4.
 Opening
 proceedings
 at trial.
 30th May,
 1932.

The submission of the defendant, is, my Lord, that this action is brought
 under this section, and the City is only a party by virtue of this Act. The
 City is not an active litigant in the sense that it is initiating these pro-
 10 ceedings itself. Under this Section the right is given to the Plaintiff
 Company to join the city. Our submission is that no relief can be
 granted in this action other than the specific relief that is contemplated
 by the provisions which authorize the bringing of the action. In other
 words, it is not a suit at large by the city, so to speak, in dealing with the
 question of this franchise, but it is a suit limited to such rights as are
 conferred under this Section.

—continued

HIS LORDSHIP: Wouldn't that be more a matter of argument as to
 what relief the plaintiffs would be entitled to?

MR. ROWELL: I submit more than that, because we think we should
 20 have the right here to show by evidence also that this proceeding so far
 as the City is concerned is solely under this Act.

HIS LORDSHIP: Is it your argument that the City has waived all its
 rights, assigned them to the company, under the provisions of this private
 Act?

MR. ROWELL: Apparently they have assigned certain specific rights
 to the company under this Act.

HIS LORDSHIP: You claim they cannot let the general rights—

MR. ROWELL: I claim they are not suing in that capacity. The City
 is not suing as a City. The company have joined the City, and under
 30 this Act they have a right to join the City, and the suit is properly con-
 stituted in the name of the City under the terms of this Act.

HIS LORDSHIP: Your contention is that all the relief that can be
 granted is that contemplated within the terms of this Act?

MR. ROWELL: That is my point. I should explain to your Lordship
 that this question was raised by the original defence, in which the defend-
 ants pleaded that this action was brought by the plaintiff without the
 authority of the city. The Court held on a motion to strike out that
 pleading that that was not a proper defence; on the ground that if a
 solicitor was bringing an action without authority the proper method was
 40 to move. I cannot quarrel at all with that view. Then an application
 was made to amend, and the amendment then proposed was refused by
 his Lordship, Chief Justice Rose, because he said, “In effect it is but
 another effort to challenge the authority of the solicitors to bring the
 action.” That is not what we wish to do, my Lord. We wish to put on
 record the claim that this action is brought pursuant to the provisions of
 this Act, and that the only relief that can be granted in the action is such
 relief, if any, as can be granted pursuant to the terms of this section.

*In the
Supreme Court
of Ontario*

No. 4.
Opening
proceedings
at trial.
30th May,
1932.

—continued

The clause is before your Lordship, and it is possible it may be a little broad. We would be quite content to have that limited in the language in which I have explained the motion to your Lordship. The action is commenced and carried on by the Plaintiff Company in its own name and that of the Corporation of the City of Hamilton, pursuant to the provisions of 21 Geo. V. Chap. 100.

HIS LORDSHIP: It is a private Act. You can refer to it.

MR. ROWELL: It is not necessary perhaps to insert that provision, but that is the relief we desire in respect of that matter.

Then, as your Lordship is aware, we have no right to file a rejoinder to a reply without leave of the court. Notice was given that a motion would be made for leave to file a rejoinder. That rejoinder is before your Lordship in the notice of motion, and is a rejoinder to my learned friend's reply before the particular amendments asked for by him. I will therefore deal with this rejoinder first, and then I will deal with the amendments afterwards.

Your Lordship will see we plead that by reason of the matters set up, it is not competent—it is not open to the plaintiffs now to raise the issues which they are seeking to raise by that clause in the reply. The question of our franchise validity, of our franchise or our rights under it, was not raised in the statement of claim, and the reply is the first time the matter is brought before the court. It is necessary for us to file a rejoinder setting out the grounds on which we base our contentions with reference to the matters set out in paragraph 1.

We set out a series of agreements between the parties, in all of which we say these rights have been recognized; by-laws by the City Corporation in which they recognize these rights within the annexed portions; large expenditures of money on the basis of our possessing these rights. We say under these conditions it is not open to the plaintiffs now to make the contentions they make with reference to Clause 1.

HIS LORDSHIP: In other words, that they, standing in the shoes of the city, cannot have higher rights than the city, and that the city is estopped?

MR. ROWELL: Yes, my Lord. And then we also plead certain agreements to which the company is a party. Those in paragraph four are agreements between the Plaintiff Company and the Defendant Company.

HIS LORDSHIP: Is it correct to say that the object of these amendments you seek is to place the whole facts before the court in connection with the action?

MR. ROWELL: That is it, my Lord, put all the facts before the court, from which the court must finally draw its conclusions with reference to the proper interpretation of the contract, of the by-law and agreement; and further, whether it is open to the plaintiff to raise these questions at the present time.

HIS LORDSHIP: Perhaps Mr. Tilley does not object to these amendments.

MR. TILLEY: Yes, my Lord, we have had these up two or three times

in various forms. The last draft to suit my friends' taste was received since I have been sitting here. Chief Justice Rose has passed upon such contentions as my friend is now putting forward, and after a great deal of discussion before him, he actually settled what could be pleaded and what could not.

My friend is not quite, I think, as frank as he usually is with your Lordship as to the purpose of this. The first clause is an attempt to plead in an indirect form something as to the position of the plaintiff municipal corporation as a litigant, and as to the issues it is raising.

10 If my friend wants to make any attack on the claims that are being put forward in the statement of claim by any complaint on the ground that the person drafting the pleading is not authorized to make the claim for that litigant, that must be done by direct motion by way of attack, and is not a subject-matter for the trial. That has been decided in two or three cases, and the Master held that no question could be raised under that head.

HIS LORDSHIP: It is not a question of pleading. It is a question of authority.

MR. TILLEY: Yes, my Lord. And Chief Justice Rose heard a long

20 argument, and he reached the same conclusion. What either plaintiff is claiming must depend upon the plea they have entered, and whether they are entitled to it or not depends upon the facts and the law. It does not depend upon calling members of the council. I do not know who my friend proposes to call to show who gave the authority to have the corporation's name included as a party plaintiff. We are here to try the issues raised in these pleadings.

HIS LORDSHIP: It does not appear to me that that "2(b)" the first clause of the proposed amendment, questions the authority at all.

MR. TILLEY: It questions the authority to assert some of the claims

30 that are put forward in the pleading for the municipal corporation. If my friend's only argument is that the Municipal Corporation cannot get relief under some of these claims made, that would be quite a different matter, but he is not saying that. He is saying that the use of the name here is only for a limited purpose, and that if the claim is not backed up by the Statute, then it must be disregarded. If my friend wants to make that attack, it must be made by direct motion.

Would your Lordship be good enough to look at Clause 2 of the defence, because that is a clause that was settled by Chief Justice Rose after this controversy cropped up? It says, "No rights enforceable by

40 "the plaintiff City Corporation have been invaded by the defendant
"and the defendant will so contend at the trial of this action."

Now we are ready to meet that.

Then the statement of defence goes on:—

"The said statement of claim does not disclose any cause of action in
"the plaintiff company, and the defendant at the trial will contend
"that the plaintiff company has no right to maintain this action."

That is, first, the municipal corporation; and secondly the company.

*In the
Supreme Court
of Ontario*

No. 4.
Opening
proceedings
at trial.
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
No. 4.
Opening
proceedings
at trial.
30th May,
1932.

—*continued*

“If the plaintiff company at the trial of this action contends that
“it has the right to maintain this action under the provisions of the
“City of Hamilton Act 1931 then the defendant will contend that
“that the Plaintiff Corporation never had any right to institute or
“maintain such an action, but if the Plaintiff Corporation ever had
“such a right then such right is not assignable at law and any assign-
“ment attempted to be made of such right of action in the Agree-
“ment ‘Schedule B’ and the said Act is ineffective and a nullity
“and that Section 4, subsection (2) of the said Act does not create
“and vest such a right in the Plaintiff Company but only confirms 10
“such rights as are conferred by Clause 2 of the Agreement therein
“mentioned and no right to litigate the questions herein raised is
“or could be lawfully assigned by the Plaintiff Corporation to the
“Plaintiff Company.”

That is in the pleading, and the pleading has all been settled at Toronto.
(Reads paragraphs 4A, 4B, and 4C of the statement of defence.)

All of those paragraphs I referred to are amendments made to the
defence because Chief Justice Rose said they had to give some more
definite information than they had given about the things relied on as
estoppel. 20

MR. LYNCH-STANTON: That is not correct. We proposed to make
that amendment and it was not—

MR. TILLEY: My friend proposed a much briefer amendment than
this, and when it came before Chief Justice Rose, he said it had to be
elaborated and particulars had to be given, that he would not permit
the vague amendment to be made that was proposed.

HIS LORDSHIP: Do not these amendments, Mr. Rowell, set up the
defence of estoppel?

MR. ROWELL: They do, my Lord, on certain points raised in the
pleadings, but, my Lord, my learned friend for the first time in his 30
reply—

HIS LORDSHIP: Why did you not move to strike out the reply? If
it is not properly pleadable by way of reply, it should be stricken out.

MR. ROWELL: We based our defence on the by-law, and my learned
friend replied by saying—

MR. TILLEY: Mr. Rowell, just to be accurate, our reply was filed
at the time my friends moved to make this amendment, and Chief Justice
Rose in Clause 3 says, “And it is further ordered upon the motion on
“behalf of the plaintiffs aforesaid that the proposed amendments 40
“to the statement of defence in paragraphs 4A and 4C as contained
“in the said Schedule as the same are now drafted be not allowed
“but that the defendants be at liberty to amend the said statement
“of Defence by adding in place of paragraph 4A a paragraph to
“the same effect but in addition containing particulars of the manner
“in which the consent and approval of the Plaintiff Corporation to
“the expenditure referred to,” and so on.

So that his Lordship had our reply. My friend is quite inaccurate in

saying our reply was not before them. It was, because we moved to strike out a clause that said that the Plaintiff Corporation was a party without authority, and when they got before Chief Justice Rose the defendants came along with this draft 4A and 4B to be added, and his Lordship said, "I will not allow those, but give proper particulars of what you are alleging by way of estoppel and you can add them." Then the pleading was amended as we have it here.

*In the
Supreme Court
of Ontario*

—
No. 4.
Opening
proceedings
at trial.
30th May,
1932.

MR. ROWELL: My learned friend is, I am sure, in error unintentionally. I was not a party to these proceedings and I have been basing
10 my observations on the records here. I find the amended defence was delivered on the 7th of March.

—continued

MR. TILLEY: We are not talking about the amended defence. If you look at Clause 6 of the very order I have been referring to, it says this:—

"That the plaintiffs do deliver their amended reply to the said
"amended statement of defence within ten days thereafter."

MR. ROWELL: The amended reply to which I have reference was delivered on the 15th of March, 1932.

HIS LORDSHIP: You object that the plaintiffs in their reply are
20 claiming relief which they did not claim in the statement of claim?

MR. ROWELL: No, my Lord, not claiming relief, but by the way of answer to our contention that our occupation of the streets and distribution of gas is justified by the by-law, they say, "The plaintiffs deny
"that a by-law numbered 533 was passed by the Township of Barton
"or if passed was effective to give to the defendant the right to
"extend its lines or to dig trenches . . . on any streets . . . which
"were not in existence at the time of the passing of the said by-law."

That appears in the reply, my Lord.

HIS LORDSHIP: You set up in your defence the by-law as your
30 authority.

MR. ROWELL: Yes, my Lord.

HIS LORDSHIP: They say that by-law is not valid or is not effective to give you the rights which you claim. Doesn't that put squarely in issue the whole by-law?

MR. ROWELL: Then we say in answer to that, and that is the reason we have asked to plead these facts, that by reason of all that has taken place between these three parties, it is not open to these plaintiffs now to raise those issues, because for 20 years and more this by-law has been acted upon, we say, on the basis of the interpretation which we now put
40 upon it, which gives us these rights in the Township.

HIS LORDSHIP: Would that not be a matter of evidence rather than pleading?

MR. ROWELL: The important thing, of course, is to get it before your Lordship. If your Lordship will receive it as evidence—I thought the fair thing was to have it on the record as a plea.

HIS LORDSHIP: In a case as important as this, I think every fact or circumstance that bears on the issue should be admitted in evidence.

I am not going to restrict it unduly anyway. Both parties have notice of the contentions of the other, and that is the object of pleading.

MR. ROWELL: My submission would be that we should be permitted to file a rejoinder to this reply, setting out the matters—

HIS LORDSHIP: You must appreciate the fact, Mr. Rowell, that an additional pleading at the trial is somewhat unusual.

MR. ROWELL: It is not so uncommon, my Lord. It is only setting out the facts which we submit are relevant, and which we say show that they are not entitled to raise the objections which they plead; that is, an entirely different issue from the first one. 10

I was surprised at my learned friend's suggestion that we were not frank with the Court. I explained to the Court in opening that the learned Chief Justice of the High Court had held we were not entitled to raise that issue as to the right to bring the action. I am not now seeking to raise that issue. I recognize that that is concluded. What we are seeking to present to the Court is that no relief can be granted in the action save that authorized by the Statute.

HIS LORDSHIP: That is not a question of pleading, is it? The plaintiff has to succeed by showing what his rights are. The court can only give effect to those that are established, not to those that are claimed. 20

MR. ROWELL: With respect I submit we should be permitted to amend in that form.

Then with reference to my learned friend's application to amend Paragraph 1 of his reply; that does raise issues which have not been raised at all before. The particular portion of that amendment which I submit raises entirely new matter is,—

“In addition, the provisions of paragraphs four, six and twenty-two of the by-law were not observed and the rights, if any, conferred by the by-law terminated at the end of ten years and as to any area annexed to the City of Hamilton at the date of annexation.” 30

That raises entirely new issues, because it raises the question of the compliance with the by-law, the terms. I assume my friend must intend to argue that these are conditions precedent.

MR. TILLEY: Yes.

HIS LORDSHIP: You set up the by-law, and he by reply says, “But you have not brought yourself within the by-law.” That is very proper by way of reply.

MR. ROWELL: Has he not set it up till now, my Lord.

HIS LORDSHIP: Are you prejudiced in any way?

MR. ROWELL: It states the by-law is limited to ten years. The situation is this. This by-law was passed by the Township of Barton. It imposes certain important obligations on us, as well as granting us certain privileges. My submission is that the Court should not determine the question of the duration of that by-law or the compliance with its provisions in the absence of the Township of Barton. How would it be right to determine that a franchise and by-law which is under an agreement made with another municipality, under which they have certain rights 40

and privileges, that we are under obligation to supply gas—

HIS LORDSHIP: Isn't it so under the municipal law that when a territory is annexed to a city, that the by-laws of the Township remain in force in that part until they are rescinded by the city?

MR. ROWELL: A by-law granting a franchise does remain in force, and the City has no power to repeal a franchise. Only parts of the Township of Barton have been added to the City of Hamilton.

10 HIS LORDSHIP: Has anybody suggested heretofore that the Township of Barton should be a party?

MR. ROWELL: No, my Lord.

HIS LORDSHIP: There is no relief claimed against them?

MR. ROWELL: No, my Lord.

HIS LORDSHIP: No relief claimed by them. They would be merely formal parties. They might be proper parties, but not necessary to determine the issue.

MR. ROWELL: Would they not be necessary in this sense; assuming the argument is pressed that it is only a ten years' franchise, that might seriously affect the Township of Barton.

20 HIS LORDSHIP: How?

MR. ROWELL: Because they have an obligation from us to continue to supply gas at certain fixed rates made under a by-law in 1904.

HIS LORDSHIP: That part of the agreement is not in question.

MR. ROWELL: It cannot be severed. It is a whole agreement. The courts have held these franchise agreements cannot be severed.

HIS LORDSHIP: Under a by-law affecting the rights of two residents in a municipality, if the question of the effect of the by-law comes up, it is not necessary in that case to have the Township made a party.

30 MR. ROWELL: No, my Lord, but this is different. This is an agreement between the Township and the Corporation, and the City only comes into it by virtue of the fact that a portion of the Township covered by the agreement has been annexed to the City. Now my learned friend is asking your Lordship to pass upon the effect of that agreement and the by-law as to its duration. That is the first time it has been raised, in this request for amendment.

HIS LORDSHIP: Has any person a right to say to another who claims rights under a by-law, "You have no longer any rights. Your rights are determined. You have no rights under the by-law any longer?" Is it necessary that the municipality should be a party in order that that should be determined?

40 MR. ROWELL: Perhaps not in that particular case, my Lord. It is perhaps not easy to draw the line between the class of case where it is necessary and where it is not.

HIS LORDSHIP: That would not be binding upon you, or the Township of Barton, the Township of Barton not being a party.

MR. ROWELL: In effect is it not binding, assuming the court should hold and further decisions should be to the same effect?

*In the
Supreme Court
of Ontario*

No. 4.
Opening
proceedings
at trial.
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
No. 4.
Opening
proceedings
at trial.
30th May,
1932.

—continued

HIS LORDSHIP: It could not possibly be binding on the Township of Barton.

MR. ROWELL: Because they are not before the Court, but in the result if the Court reached the conclusion in this suit, one could not expect the Court to come to a different conclusion—

HIS LORDSHIP: Why not? A different Judge might come to a different conclusions. There are lots of instances of that.

MR. ROWELL: It is the construction of a contract, and if the construction is given in this Court, and that is dealt with by other Courts as well, one could not expect the same contract to receive a different construction. 10

HIS LORDSHIP: What would the object in adding the Township of Barton be? There is no relief claimed against them.

MR. ROWELL: My learned friend is in effect seeking a declaration in that form.

MR. TILLEY: No, I am not.

MR. ROWELL: He is claiming there are no rights because it has expired. I submit this amendment should not be granted in the absence of the Township.

HIS LORDSHIP: Carrying that along logically, it would mean that any action in which a by-law of a township was involved, the township should be a party. 20

MR. ROWELL: I do not think it goes that far, my Lord.

HIS LORDSHIP: I am not in a position to give a decision on this on this short notice. You can file your applications in the meantime, and I will deal with them at a later stage in the action. I think that is the best I can do at present.

MR. ROWELL: There is this further difficulty I should point out. My learned friend is pleading that we have not complied with a condition which was to be complied with in the year 1905. I do not know anybody living or available— 30

HIS LORDSHIP: Is there not such a thing as waiver of conditions?

MR. ROWELL: That is one reason why we want to reply and plead waiver. There are further pleas in reply, if my learned friend's amendments are granted, further pleas to those particular amendments.

HIS LORDSHIP: They are not necessary unless his amendment is granted?

MR. ROWELL: The further pleas are not necessary unless his amendment is granted.

HIS LORDSHIP: I suppose if his pleading necessitates amendment he cannot complain. He has got to take the consequence. 40

MR. ROWELL: I will file my further reply to the amendments proposed in case your Lordship should grant these additional clauses.

HIS LORDSHIP: Anything additional to what is claimed in your proposed rejoinder?

MR. ROWELL: Yes, my Lord, these additional pleas.

HIS LORDSHIP: What is the effect of it, Mr. Rowell?

MR. ROWELL: The effect is this, my Lord:—

10 “The rights and obligations of the defendant in respect of the mat-
 “ters alleged in paragraph 1 of the reply are covered by the said
 “agreement of the 19th day of November, 1904, between the De-
 “fendant and the Township of Barton, and the said by-law number
 “533, and a substantial part of the area covered by the said agree-
 “ment and by-law is still within the said Township of Barton, and
 “under the exclusive jurisdiction of the said Township of Barton,
 “and the said Township is directly interested in and would be affect-
 “ed by any adjudication by this Court on the matters alleged in said
 “paragraph. The Defendant submits that the Township of Barton
 “is a proper and necessary party to any proceedings involving the
 “determination of the matters alleged in said paragraph.
 “The Township of Barton is the only person entitled to question the
 “observance of the provisions of the said agreement and by-law
 “referred to in paragraph 1 of the amended reply, and the said
 “Township has never questioned and is not now questioning the
 “observance of the said provisions.”

20 HIS LORDSHIP: That raises a clear-cut question of law, whether it
 is open to them to question it or not. Hardly a matter of pleading, more
 of argument.

MR. ROWELL: I would submit it is a proper thing to raise, a matter
 on which the argument will take place.

30 “The Defendant denies that the provisions of paragraphs 4, 6 and
 “22 of the said by-law were not observed, and denies that the rights
 “conferred by the said by-law expired at the end of ten years or at
 “any time, and alleges that the said rights are now in full force and
 “effect.

“The Defendant further alleges that if the provisions of paragraphs
 “4, 6 and 22 of the said by-law, or any of them, were not observed
 “(which the Defendant does not admit, but denies), that such non-
 “observance was waived and acquiesced in by the Township of Bar-
 “ton, and that it is not now open to the Plaintiffs, or to the said
 “Township, to claim that said provisions were not observed.

“The Defendant further pleads, in answer to paragraph 1 of the
 “amended reply, the provisions of Sec. 353 of The Municipal Act,
 “R.S.O. (1927) Ch. 233.”

MR. TILLEY: What is that section?

MR. ROWELL: (Reads section).

40 We plead that in answer to my learned friend's claim for damages for
 doing acts upon the streets which we say we have done under that by-law,
 if my learned friend challenges that as being valid.

HIS LORDSHIP: Do you wish to add anything?

MR. TILLEY: Just one point there, my Lord. If your Lordship
 thinks that a reply to my amendment is necessary, I have nothing par-
 ticular to say about this special reply. It seems to be setting up law

*In the
 Supreme Court
 of Ontario*

—
 No. 4.
 Opening
 proceedings
 at trial.
 30th May,
 1932.

—continued

*In the
Supreme Court
of Ontario*

No. 4.
Opening
proceedings
at trial.
30th May,
1932.

—continued

rather than fact, but there it is, and I am not concerned now with arguing the law.

On the other branch I do want to make this point, that these pleadings were before Chief Justice Rose, including our reply at the time when my friends applied to be allowed to amend their defence by setting up matters of estoppel and such like. His Lordship directed that they should give them with more particularity, and the result was that they gave them with the particularity disclosed now in the pleading. After that was done the only amendment we made to our reply was to include in it a reference to the added paragraphs, by way of controverting what was therein set up. Instead of saying, "The plaintiffs deny that any consent, permission or authority was given by the Corporation of the City of Hamilton as alleged in paragraph 8," we added "paragraphs 4(a), 4(b) and 4(c)." That is the only amendment we made, just to bring in the new allegations of consent. So that the whole matter was before Chief Justice Rose at the time when he had the pleadings before him. I have a copy of his order and his reasons. 10

HIS LORDSHIP: I would like to have them filed.

MR. TILLEY: There are the order and the reasons both (handing to his Lordship). 20

MR. LYNCH-STAUNTON: I would like to draw your Lordship's attention to a statement made by my friend Mr. Tilley in opening his case. He said that one of the matters in controversy here was our right to lay and maintain pipes in the streets. I submit that the only issue before your Lordship is the right to sell gas, that the agreement is confined to that, the agreement in the Statute.

"The City Corporation shall not during the said period of ten years grant any rights, licenses, privileges or franchises to any other company, firm or individual to conduct, distribute, supply or sell gas within the limits of the said City Corporation." 30

HIS LORDSHIP: Isn't that wider? Conduct gas—isn't that maintain pipes?

MR. STAUNTON: I have not arrived at the point I want to yet.

"...as from time to time existing during the said period and if during the said period any company, firm or individual . . . shall without due license, permission and authority, conduct, distribute supply or sell gas within the said limits, or shall commence to dig trenches, lay pipes, solicit contracts for the sale of gas, or otherwise prepare to conduct. . ." 40

Conduct does not include the laying of pipes, I say in passing, although it is not my point. Conduct is after the pipes are laid.

HIS LORDSHIP: The conducting of gas must be done by pipes that are maintained.

MR. STAUNTON: Yes, it might be, but I am saying conduct means the operation of distributing the gas. That is my contention. "Otherwise prepare to conduct, distribute, supply or sell gas within the said limits, then the Company—" Up to date their right has not arisen,

because we last year laid down pipes. It only arises if we after the passing of this Act commence to do something in the way of laying pipes. If the paragraph ended there, they must show that we have commenced to lay pipes or done something, and not show that we have done something before the passing of the Act.

10 “ . . . shall have the right to take such action in any court of competent
 “ jurisdiction or otherwise as it may be advised to prevent such con-
 “ ducting, distribution, supply or sale of gas and/or to determine
 “ or to have the question determined as to whether or not the com-
 “ pany, firm or individual . . . has due license, permission and
 “ authority to so conduct, distribute, supply or sell gas and/or has
 “ existing rights and privileges which justify it in so doing and all
 “ the rights of the City Corporation in the premises are hereby as-
 “ signed to the company and the City Corporation agrees that this
 “ Agreement shall not be effective until the Legislature of the Prov-
 “ ince of Ontario shall have enacted a statute conferring upon the
 “ company the right to take all action contemplated by the provisions
 “ of this paragraph 2 and in accordance with the intention thereof.”

I say that this Act must be construed literally.

20 HIS LORDSHIP: Because it creates a monopoly?

MR. STAUNTON: No, because it is taking away rights from us which we enjoyed. It is giving them the right to oust us from a position we have occupied for 20 years. My friend says we have only begun since 1928. As a matter of fact, we had 25 or 30 miles of pipes laid 20 years ago. In the first place, it is unheard of legislation. I do not think anywhere has any legislature undertaken to assign a cause of action—

HIS LORDSHIP: Which is unassignable at common law? Isn't that what the Legislature is doing every day, changing the common law?

30 MR. STAUNTON: I think this is the first stride it has made to change
 the common law of assignment of a chose in action. This chose in action is not assignable, and it is against the whole policy of the law that a right to litigate should be assignable, and if the Legislature does assign it, it will be scrutinized carefully to see exactly what it has assigned.

That is a matter perhaps for argument, but I particularly want now to say that we take the stand that they cannot inquire into it, nor can the Court pronounce upon the right to maintain these pipes or lay them down in these streets in this action, and that is why we are pressing so strongly that it must be shown how the city came into this action.

40 We are not imputing anything wrong to the solicitors, but it will be
 argued, “Oh, well, if we cannot do it, the city can do it,” but the city is not asking it.

HIS LORDSHIP: Why did you not move to strike out the city as a party?

MR. STAUNTON: I did, my Lord, and I was met with the reply that that means an imputation on the solicitor. It is in the judgment of the Master that it is an imputation on the solicitor.

HIS LORDSHIP: That should not deter you from going further.

*In the
 Supreme Court
 of Ontario*

—
 No. 4.
 Opening
 proceedings
 at trial.
 30th May,
 1932.

—continued

*In the
Supreme Court
of Ontario*

No. 4.
Opening
proceedings
at trial.
30th May,
1932.

—continued

MR. TILLEY: They did go.

MR. STAUNTON: I consider it is necessary for us, it is right for us, whether it is a pleading or not, to show that the city gave no instructions. If we failed to do that it could be argued in this court and other courts that the city is entitled to this relief if the company is not.

HIS LORDSHIP: I thought there were authorities to the effect that when a municipal corporation brings an action there must be a by-law authorizing it, or resolution of the council, and in the absence of that it cannot be said it is an authorized action. I think that is the result of the Town of Barrie case. 10

MR. STAUNTON: That is what we propose to tender evidence to show, that there is none.

MR. TILLEY: I submit that is not proper at the trial.

HIS LORDSHIP: Did you show that on the motion?

MR. STAUNTON: I did show it on the motion. I put in a letter from the City Solicitor saying that they did not authorize the action, and a letter from the Mayor to the same effect.

HIS LORDSHIP: Otherwise, anybody could bring an action in the name of the city. Wouldn't there be a remedy? Is it necessary for the city to disown it, or can the defendant say, "You have no right to bring 20 this action. You have no authority."

MR. STAUNTON: We are only putting this pleading in because I have seen that sometimes in the other courts they have said, "You did not raise it by the plea."

HIS LORDSHIP: That must have been a long time ago because pleadings now very seldom show the real issue.

MR. STAUNTON: I was barred from it in the Privy Council last summer because it was not shown in the pleadings. I propose to call the evidence to show it was not authorized.

HIS LORDSHIP: The evidence may be received subject to objection. 30 I am not ruling that now though. Let us get at the real trial now.

SAMUEL H. KENT, Sworn. Examined by MR. TILLEY:

Q. Mr. Kent, you are the Clerk of the City of Hamilton? A. Yes sir.

Q. And have you brought certain orders of the Ontario Railway and Municipal Board annexing parts of Barton to the City of Hamilton. A. Yes sir.

Q. You have the originals I suppose? A. I have the originals, and I think copies have been supplied. 40

HIS LORDSHIP: I suppose the parties agree that copies can go in?

MR. TILLEY: Yes.

HIS LORDSHIP: Give them in order of date if possible.

MR. TILLEY: Yes.

WITNESS: These are the orders of the Railway Board.

MR. TILLEY: Q. Have you first a proclamation of 1891 fixing certain boundaries? It is the 2nd of July, 1891.

Plaintiffs'
Evidence.
No. 5.
Samuel H.
Kent,
Examination,
30th May,
1932.

HIS LORDSHIP: In those days it was done by private act.

WITNESS: It was a proclamation.

MR. TILLEY: "Whereas, it has been made to appear . . . that two-thirds of the members of the municipal council . . . did . . . pass a resolution affirming the desirability of adding to the limits of the said city certain portions of the adjoining Township of "Barton."

This fixes it as it stood in 1904. Have you that?

WITNESS: I have not the original proclamation.

10 MR. TILLEY: This is a certified copy. Possibly my friends will not object to its being used. This is a proclamation signed by Mr. Gibson, as Secretary.

HIS LORDSHIP: It would be an order-in-council.

MR. TILLEY: It fixes the limits on Sherman Ave..

EXHIBIT 1. Proclamation of 2nd July, 1891.

MR. TILLEY: The next is an order of the Railway Board of Sept. 3, 1908.

20 Q. Have you that? It orders that the section of Barton herein above described shall be annexed to the City of Hamilton, and the property described is that part of the Township bounded by Wentworth Street on the west side, on the south by Concession Road, on the east by Lake View Avenue extended to the brow of the mountain (the extension on the south to take in the whole of the highway to the south thereof, and on Lake View Avenue to the east side thereof), and on the north by the brow of the mountain.

EXHIBIT 2. Order of Ontario Railway and Municipal Board, Sept. 3, 1908.

30 MR. TILLEY: Then Exhibit 3 is dated the 27th of September, 1909, another order of the Railway Board. It orders that a described area of the Township of Barton—I need not go through it; it is a very elaborate description—it is the part adjacent to Sherman Avenue, and that is added to the City of Hamilton.

EXHIBIT 3. Order of Ontario Railway and Municipal Board, 27th Sept., 1909.

HIS LORDSHIP: Have you such a thing as a map?

MR. TILLEY: I am going to give your Lordship a map. After I get these in I will show your Lordship what each addition meant.

Q. You have the originals of these? A. Yes sir.

40 Q. Exhibit 4 is an order of the Board, of the 11th of January, 1910, adding another area, and the terms are set out. We need not bother with those for the moment.

EXHIBIT 4. Order of Ont. Railway and Municipal Board, Jan. 11, 1910.

(Reporter's note: The following documents were then filed by Mr. Tilley):

EXHIBIT 5. Order of Ont. Railway and Municipal Board, Jan. 18, 1912.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 5.
Samuel H.
Kent,
Examination,
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 5.
Samuel H.
Kent,
Examination,
30th May,
1932.

—continued

EXHIBIT 6. Order of Ont. Railway and Municipal Board, Nov. 17, 1913.

EXHIBIT 7. Order of Ont. Railway and Municipal Board, January 26, 1914.

EXHIBIT 8. Order of Ont. Railway and Municipal Board, March 18, 1920.

MR. TILLEY: Q. I don't know about this one, Mr. Kent. Have you got one of the 14th of May, 1921. A. Yes.

Q. Would you look at that and see if that brings in part of Barton? A. Part of the Township of East Flamboro. That would have nothing to do with this. 10

Q. Then would you just put it to one side? The 22nd of December, 1922, is the next order.

EXHIBIT 9. Order of Ontario Railway and Municipal Board, Dec. 22, 1922.

Q. An order of the 11th day of March, 1924, Exhibit 10. A. I have that.

EXHIBIT 10. Order of Ontario Railway and Municipal Board, March 11, 1924.

EXHIBIT 11. Order of Ont. Railway and Municipal Board, May 6, 1925. 20

EXHIBIT 12. Order of Ont. Railway and Municipal Board, September 11, 1928.

EXHIBIT 13. Order of Ont. Railway and Municipal Board, February 28, 1929.

Q. Have you one of the 11th Sept., 1928, a second one of that date? A. I have an order of the 11th of September, 1928. (Ex. 12).

Q. Have you two or one? A. I just appear to have the one.

HIS LORDSHIP: There would not likely be two.

MR. TILLEY: I think that must be the only one. (Ex. 12). 30

Q. Have you one of the 20th December, 1929? I don't think that is Barton. I think it is the Township of Ancaster. A. I have that but it is for part of the Township of Ancaster.

Q. There is no part of Barton in that, is there? A. No sir.

Q. Well, we will leave it out. There is a question whether we have missed one, but I will have to get that later.

Now, Mr. Kent, do you produce a by-law, No. 30, of the City of Hamilton, requiring a permit for the opening up of streets? I need not stop to read it. A. (Produced).

HIS LORDSHIP: What year? 40

MR. TILLEY: Q. It is passed? A. 1910.

HIS LORDSHIP: Q. You number them every year? A. That was when we revised the list.

EXHIBIT 14. By-law No. 30 of the City of Hamilton.

MR. TILLEY: Q. Then By-law 400 of the 26th of September, 1904? A. Yes sir.

Q. That is Exhibit No. 15. That is the franchise to the predecessor,

which was then called the Ontario Pipe Line Company Limited. I need not bother your Lordship with that now because possibly very little will turn on the precise language of that franchise.

EXHIBIT 15. By-law No. 400 of the City of Hamilton.

MR. TILLEY: And that was amended by By-law No. 443 of the 13th of March, 1905, which will be Exhibit 16.

EXHIBIT 16. By-law No. 443 of the City of Hamilton.

MR. TILLEY: By-law No. 2590 is another amendment. That is Exhibit 17. That was passed in 1921, Mr. Kent, the 29th of November; and attached to that is a contract dated the 15th of December, 1921, between the United Gas Company and the Corporation of the City of Hamilton, the name of the company having been changed since By-law 400 was passed.

EXHIBIT 17. By-law No. 2590 with agreement attached.

Q. Now, Mr. Kent, can you tell me whether that by-law, 2590, was submitted to the electors and voted on, and carried in accordance with the Municipal Act? I mean in accordance with the Ontario Statute governing? By-law 2564 I think provided for the submission of it to the electors. A. 2564 was a by-law for taking the votes of the electors on a proposed by-law entitled, "A By-law to Amend By-law No. 400 as Amended by By-law No. 443 of the City of Hamilton."

Q. That by-law I have not a copy of. Probaby you will let me have that.

HIS LORDSHIP: By-law 2590 (Ex. 17) Clause 8 says, "This by-law "and the powers and privileges hereby granted shall not take effect "or be binding on the said city unless and until this by-law is assented "to by a majority of the municipal electors . . . "

MR. TILLEY: Q. This by-law you now produce provides for taking the vote? A. That was a by-law providing for taking the vote.

Q. Is this the original? A. That is the original.

Q. Exhibit 18 will be a copy of this by-law that we will put in.

EXHIBIT 18. By-law No. 2564 (provides for taking the vote on Exhibit 17).

Q. And do your records show that a vote was taken? A. I have given a certificate of that I think.

Q. I am afraid we have not got that certificate. Would you be good enough— A. I will get that for you.

Q. Then I can put in as Exhibit No. 19 a certificate of the carrying out of the formalities.

EXHIBIT 19. Certificate of voting.

MR. TILLEY: I put in by-law No. 4168 of the 24th of March, 1931, and the agreement attached.

HIS LORDSHIP: That is the one that is mentioned in the private act?

MR. TILLEY: Yes, my Lord.

EXHIBIT 20. By-law No. 4168, with agreement attached.

MR. TILLEY: There is a second order of the 11th of September, 1928, which I now produce. It is another section of Barton, added by a separ-

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.

No. 5.

Samuel H.
Kent,
Examination,
36th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 5.

Samuel H.
Kent,
Examination,
30th May,
1932.

—continued

Plaintiffs'
Evidence.
No. 5.

Samuel H.
Kent,
Cross-
Examination,
30th May,
1932.

ate order. There are two of that date.

EXHIBIT 21. Order of Ontario Railway and Municipal Board,
Sept. 11, 1928.

WITNESS CROSS-EXAMINED by MR. ROWELL:

Q. Mr. Kent, you have been City Clerk of the City of Hamilton for many years? A. Yes sir.

Q. For how long have you been City Clerk? A. 22 years.

Q. Since the year 1910, is that correct, Mr. Kent? You have been City Clerk since 1910? A. I have been City Clerk since 1903.

Q. That is 29 years. You have been City Clerk during the entire period covered by the documents that have been filed? A. I think I have. 10

HIS LORDSHIP: There is one of 1891.

MR. ROWELL: I mean the orders of annexation and the other by-laws.

Q. Then, Mr. Kent, you have known throughout that period that the Dominion Natural Gas Company had a franchise in the Township of Barton under which it laid certain pipes in the City of Hamilton? A. I wouldn't say all during that time. I have been aware of it for a considerable time, but I don't know how long it was. 20

HIS LORDSHIP: Q. In your capacity as a citizen. As clerk of the municipality have you any official notice of it? A. Not until such time as that district was annexed to the city, I hadn't.

MR. ROWELL: Q. At the time the first annexation was made to the City in 1908, did you have any knowledge of it at that time?

MR. TILLEY: Does the knowledge of Mr. Kent really affect the matter, unless it is done by some official act?

HIS LORDSHIP: It might come to him in an official way. I do not know yet. That will have to be found out. How did it come to your knowledge? 30

WITNESS: Just in a general way, your Lordship. We hadn't any dealings that I know of with the Dominion Gas Company at that particular time.

MR. ROWELL: Q. What is the earliest date on which you have official record of dealings with the Dominion Natural Gas Company? A. I really couldn't say, Mr. Rowell. I really couldn't say just how long it is, or when the date was.

Q. Do you remember an agreement made in 1920 between the City, the Dominion Natural Gas Company, and the United Gas and Fuel Company? 40

MR. TILLEY: If my friend wants to produce the agreement——

MR. ROWELL: Mr. Kent has furnished us with a certified copy.

MR. TILLEY: I am quite agreeable you should get along as easily as I did.

HIS LORDSHIP: There is some agreement of which you are said to have furnished a copy.

MR. ROWELL: Q. You furnished a copy to us, dated the 29th of September, 1920. A. If I furnished a copy that ought to settle it. I can't remember that far back.

Q. And By-law No. 2416 of the City of Hamilton dated the 29th of September, 1920, authorizing the execution of the agreement? A. Yes.

Q. There is a certificate of Mr. Kent attached (producing documents). The by-law authorizes the execution of the agreement. The agreement is between the United Gas and Fuel Company, Limited, of the first part; The Dominion Natural Gas Company Limited, of the second
10 part; and the Corporation of the City of Hamilton of the third part. (Reads agreement.) Have you a copy of the agreement between the Dominion Company and the Ontario Pipe Line Company, dated the 25th day of September, 1905, referred to in this agreement, to which the City is a party? A. No, I don't think I have.

HIS LORDSHIP: He would not likely.

MR. ROWELL: Q. And that agreement (Ex. 22) was duly executed by the companies and by the City pursuant to the by-law? A. Yes.

EXHIBIT 22. By-law 2416 with copy of agreement of Sept. 29, 1920, attached.

20 Q. Then you have produced to us, Mr. Kent, a certified copy of another by-law, No. 2466, dated the 5th day of April, 1921, and an agreement attached dated the 5th day of April, 1921, between the United Gas and Fuel Company, Limited, formerly The Ontario Pipe Line Company, Limited; the Dominion Natural Gas Company, Limited, and the Corporation of the City of Hamilton. You recall this agreement and by-law? A. Yes.

EXHIBIT 23. By-law 2466, with copy of agreement of April 5, 1921, attached.

30 MR. ROWELL: This agreement, my Lord, contains the same recitals in substance as the last agreement, and its provisions I think are almost identical. It extends the period of operation beyond the period mentioned in the first agreement. It contains other obligations as to production, and delivery and so on, such as I have already read to your Lordship in the other agreement.

Q. These by-laws were all duly passed, Mr. Kent? A. Yes sir.

Q. And this agreement duly executed?

MR. TILLEY: You do not mean "duly" in the sense that they were read more than the first, second and third time. There is no suggestion of the consent of the electors to this by-law.

40 MR. ROWELL: In our view it was not necessary that the electors should, these particular by-laws.

Q. I mean passed by the council in the regular course? A. Yes.

Q. You have produced to us another by-law, No. 2503, dated the 10th of May, 1921, with an agreement attached bearing the same date, between the same parties, and in substantially the same form, extending the period under which these higher rates might be charged by the two companies. A. Yes sir.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.

No. 5.
Samuel H.
Kent,
Cross-
Examination.
30th May,
1932.

--continued

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 5.
Samuel H.
Kent,
Cross-
Examination.
30th May,
1932.

EXHIBIT 24.. By-law No. 2503, with agreement attached dated May 10, 1921.

Q. This by-law was duly passed? A. Yes.

Q. And the agreement duly executed? A. Yes.

Q. Then you produce another by-law, No. 2522, dated the 28th of June, 1921, accompanied by an agreement dated the 28th of June, 1921, between the same parties for the same purpose as the last two agreements, and further extending the period in which this higher price may be charged.

EXHIBIT 25. By-law No. 2522, with agreement attached dated 10 28th June, 1921.

Q. This by-law was duly passed? A. Yes.

Q. And the agreement duly executed? A. Yes.

Q. I think the recitals are just the same as in the other agreements. Then a further by-law, No. 2540, dated the 25th of August, 1921, accompanied by an agreement bearing the same date between the same parties? A. Yes sir.

EXHIBIT 26. By-law No. 2540, with agreement attached, dated Aug. 25, 1921.

Q. This by-law was duly passed? A. It was. 20

Q. And the agreement duly executed? A. Yes.

Q. This differs from the others in that it does not contain the full terms, but expressly continues the period under which the preceding agreements should operate. Then you produce another by-law, a certified copy of No. 2567, dated the 25th of October, 1921, and an agreement of the same date dealing with the same subject-matter.

EXHIBIT 27. By-law No. 2567, with agreement attached, dated October 25, 1921.

Q. This by-law was duly passed? A. Yes.

Q. And the agreement duly executed? A. Yes. 30

Q. This agreement, like the last one, my Lord, does not contain the full recital, but extends the period like the last agreement, continues them in force. I have here a certified copy of a resolution which you have furnished to us, Mr. Kent, of the municipal council of the City of Hamilton at a meeting held on October 12, 1920, from council minutes, page 948, of the year 1920. (Reads resolution.) A. Yes.

Q. Is that within the annexed district? (the residence of George Ritchie on the east side of Blake Street, south of Maple Avenue). A. Yes, it is.

Q. That is within the annexed territory? A. Yes. 40

Q. And the municipal council was requesting them to put in that service. Was the service put in? A. I couldn't say.

EXHIBIT 28. Copy of resolution of Hamilton council, Oct. 12, 1920.

Q. Mr. Macallum who was City Engineer of Hamilton some 20 years ago, 18 to 20, is now dead? A. I don't think he is dead.

Q. I thought he was. A. He is in Ottawa I think.

Q. Were you familiar with his signature?

MR. TILLEY: I do not think that is material to prove his signature.

MR. ROWELL: Q. Are you familiar with Mr. Macallum's signature?

A. I would know Mr. Macallum's signature I think.

Q. Would you look and see if his signature is on any of those letters? (handing letters to witness). A. Yes, I would say they are Mr. Macallum's signatures.

HIS LORDSHIP: Any question about these? The City Engineer is not like the City Clerk.

10 MR. TILLEY: Were you thinking of putting them in, Mr. Rowell?

MR. ROWELL: Yes.

MR. TILLEY: Would you mind letting me see the type of thing it is?

WITNESS: I think there is one there I would not like to verify. With that one exception I think they are all Mr. Macallum's signatures.

MR. TILLEY: One of them is supposed to have been signed by a man named Brennan, not supposed to be signed by him at all.

HIS LORDSHIP: Q. Is that the one you excepted? A. There was one there I was not sure.

20 MR. ROWELL: These are letters from the City Engineer of the City of Hamilton, sent to the company, advising them the city proposed to lay permanent pavements, and asking them to take up their conduits on the streets so as to permit the pavements to be laid. It is official recognition I submit, and evidence of the fact that they knew we were there.

HIS LORDSHIP: I suppose Mr. Macallum could if necessary be called to verify that he gave the notices, or it could be shown that the company received these. Is there any doubt about their authenticity?

30 MR. TILLEY: I am not doubting the authenticity but I think the circumstances under which they were sent ought to be shown. I understand they were circular letters sent to all companies, whether they have work there or have not.

MR. ROWELL: Having pipes in the area.

MR. TILLEY: Or not having them there. You will find on some of those lists you have not got them there at all.

HIS LORDSHIP: They were notices sent by the City Engineer I suppose in the course of his duty.

MR. ROWELL: I ask to put these in, my Lord.

HIS LORDSHIP: File them subject to the question of whether they are admissible.

40 MR. TILLEY: Your Lordship sees my friend is trying to draw inferences from them. If he is going to draw an inference of knowledge we ought to have something more than the mere production of documents and the signature verified, when the man himself is available who wrote them.

HIS LORDSHIP: I don't know any rule by which I can admit them. It is not an official who is dead.

MR. ROWELL: I submit if they are communications from an official of the City of Hamilton to these parties, and this witness can identify the signature—

—continued

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 5.
Samuel H.
Kent,
Cross-
Examination.
30th May,
1932.

—continued

HIS LORDSHIP: He can identify the signature, and I suppose somebody else could show that they came to the company.

MR. ROWELL: Your Lordship will see we can put these in as letters received from the city.

HIS LORDSHIP: They do not purport to come from the city.

MR. ROWELL: They are headed, "City Engineer's Office, Hamilton, Ontario."

MR. TILLEY: They are not addressed to anybody.

HIS LORDSHIP: I suppose the envelope would contain the address.

MR. TILLEY: He hasn't the envelope. There is nothing to identify 10 these with the Dominion Company at all.

HIS LORDSHIP: Mark them tentatively as Exhibit 29. They will have to be supplemented before they are received.

MR. ROWELL: The date of the first letter is May 5, 1914, with a list enclosed. The second is the same date. The third is May, 29, 1914. The fourth is June 11, 1914.

HIS LORDSHIP: They will all go in as one exhibit. Mark them tentatively as Exhibit 29.

EXHIBIT 29. Number of letters re street alterations from City Engineer's office. 20

MR. ROWELL: There are two letters of June 11, 1914, and two of June 25, 1914. I am not sure that those are not duplicates. The next is July 10, 1914.

MR. TILLEY: Was there a list with each?

MR. ROWELL: There was either a list attached, or the streets are mentioned on the face of the letter.

MR. ROWELL: Q. Do you recognize Mr. Macallum's signatures to those two letters? (handing two letters). A. No, I would say to this one though. I do not recognize that one. That looks like Mr. Macallum's signature. 30

Q. That is Nov. 30, 1914, to the Dominion Natural Gas Company. "Permission is granted to open the street provided the roadway is left in as good shape as it was before the work was commenced." Is Prospect and Maple Avenue within the annexed territory? A. Yes.

EXHIBIT 30. Letter, Nov. 30, 1914, City Engineer to defendants.

Q. Do you recognize this as Mr. Macallum's signature, a letter of May 21, 1915? A. Yes, I would say that is his signature.

Q. "Permission is granted 33 Albert Street and at the corner of Central & Lorne Avenues natural gas." That is in the annexed area? A. Yes sir. 40

EXHIBIT 31. Letter, May 21, 1915, City Engineer to defendants.

Q. For how long was Mr. Macallum City Engineer? A. I think Mr. Macallum was with us about eight or ten years.

Q. When did he leave the city service? A. I couldn't say when it was he left.

Q. Approximately? A. Oh, it would be ten or 12 years ago I guess.

MR. TILLEY: I suppose this is subject to the same understanding.

MR. ROWELL: That is a direct permit.

MR. TILLEY: It is not proven anyone got it. That is his signature. That is all we know.

HIS LORDSHIP: I suppose it will have to be proved by them that they received it.

MR. ROWELL: Q. Do you recognize Mr. Macallum's signature to these letters? (handing other letters). A. Yes, I would say that is in that one. Yes, I would say they were all three Mr. Macallum's.

10 Q. These are letters of the nature of the ones your Lordship admitted for identification, Exhibit 29, and these relate to 1915.

HIS LORDSHIP: Not addressed to anybody particularly.

MR. ROWELL: No. They will be marked for identification in the same way, my Lord?

HIS LORDSHIP: Yes.

MR. ROWELL: They are dated March 31, 1915, June 2, 1915, and June 23, 1915, and the streets are scheduled on the face of the letters.

EXHIBIT 32. Three letters in 1915 re street alterations from City Engineer's office.

20 MR. ROWELL: Q. Do you remember the engineer who succeeded Mr. Macallum? A. Yes, Mr. Edwin Gray.

Q. Do you recognize his signatures to those documents? A. Yes, I would say that is Mr. Gray's signature.

Q. Mr. Gray is now dead. I made a mistake in the other. I was thinking of Mr. Gray.

These are permits, my Lord. The first is dated Oct. 19, 1917, signed by Edwin R. Gray, City Engineer, addressed to The Dominion Natural Gas Company Limited. "I beg to advise that Nos. 73, 75, & 77 Lorne Ave."

30 HIS LORDSHIP: Q. Wouldn't all those come before the board of works, or would the engineer on his own— A. The Engineer would have charge of details of that nature.

Q. Would there be a formal application made to him for an opening? A. Yes. We have printed forms of application.

MR. TILLEY: Your Lordship will see—I do not know whether at this date, but later dates show it was under this by-law 30. That is why I put in the by-law.

MR. ROWELL: The second one is September 5, 1917, to the Dominion Natural Gas Co., Limited. "I beg to enclose herewith permit to make cut 78 Chedoke Avenue necessary repairs to your pipe line."

EXHIBIT 33. Two letters City Engineer to defendants Oct. 19, 1917; and Sept. 5, 1917.

Q. Is Chedoke Avenue in the annexed territory? A. No, that is in the west end. That one would not apply to this.

Q. Then we will take that out. Is that in the Township of Barton? A. It was formerly part of the Township of Barton.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 5.
Samuel H.
Kent,
Cross-
Examination.
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 5.
Samuel H.
Kent,
Cross-
Examination.
30th May,
1932.

—continued

Q. Annexed to the City? A. At a different time from the east end annexation.

Q. But part of the Township of Barton which was annexed to the city? A. Yes sir.

Q. Do you know the date on which that was annexed? A. I could look it up.

HIS LORDSHIP: Q. These orders of the Railway Board that have been filed, are they all orders that were made with reference to Barton lands annexed to the City? A. Some of them are for Saltfleet.

Q. Are there any more referring to Barton than those that are put in? A. Yes sir, there were others. 10

MR. TILLEY: I do not think so. I think this is one of the two of the 11th of September, 1928, as I am informed, and this letter is 1917.

MR. ROWELL: Q. Perhaps then we need not delay further. Both of these permits would cover openings in streets within the annexed area, one in the east end, and one in the west end, both from the Township of Barton? A. Yes.

Q. Would you tell his Lordship what was the east city boundary at the time of the first annexation of territory in the Township of Barton in respect of the orders which have been put in? 20

HIS LORDSHIP: Do you mean before the order-in-council?

MR. ROWELL: Before the order-in-council making the annexation.

HIS LORDSHIP: Look at Exhibit 1. Perhaps that will tell him.

MR. TILLEY: The east side of Sherman Avenue. That will be shown later on.

MR. ROWELL: My learned friend says he is going to make it clear what the boundary was, so I need not trouble with Mr. Kent.

HIS LORDSHIP: I should have thought the order-in-council would describe that as the eastern boundary.

MR. ROWELL: Assuming there was no further extension in the mean- 30
time, my Lord, it would.

Q. Then, Mr. Kent, I want to ask you in connection with this action if any authority was given by the city for the bringing of this action, except whatever authority may be conferred by the Statute of 1931? A. I have no personal knowledge of any.

HIS LORDSHIP: Q. Are there any records? A. I really could not say without looking it up, your Lordship.

MR. ROWELL: Q. Will you look it up and see, Mr. Kent, please—any authority other than what is given by the Statute of 1931?

HIS LORDSHIP: There would be no reference to that. 40

MR. TILLEY: Is your Lordship admitting evidence of that? I do submit it is not proper in this action.

HIS LORDSHIP: I will admit it subject to objection.

WITNESS: Any authority by the city?

MR. ROWELL: In any form authorizing this action.

WITNESS: I will look it up.

HIS LORDSHIP: You will not have to go back very far. The action started in December, 1931.

MR. ROWELL: Subject to Mr. Kent's looking up that point, I think there is just this other matter.

Q. This by-law referred to in the Statute, Exhibit 20—you recall that this agreement of the 24th day of March, 1931, provides for granting certain rights to the United Gas and Fuel Company, and then there is this provision in paragraph 1,

10 "Except as to and to the extent of any existing rights and privileges
"that may now be held by the Dominion Natural Gas Company
"Limited under By-law Number 533 of the Township of Barton and
"the Agreement entered into pursuant to the said by-law . . ."

Have you a copy of By-law 533 of the Township of Barton and the agreement referred to? A. No, I have not.

Q. Who would have the custody of that? A. The Township Clerk would have that.

Q. But in the city.

HIS LORDSHIP: It occurred to me the city solicitor would likely have it. He likely revised the agreement for the city.

20 MR. ROWELL: Q. You have not got it? A. No sir.

WITNESS RE-EXAMINED by MR. TILLEY:

Q. Do you know anything about the sending out of these notices such as Exhibit 32, the Engineer's notices? It looks very much like a circular letter or form in which dates and names of streets are filled in. It seems to be a circular form, with the dates filled in afterwards, and then a list of streets below. Do you know anything about them at all? A. No, that is just a departmental matter.

Q. For instance, some of these streets—take Wellington Street, King to Cannon; is that in the Barton area? A. No sir.

30 Q. You have not checked them over at all to see what are in the Barton area, or what are not? A. No, this is the first time I have seen them. There is one here, Gage Avenue from Barton to Beach Road; and King from Sherman to Delta; those were all in the large annexation.

Q. That is the 1909? A. That is the one from Sherman Avenue easterly. And Main and Cumberland. There is three on that; some inside and some out.

Q. You say you find three inside in the letter of March 31, 1915? A. Yes.

40 WILLIAM TYRRELL, Sworn. Examined by MR. TILLEY:

Q. Mr. Tyrrell, you I believe are an engineer? A. Yes.

Q. And practising in Hamilton? A. Yes.

Q. For how long? A. Ever since the war; 1920 we will say.

Q. Do you know the Barton area pretty well? A. Yes.

Q. How do you come to? A. I was brought up down there.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 5.
Samuel H.
Kent,
Cross-
Examination.
30th May,
1932.

—continued

Plaintiffs'
Evidence.
No. 5.
Samuel H.
Kent,
Re-Exami-
nation.
30th May,
1932.

Plaintiffs'
Evidence.
No. 6.
William
Tyrrell,
Examination.
30th May,
1932.

In the
Supreme Court
of Ontario

Plaintiffs'
Evidence.
No. 6.
William
Tyrrell,
Examination.
30th May,
1932.

—continue—

Q. You prepared certain plans. Possibly you have had some help as to the information you put on them. I shall call those who gave you the help afterwards to verify it. I would like if we could to get a picture of this locality and the area involved. What plans have you prepared?

A. I have a number of different ones.

Q. Start with one that will give the Township of Barton, and showing the gas lines in 1904, and then as to any information you have received in order to locate them—just mention who was the one to give the information so we can call him to verify the accuracy later. A. (A plan is placed upon an easel.)

Q. Will you just give the directions? A. That is a plan of the Township of Barton, leaving the City of Hamilton previous to October 26, 1904, blank. The older portion of Hamilton is blank. The annexed areas are here. This is shown better on a later plan.

HIS LORDSHIP: Q. Annexed to the northeast corner? A. Yes. There are some districts—Chedoke Avenue is over in the annexed area to this direction.

Q. Mark the plan Exhibit 34.

EXHIBIT 34. Plan showing gas lines in Township in 1904.

WITNESS: On it I have shown the lines of the Dominion Natural Gas Company as laid out in the franchise.

MR. TILLEY: Q. That is to say, in the franchise from Barton Township—putting to one side whether it is a franchise or not for the moment—these streets are actually referred to in the document; is that it?

A. These streets are referred to in the document.

Q. Will you show what that means? Those that are coloured red? A. These that are coloured solid red show the streets that the Barton by-law required them to lay mains on.

Q. Is there part of it dotted red? A. This dotted red is also mentioned in the by-law.

Q. Where are the dotted reds? A. It is here between the seventh and eighth concession in the Township of Barton.

Q. Running east and west? A. Yes.

Q. It is dotted to indicate what? A. To indicate that we could not find any pipe line there.

Q. Did you go to see? A. Yes, I went there with some men. We dug up and endeavoured to find a line and couldn't.

MR. LYNCH-STAUNTON: Q. When was this? Lately? A. Yes, early in the spring or late in the fall.

MR. TILLEY: There will be other evidence on it.

Q. Is there any other part that is dotted? A. No, that is the only area that I show dotted.

Q. That is substantially all that that plan shows, is it, the lines that were mentioned in detail in 533? A. Yes.

Q. Of Barton. What is the next plan you have then? Did you make any test other than at that spot where the dotted line is to ascertain whether there were any lines in point of fact? A. Yes, there was one

place where the rock was right at the surface of the ground. I examined everywhere except in the centre of the bare rock. We examined and could not find it had been broken at all.

Q. Apart from the dotted line, did you make any other investigation? A. In other areas?

Q. Yes. A. No, I did not.

Q. What is your next plan? A. (Plan produced.)

Q. A plan of the first annexation; have you got that? A. (Plan produced.)

10 Q. Describe that map. A. That is a plan of part of Barton Township from Sherman Avenue east.

Q. Where is Sherman Avenue? A. Sherman Avenue is the westerly limit of this plan.

Q. And that is the east boundary of Hamilton? A. This is showing it—showing the streets in existence east of Sherman Avenue. Sherman Avenue was the easterly limit of the big annexation.

Q. Sherman Avenue was the easterly limit? A. Was the westerly limit.

20 Q. Sherman Avenue would be the easterly limit of the City of Hamilton at the time that was annexed? A. Yes.

Q. Was Sherman Avenue in Hamilton, or was it in the township? A. Sherman Avenue was in the City of Hamilton.

Q. The east side of Sherman Avenue was the westerly boundary of the township? A. Yes.

Q. What does the plan show? A. This shows the streets in existence previous to Sept. 27, 1909.

Q. That is the date of annexation? A. That is the date the big area was annexed.

30 Q. How did you get at what were the highways at that time? What is your foundation? A. I made very extensive search in the registry office, copy of the registered plans, copied the outlines of all the registered plans.

Q. And all the subdivisions? A. And all the subdivisions with their dates, and divided them.

Q. You examined the plans in the registry office. Did you examine the city by-laws? A. I also examined the city by-laws at the city hall.

Q. For the opening of streets? A. There were small areas opened and joined up, and I followed them through as well.

HIS LORDSHIP: They are all shown on the plan?

40 MR. TILLEY: As highways.

HIS LORDSHIP: At the present time?

MR. TILLEY: At the date of 1909 when it was annexed.

HIS LORDSHIP: Anything subsequent to 1909, any of the by-laws? Are they shown on there, any of the highways established?

MR. TILLEY: Not on that.

HIS LORDSHIP: Or is that just as they were in 1909?

WITNESS: Yes, as they were in 1909.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 6.
William
Tyrrell,
Examination.
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 6.
William
Tyrrell,
Examination.
30th May,
1932.

—continued

MR. TILLEY: Your Lordship sees I am trying to show what were the highways of Barton in the annexed area at the date of annexation.

MR. ROWELL: I do not want to interrupt my learned friend, because I appreciate the importance of getting the plans in, but I wish to make the objection, my Lord, that this does not prove in itself what were the highways at that time.

MR. TILLEY: Q. You are a surveyor, and you have taken the plans in the registry office, you have taken the official documents of the township in the sense of by-laws to open streets, and to connect them, and from those you have determined to your satisfaction, at any rate, that these were the existing highways at the date of annexation? A. Yes, it is really just a compiling of the plans in the registry office together with the original road allowances. 10

Q. The highways in that locality have been largely increased since? A. Yes, this is not an up-to-date plan.

Q. That shows it as of that date. And what are the lines on it, the red lines? A. Those are lines that are known to be in existence at that time.

HIS LORDSHIP: Q. Pipe-lines? A. Pipe lines of the Dominion Natural Gas Company. 20

MR. TILLEY: Q. In the annexed area? A. In this area in blue.

Q. From what source did you get the information from which you put the names on? A. Mr. Byrnes and Mr. King. I happened to know of my own accord most of them myself, because I was born or brought up down there, and I remember most of them being put in. I lived down there myself since 1900; in fact, we were one of the earliest families to be supplied.

Q. On what street did you live? A. On Fairholt Road.

Q. Are you able to say that is accurate? A. Just going back from my memory as a kid, running the neighborhood, I couldn't say exactly. I believe it is accurate. I remember the line down the mountain. I remember the line from Bartonville to Sherman Avenue, and I remember our own, two streets east of Sherman Avenue. 30

EXHIBIT 35. Plan of part of Barton Township from Sherman Ave. east, showing conditions as of Sept. 27, 1909.

MR. TILLEY: Q. What is your next plan?

MR. ROWELL: So as not to be making a number of objections, may my objection be noted to anything in respect of these plans to which the witness deposes—that we object to anything that is merely hear-say; and then it will only become evidence I submit if my learned friend calls the witnesses to establish the facts? 40

HIS LORDSHIP: I suppose all the plans could be brought here from the registry office, and the witness could speak as to them—examine them and give the evidence. He has done that.

MR. TILLEY: I have the Deputy Registrar here with the plans.

HIS LORDSHIP: Is there any doubt about that, because strictly his evidence about the production of plans would hardly be the best evidence

that could be given? The Registrar is here with the plans if you have any doubt about them, Mr. Rowell.

MR. ROWELL: When we have time to look them over, it may be there will be no question. I just want to protect myself on it.

WITNESS: The Registrar checked my list. We checked our list together. There are some 140 or so plans represented there.

MR. TILLEY: Q. Exhibit 36 is what? A. This is a map got out by the City Engineer's Department, which I have utilized. I show all the annexed areas tinted and all the dates that each one was annexed.

10 HIS LORDSHIP: That is a very convenient way to collect all the information.

MR. TILLEY: Q. Each colour indicates a particular annexation?
A. Each is a separate annexation.

HIS LORDSHIP: Q. And the date is given? A. The date is given.

MR. TILLEY: Q. Would you give them in the order of date, so his Lordship may see the area brought in each time.

HIS LORDSHIP: The first one was said to be in 1891.

WITNESS: That is not marked here. That is Sherman Avenue. The east limit of that was the east limit of Sherman Avenue. I have not
20 shown that. Do you want them in the direct order?

MR. TILLEY: If you can. A. The first one is 1908, Sept. 3rd, 1908, a little area on the mountain (indicating). This one was spoken of as the large area, Sept. 27, 1909.

Q. When you give that date, you are giving the date of the order of the Railway Board? A. Yes.

Q. It is sometimes effective on a different date. The next, 11th of January, 1910? A. Yes. That included Chedoke Avenue.

Q. 18th of January, 1912? A. That is an area north of the Jockey Club, down running to the bay, west of Kenilworth Avenue.

30 Q. And the 17th of November, 1913? A. That is the Mountain Hospital property.

Q. And the 26th of January, 1914. A. That is an area on the westerly boundary of the Township of Barton, running from King Street or the old Stone Road.

Q. Is that the boundary line of Barton? A. This is the boundary line of Barton Township.

Q. And the next one, March, 1920? A. An area east of Kenilworth Avenue from Main Street down.

Q. December, 1922? A. A little school site on the mountain, on
40 Concession Street, south side of Concession Street.

Q. March, 1924? A. March, 1924, it is an area east of Ottawa Street and south of Main Street.

Q. And May, 1925? A. That is the Chedoke Golf Club property.

Q. Sept., 1928? A. That is an addition to the golf club.

Q. And there is another on the same date? A. Sept. 11, 1928, that is an area—(indicates).

Q. February, 1929? A. It is an area on the mountain, an irreg-

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.

No. 6.
William
Tyrrell,
Examination.
30th May,
1932.

—continued

In the
Supreme Court
of Ontario

—
Plaintiffs'
Evidence.
No. 6.
William
Tyrrell,
Examination.
30th May,
1932.

—continued

ular line, generally speaking running from Wellington Street to James Street.

EXHIBIT 36—Plan of City of Hamilton showing annexations in colours and dates of same.

Q. Have you another map of Hamilton, showing the streets that have come into existence since 1909, and a copy for Mr. Rowell?
A. (Producing plan.) That is a repetition of the last one, with the addition of streets that came into existence through the registered plans and by-laws, came into existence after the particular date it was annexed.

Q. You have taken each particular block that was annexed, and on it you have shown the streets that were brought into existence after annexation. A. Yes. 10

Q. While it was in the City of Hamilton? A. Yes.

Q. And that is from the official records as you have described?
A. Yes.

HIS LORDSHIP: Q. In addition to that, are the streets that were in existence before the tract was annexed shown on this too? A. Yes. I coloured the ones—I have shaded the ones in, that came into existence after the area existed.

MR. TILLEY: Q. And the colour is what? A. They are coloured 20
blue.

Q. Does that plan show anything about pipe lines or service pipes, anything like that? A. No.

Q. Just the highways opened up since annexation? A. Yes.

EXHIBIT 37—Plan, similar to Exhibit 36, but with streets opened up since annexation shown.

Q. Did you prepare any plan with the assistance of Mr. King, showing pipe lines? A. Yes.

Q. Just identify that and describe it. That will be Exhibit 38.
A. There are several different gas systems shown on it. 30

Q. Let us have everything you have got so we can get rid of the identification work. What is 38? A. That is a map of the City of Hamilton showing the newer annexed area. The older area I have left blank.

Q. That is the area before 1904? A. Before 1904.

Q. What have you shown on the annexed area? A. That shows the United Gas and Fuel Company's lines east of Sherman Avenue as of May 8, 1928.

Q. And how did you get the information on which you did the colouring? A. That was Mr. King.

Q. The colouring is what? A. It shows the lines. The colouring 40
in red shows the lines.

Q. And you have to rely on his statement as to whether you got them right or not? A. There are three different systems shown on this one plan.

Q. What do you mean by that? A. They have shown different pipe line systems on my one plan. They are using the same plan in different ways.

HIS LORDSHIP: Q. You mean it shows three different companies' pipe lines? A. No, but they have utilized my plan in different ways.

MR. TILLEY: Q. The red on this plan shows what system of pipes? A. United Gas and Fuel Company's lines in existence east of Sherman Avenue.

HIS LORDSHIP: Q. As stated to you by Mr. King? A. Yes.

10 EXHIBIT 38. Plan of City of Hamilton showing newer annexed areas, with plaintiff's gas lines east of Sherman Ave.

MR. TILLEY: Q. You have another similar plan differently marked. Let us see it. A. (Produces plan.)

Q. What does Exhibit 39 show? A. The same basic map, showing the permits granted by the City of Hamilton for the Dominion Natural Gas Company from 1914 to Oct. 14, 1931.

Q. In what colour? A. In red.

Q. That is, the red shows between 1914 and—— A. Oct. 14, 1931.

20 Q. Is that right? I think that is wrong. The green I understand is permits from 1928 to 1931? A. Yes.

Q. And the red indicates before 1928? A. Yes, prior to it.

EXHIBIT 39. Map of City of Hamilton, showing location of city permits.

Q. What is the next one, Exhibit 40? A. This one, No. 40, is the same plan, showing the Dominion Natural Gas Company's original distribution lines in Barton Township, and lines laid in the city without permit. The Barton Township lines are shown in blue, and the lines in the city shown in red.

30 HIS LORDSHIP: Q. Will you kindly repeat that? A. It is a plan showing portions of the Township of Barton annexed to the City of Hamilton since October 26, 1904. It shows the Dominion Natural Gas Company's original distribution lines in Barton Township, and the lines laid in the city without permit. The Barton lines are shown in blue and the city are in red.

MR. ROWELL: How can this witness give evidence——

HIS LORDSHIP: Q. The blue shows the lines as they were at the time of annexation, while it was in Barton Township? A. Divided before and after.

Q. Now in the city? A. Yes.

40 MR. TILLEY: Q. And the red shows lines laid without permit. That is the legend on it? A. Yes.

Q. Mr. King will have to—— A. Yes.

Q. Does that complete all the plans you have made? A. Yes.

EXHIBIT 40. Plan of parts of Barton annexed to Hamilton since Oct. 26, 1904, showing defendant's original distribution lines, etc.

*In the
Supreme Court
of Ontario*

Plaintiffs'
Evidence.
No. 6.

William
Tyrrell,
Examination.
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

Plaintiffs'
Evidence.
No. 6.

William
Tyrrell,
Cross-
Examination.
30th May,
1932.

WITNESS CROSS-EXAMINED by MR. ROWELL:

Q. I understood you to say, Mr. Tyrrell, that the lines marked on this plan, Exhibit 34, are lines which you took from the by-law, No. 533 of the Township of Barton? A. Yes.

Q. Have you a copy of the by-law, from which you— A. Yes, I have a copy.

MR. TILLEY: You may put it in, Mr. Rowell. I am not going to object.

MR. ROWELL: I want to ask about certain lines.

MR. TILLEY: I am not raising any objection to your putting in a 10 copy.

MR. ROWELL: I will put in, my Lord, a photographic copy showing the original signatures and so on of By-law No. 533 of the Township of Barton, with the agreement of the 19th of November, 1904, attached.

EXHIBIT 41. Photographic copy of By-law No. 533 of the Township of Barton with copy of agreement of 19th November, 1904, attached.

MR. ROWELL: Q. Then, Mr. Tyrrell, the line marked in dotted red between Concessions 7 and 8; where do you find that in the by-law?

MR. TILLEY: Clause 22, Mr. Rowell.

WITNESS: I am not familiar with the paragraphs without looking 20 it up.

MR. TILLEY: "A line from the intersection of the allowance for road "between lots six and seven with the allowance for road between lots "in the seventh and eighth concessions in the said Township of Barton. Thence westerly along said last mentioned road to its inter- "section with the Barton and Glanford road and from thence north- "erly along said last mentioned road to the southerly limits of the "City of Hamilton."

HIS LORDSHIP: I understood the witness to say the dotted line, he found no pipe there. 30

MR. ROWELL: Yes, my Lord, and I was wishing to know where he found in the by-law that particular section, and I understand now it is Section 22 of the By-law.

HIS LORDSHIP: Is it suggested the company was authorized to lay it but did not lay it?

MR. ROWELL: Authorized to lay and did not lay.

MR. TILLEY: Was required to lay.

MR. ROWELL: Perhaps I had better read it to your Lordship now. Perhaps the witness will indicate as I read it.

(Reporter's Note: Counsel then read to the Court By-law 533, part 40 of Exhibit 41, the witness indicating on the plan the various areas referred to, using the words "Here," "there," "that is here," and so on.)

MR. ROWELL: Then attached to the by-law is the agreement made between the parties, referred to in paragraph 21 of the by-law. (Reads agreement.)

Q. Without going into details with the other plans, Mr. Tyrrell, I

understand that the plan on which you laid out the streets as they existed prior to 1904 is based on the investigation you made in the registry office?

A. Yes, and the by-laws as well in the city hall.

Q. The by-laws in the city hall, how would they apply to the Township of Barton before the annexation? A. Oh, well, that is true, no. In connection with the first one it did not apply.

Q. In connection with the first one it is investigation you made of plans registered in the registry office applicable to the Township of Barton? A. Yes.

10 Q. You are not in a position to say whether there may have been other plans in existence of roads laid out, or lots sold, which were not registered at that time? A. No, except the general knowledge, living there at that time. It would not be anything very large.

Q. Can you as a matter of recollection— A. I say there would not be any road of any length. There might be some small unimportant thing that I might not remember. I would remember anything of any importance. I went to school down there, lived my early life down in that part.

20 Q. Are you professing now to speak from memory on anything of that sort? A. Just generally.

Q. How old a man are you? A. I am almost 40. I will be forty this year.

Q. So in 1904 you were 12 years of age? A. Yes, just running around the neighborhood.

Q. May there have been a number of plans registered applicable to that portion of the Township of Barton on which the roads had not already been laid out on the ground? A. Pardon.

30 Q. May there have been plans not registered, relating to the Township of Barton, in which the roads were not actually laid out on the ground at that date, 1904? A. I don't believe so. Our firm was the only firm in the town in those days, my father's firm of engineers and surveyors, and we have all the old records of plans and work done in this area. The result is we are pretty well posted on everything in the area. It is only in recent years there has been any other firm. The result is I am in a position to be pretty well posted on streets, not only in that but other areas.

40 Q. Let us confine ourselves to this. With reference to this particular section you do not profess as a matter of recollection or of knowledge of what was going on when you were 12 years of age, to speak of the roads then in existence? A. No. As I say, I went into it thoroughly in the registry office, and I think I have arrived at a true state of affairs.

Q. I am not asking whether you have arrived at a fair thing from the registry office. I am asking specifically if you can say that there were or were not other plans unregistered relating to the Township of Barton at that time? A. Showing roads?

Q. Yes. A. There may be but I don't believe so.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 6.

William
Tyrrell,
Cross-
Examination.
30th May,
1932.

—continued

In the
Supreme Court
of Ontario

Plaintiffs'
Evidence.
No. 6.
William
Tyrrell,
Cross-
Examination.
30th May,
1932.

—continued

HIS LORDSHIP: Q. A possibility but you do not think it is probable?
A. Yes.

MR. ROWELL: Q. With reference to the plan which shows the streets laid out after annexation, that is also taken from plans on file in the registry office? A. Yes.

Q. And you are speaking wholly from those plans in the registry office? A. Yes, together with the by-laws joining up some of it, opening small areas.

Q. I do not understand that. A. The city has passed by-laws opening up a number of short ends. In a number of surveys the streets did not run through to the boundary so they would connect with the adjoining survey, and the city has opened them through. 10

HIS LORDSHIP: Q. That would appear in the registry office. The by-law would be registered. A. I had it from the City Clerk's office.

MR. ROWELL: Q. You could give us access to any of those by-laws if we wanted to check up on any of those points? A. Yes.

Q. Coming to the plans showing permits granted, that is based entirely on information received from whom? A. That is based on Mr. King. I prepared the plan—in fact, I thought he was going to prove it. It was my plan and he put the information on it. 20

Q. You simply put on the information he gave you with reference to permits granted or not granted, and the streets on which they appear? A. Yes. I can't say to the accuracy of that.

Q. You are an Ontario Land Surveyor? A. No, I am an engineer. I am not an Ontario Land Surveyor.

Q. Graduate? A. No, I am not. I am a Civil Engineer, been practising that all my life, except a few years overseas.

Q. You have learned that in your father's office? A. Yes, I have learned it all my life.

HIS LORDSHIP: Q. Are you a graduate of some school of engineering? A. No, I am not a graduate. 30

Q. School of Practical Science? A. No, I am not.

EUGENE W. KING, Sworn. Examined by MR. TILLEY:

Q. Mr. King, what is your position with the Plaintiff Company?
A. Engineer with the Gas Company and Coke Company.

Q. Are you a graduate engineer? A. Yes, sir.

Q. When did you join the company? A. In 1928.

Q. And then have you made a study of the permits issued by the city to the Dominion Company? A. Yes, sir.

Q. Or by the City Engineer's Department? A. Yes, sir, to the Dominion Company. 40

Q. And the company itself has permits that they have made available to you on production in this suit. You have seen those? A. Yes.

Q. Did you make a check to ascertain what pipes were laid with

Plaintiffs'
Evidence.
No. 7.
Eugene W.
King,
Examination.
30th May,
1932.

permits in advance, and what were not? A. I don't know just what you mean by that.

Q. Haven't you checked over the list of permits? A. We checked over the list that they disclosed with the permits in the City Engineer's office.

Q. And from that did you give the information? A. From that I made the maps with the colours on, those maps you have just seen.

Q. Do they accurately show the lines that were authorized by permit? A. Yes, there is three of them in which I had something to do with them.

Q. We will just pick them out. The last three, was it? A. I think it was the last three.

Q. There are the three, Exhibits 38, 39 and 40. Perhaps you will tell the Court what you had to do with them. A. This is the first one of the three.

HIS LORDSHIP: Q. Referring now to Exhibit— A. Exhibit 38. On this may it is labeled, "United Gas and Fuel Co. Limited lines in existence east of Sherman Ave. as of May 8, 1928, shown in solid red." That was prepared from our own company map, and our own book records, stopping on that date.

MR. TILLEY: Q. That shows the United Company? A. United Gas and Fuel Company's lines.

Q. You have gone over your own records and checked the records sufficiently to say that that represents correctly what you had permits for and had laid in 1928? A. Yes, those were all lines in the ground as of that date.

Q. And they are there now? A. Yes, sir.

Q. When you speak about the lines being there, they are ready for service? A. Ready for use. This one, Exhibit 39, shows the permissions granted by the City of Hamilton to the Dominion Natural Gas Company, starting with the year 1914, and going through to October 14, 1931. We sub-divided the permissions into two parts. Those prior to 1928 are shown in the red, and the permissions after 1928 on are shown in green.

Q. Where did you get the records for that? A. That is all from the permissions in the City Hall, in the Engineer's office of which we had disclosure, and then we checked that.

Q. That is to say, the defendants produced a lot of permits and you checked those with the City Hall—

MR. ROWELL: I did not understand him to say that. I understood him to say he saw them in the City Hall and checked them there.

HIS LORDSHIP: They were produced first and then checked.

MR. TILLEY: Q. Is that right? A. Let me start over again. We had what Mr. Walsh calls the disclosures, which were a list of permissions. We went to the City Hall and went through the files and checked them. We found they had received some permissions which were not disclosed, and those are on that map.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.

No. 7.
Fugene W.
King,
Examination.
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*
—
Flaintiffs'
Evidence.
No. 7.
Eugene W.
King,
Examination.
30th May,
1932.

—continued

Q. When you say disclosures, you mean the production of permits, and then you found in addition some more in the City Hall that they had not possession of? A. If I found those I put them on the map.

HIS LORDSHIP: Q. Your map shows every permit that was granted by the City Engineer's Department? A. All we could find in the file, yes.

MR. TILLEY: Q. That was more than the defendants produced? A. Yes, sir.

Q. The area where these green lines are and the red lines, the green lines particularly, that is the same area that was on the earlier map where the United Company's pipes were? A. Yes, it is all the same back-ground. 10

Q. And all that were on the preceding map for the United Company were there before any of the green ones were given permits for? A. Yes.

Q. Go on then? A. This one is labeled, "Map showing Dominion Natural Gas Company's original distribution lines in Barton Township and lines laid in the city without permit."

Q. How did you get that? A. We could find no permits in the City Hall for these streets where we marked in red, yet we know they are selling gas there. 20

Q. That is to say, they are serving customers there, and you found no permit in the City Hall for the laying of the pipes? A. We could not find permits for locations which I have coloured in red.

Q. Did you find all permits at the City Hall produced by the defendant? A. No, not in every case.

Q. For the lines shown in red, and you know they are serving customers there? A. Yes.

Q. What about the other area? A. The blue is what I have been calling the original distribution lines, in that it is the original lines of the Dominion Natural Gas Company. You had this on one of the larger maps down around Gage Avenue, and this went to Bartonville. 30

HIS LORDSHIP: Q. Before annexation? A. Yes.

MR. TILLEY: Q. Do you know about any connection between this company's lines or mains and any other company's mains? A. I don't know what you mean.

Q. The Manufacturers? A. You mean between Dominion's and Manufacturers?

Q. Yes. A. I couldn't testify to that only on hear-say. I understand it is connected. 40

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

MR. ROWELL: He says it is only hear-say.

HIS LORDSHIP: It is not being pressed.

MR. TILLEY: Q. Has your work brought you in touch with the actual laying of mains by the Dominion Company in 1928 and 1929? A. As we have seen around the streets, yes.

Q. Have you seen this work going on that results in the green area? A. Yes.

Q. You say you came in 1928; what time in 1928? A. In the summer of 1928.

Q. Has there been any work of that kind in 1931? A. I think it stopped. I can't tell exactly when it stopped.

Q. You have no personal knowledge of that? A. No. I know there is not much going on any more.

Q. I am not asking whether it is much or little. I am asking whether you know about it. A. No.

CROSS-EXAMINED by MR. LYNCH-STAUNTON:

Q. You say you searched the City Engineer's office for permits there? A. We went to the City Engineer's office and they provided us with the files, and we went carefully through the files checking the permits.

Q. You did that? A. Yes.

Q. Were you told in the City Engineer's office they had destroyed all the records preceding some particular date? A. No, they did not say anything to us.

Q. Did you ask for all the records? Yes, sir.

Q. Regarding the laying of pipes in the annexed district? A. Yes.

Q. Did you get any letters before 1914? A. I couldn't say to that.

Q. I want you to remember. A. One of the first files—

Q. I am asking you that question. You kept a record I suppose of what you got. A. Yes.

Q. Show me your record of what you found. I want you to give me the record of permits and applications for permits made by the Dominion Natural Gas Company, or granted to the Dominion Natural Gas Company prior to 1914? A. We started in with this disclosure which starts in 1914.

Q. I asked you for prior to 1914? A. Here is a note of mine, October, 1912.

Q. Go on. A. "Permission granted for a line starting at the corner of Brant Street and Sherman Avenue, going along Sherman Avenue to the Grand Trunk Railway; thence along this right-of-way ——" That is not in this same area. It is in the old city area.

Q. Do you mean to say that the Dominion Company got permits in 1911—did you say? A. This particular permit.

Q. Do you say the Dominion Gas Company got permits in 1912? A. This is marked the Manufacturers' Gas Company.

Q. I am talking about the Dominion. A. That is the Manufacturers'.

Q. I want to know what record you got prior to 1914 of the Dominion. A. May I ask you a question?

Q. Yes, you may, sure. A. Did I state at any time I had seen any prior to 1914?

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 7.
Eugene W.
King,
Examination.
30th May,
1932.

—continued

Plaintiffs'
Evidence.
No. 7.
Eugene W.
King,
Cross-
Examination.
30th May,
1932.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 7.
Eugene W.
King,
Cross-
Examination.
30th May,
1932.

—continued

Q. I don't know whether you did or not. I am asking you? A. I couldn't find from these records that I did.

Q. I am instructed the city authorities say that under an order of the Judge they destroyed all their records up to a certain date. I want to know whether they told you so. A. No, they said nothing to me that I know of.

Q. Whom did you ask for the records? A. I think Mr. Walsh had phoned over to have the records got together.

Q. You are giving evidence of what you did yourself? A. I don't remember the man's name; one of the engineers in the drafting room. 10

Q. He may have been the caretaker for all you can tell me? A. I know he is not because I have seen him before.

Q. Do you know who he is? A. I can't remember his name, no.

Q. Have you got any information at all regarding the records before 1914? A. I don't remember that I did.

Q. I take it that you did not. Then you know nothing of permits granted before 1914, and you know nothing about permits applied for before 1914? A. (No response).

Q. No. Did you ask for permits in the City Hall granted or applied for after 1914; and if so, give me them from year to year, beginning with 1914? A. What we asked for and they produced those in different files. 20

Q. Tell me what they produced for 1914.

MR. TILLEY: For the Dominion?

MR. STAUNTON: I want the Dominion entirely.

WITNESS: The first one I have is October 7, 1914.

Q. What is that? A. That was to open the roadway on Fairholt Road north of Main Street.

Q. What is the next? You will swear you got this from the city, this information? A. Absolutely. 30

Q. Go on. A. November 30, permission granted to the Dominion Company to open street at the corner of Prospect and Maple Avenue, to introduce service for gas, installed. Might I say here how we handled this?

Q. No, I don't want to go into details.

HIS LORDSHIP: He had a list of your productions, and then he went to the City Hall and made a memo. on each production.

MR. STAUNTON: I want to see what he got out of the City Hall.

WITNESS: I used your list as a memorandum.

HIS LORDSHIP: He took your productions as a basis and made nota- 40
tions on each one.

MR. STAUNTON: Q. Is this document dated Sept. 26, 1923, signed by McFaul, City Engineer, one of the documents that you based your plan on? A. (No response).

HIS LORDSHIP: The witness would not have the permit. He would only have a record of it.

MR. STAUNTON: He got the permits. This is what we produced ourselves. This is what he got from us, our productions in this law-suit.

HIS LORDSHIP: Would he get them in that form?

WITNESS: I had this form here.

MR. TILLEY: Clerks went and copied them.

WITNESS: That is the form. I had the copy. Then we checked these with the originals. We had it like this in the City Hall.

MR. STAUNTON: Q. Look at the first one you have got for 1923.

A. So far it reads the same as that.

10 Q. What have you got for 1923? A. Sept. 26, 1923, permission granted to the Dominion Company to instal three inch gas main on Maple Avenue from Gage Avenue to east side of Prospect Street to be laid four feet south of north curb, and on Prospect Street from Maple Avenue to alley 120 feet south of Main Street to be laid 2 feet east of east curb.

Q. And also two inch main on Springer Avenue? A. Yes.

Q. And also on Main Street? A. Yes.

20 Q. "With reference to alley from Prospect Street to Springer Avenue this is private property belonging to property owners—" you copied that letter, didn't you? A. I didn't copy this. This is given to me personally. I saw the originals—the City Engineer's copy of your original letter.

Q. And that is it, is it? (handing document). A. That is the same kind of thing I had. You probably got the original of it, and I was looking at the copy.

Q. Here are some permits in 1924. I have got four of them. Are those the permits on which you based this plan? A. No, sir, we based the plan on this thing.

30 Q. You did not put down anything on your plan for those permits. That is 1923 you know? A. It is my recollection that all the permits—they were all by letter-sized paper.

Q. I want to know from you what information you had for anything done by us in 1924? A. You want me to check this?

Q. I want you to check that. A. With my plan? The first one dated Aug. 30, 1924, reading from this one, permission is granted and so on, gas main on Concession Street between 25th Street and 300 feet west of Wentworth Street.

Q. Did you use that permit? A. Absolutely. We found in the City Engineer's office the same thing.

40 Q. What is the next one? A. Dated Sept. 5, 1924. Reading from this one, "Dominion Natural Gas Co., installing a gas main on Concession Street between 25th Street and 300 feet west of Wentworth, between the west side of East 18th Street and the east city limits."

HIS LORDSHIP: You had better hand that to one of the counsel.

MR. STAUNTON: This is a permit, so your Lordship will see what the permits are, because there are two or three hundred of them. (Reads permit of Aug. 30, 1924, afterwards filed as part of Exhibit 47.)

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence:
No. 7.

Eugene W.
King,
Cross-
Examination.
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*
—
Plaintiffs'
Evidence.
No. 7.
Eugene W.
King,
Cross-
Examination.
30th May,
1932.

—continued

Q. Can you say generally how many permits you found all told, that you acted on? A. I can't answer that, but I found all of these plus a few more.

Q. Would you check this up and see if they are all right, instead of my going through each one in detail?

MR. TILLEY: Do you find these streets are not marked on his map?

MR. STAUNTON: I don't know.

MR. TILLEY: Can we not do that at some other time?

MR. STAUNTON: I will put these permits all in.

MR. TILLEY: Well, what is the use of that? 10

HIS LORDSHIP: You are not putting in your evidence now.

MR. STAUNTON: I am proving them by him on cross-examination.

HIS LORDSHIP: He never saw your permits.

MR. STAUNTON: He says he did.

HIS LORDSHIP: He has a list that he used in checking what was in the City Hall. You produced something else he did not have.

MR. STAUNTON: You see, my Lord, they are not in the City Hall.

Q. Will you say all those permits you have got down there you found in the City Hall? A. Absolutely.

Q. Very well. Is the City Engineer here? I am instructed they 20 have not got any of them in the City Hall.

HIS LORDSHIP: Your instructions are contrary to what this witness says.

MR. STAUNTON: I want to draw his attention to it, because I am told by the City Hall they destroyed the records on an order of the Judge to 1922.

HIS LORDSHIP: You put the question 1914 before.

MR. STAUNTON: I did. I am going further now.

HIS LORDSHIP: That will have to be shown. You cannot get it from this witness. 30

MR. STAUNTON: I want to show from this witness I do not think he is going by what he found in the City Hall.

WITNESS: Absolutely. What do you think I am going by?

MR. STAUNTON: I am drawing his attention to it now.

HIS LORDSHIP: Q. Who was with you when you made the search? A. Mr. Burnett.

MR. STAUNTON: Your Lordship says I must prove these permits outside of him?

HIS LORDSHIP: Yes.

MR. STAUNTON: Q. What authority have you got for saying that 40 the lines in red were laid down on Exhibit 39 before 1914? A. I didn't say before 1914. I said prior to the year 1928.

Q. When do you say these red lines were laid down? A. I don't say. I said previous to 1928.

Q. That is all you can say about them? A. Yes.

Q. Why do you say they were down before 1928? A. Because

that is the date for them on the permits which we found.

Q. And you say those permits you found— A. In the City Engineer's office.

Q. And the ones in green you say were laid down since 1928? A. Since 1927—starting with 1928 on.

Q. Do you say you found in the City Engineer's office a permit for each one of the lines shown in green? A. Yes, sir.

HIS LORDSHIP: Those are the Plaintiff Company's?

MR. TILLEY: The Defendant Company's, since 1928, my Lord.

10 MR. STAUNTON: Q. Do you say since 1928 or 1927? A. The green includes 1928 on.

Q. Then it is since 1927? A. Yes.

Q. And it is on the permits that you found in the City Engineer's office that you base the statements regarding the green? A. Yes, sir.

Q. Do you know how many miles of line there are laid down there now? A. I know there is a great many. That is all I know.

Q. Over 100? A. Well, I would have to guess at it if I said there was over 100.

20 Q. The plan is drawn to scale, is it not? A. That plan is drawn to a scale, but a very small scale.

HIS LORDSHIP: Q. Is it so that each permit would specify the length? A. No, the permits do not specify the length.

Q. Just from a certain street to a certain street?

MR. STAUNTON: Between certain points, my Lord.

Q. Taking the lines in red, would you say there were over 25 miles of them? A. I wouldn't guess there was 25 miles of red on there. I wouldn't think there was 25 miles of red.

30 Q. You do not show the outlying lines, do you, the circumference? A. I thought one of these plans showed that the company built lines practically all around the township.

HIS LORDSHIP: That is on one of the earlier plans.

WITNESS: Are you still talking about the Dominion?

MR. STAUNTON: I am not talking about any other company yet at all.

HIS LORDSHIP: You are referring I think to Exhibit 34.

MR. STAUNTON: Q. Take a glance at Exhibit 34. Are the red lines shown on 34 all reproduced on 40? A. No, that mountain is not reproduced on 40.

Q. Is 40 the map we are talking about now? A. They are not reproduced on this, because this one takes you away back in the country.

40 Q. They are not reproduced? A. Not all of them, no.

Q. So the company had lines and pipes that are not shown on plan, Exhibit 40? A. Back in what was the Township of Barton—back on the mountain as we call it.

Q. What was the Township of Barton, is now the city? A. Not necessarily, because this goes away outside the city.

Q. Are there any lines shown on the ground in the annexations that

*In the
Supreme Court
of Ontario*

Plaintiffs'
Evidence.
No. 7.
Eugene W.
King,
Cross-
Examination.
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 7.
Eugene W.
King,
Cross-
Examination.
30th May,
1932.

—continued

are not shown on plan 40 and that are shown on plan 34? A. There is Dominion lines shown on that which are not shown on this one.

Q. Shown on plan 34, is that right? A. Shown on 34 that are not reproduced on that.

MR. TILLEY: Plan 34 is a larger area.

MR. STAUNTON: Q. I am asking you, are there lines shown on 34 in the annexed districts which are not shown on 40? A. Yes, sir.

Q. So to find all the company's lines we must take both plans 34 and 40?

HIS LORDSHIP: As I understand, 34 shows some lines that are still 10 in Barton, not in the city at all.

MR. STAUNTON: He has not reproduced those in his plan.

HIS LORDSHIP: It would not be fair to get the lines that are laid in the City of Hamilton to take the two of them.

MR. STAUNTON: What I asked was this, have the company lines in the annexations shown on 34 and not shown on 40?

HIS LORDSHIP: To get the full lines you would have to take the two.

MR. STAUNTON: To get the full lines in the annexations?

HIS LORDSHIP: No, because 34 includes some that are not in the annexations at all. 20

MR. STAUNTON: But 40 does not include all the lines that are in the annexations.

HIS LORDSHIP: You would not add the two together?

MR. STAUNTON: I am just asking him that.

MR. TILLEY: Plan 40 does not cover the whole of the annexed area.

MR. STAUNTON: I want to get it clear that 40 does not show our lines in the City of Hamilton.

MR. TILLEY: It does not show any lines that are not in the area that is included in 40.

MR. STAUNTON: I want to get it down. 30

MR. TILLEY: You have been referring to 39, not 40.

MR. STAUNTON: That will have to be corrected then. 39 is the plan on which the green and red are shown, and is the plan to which I was referring in my cross-examination.

MR. STAUNTON: Q. You have not made it clear to me what permits you found in the city office which were not in the list of our productions to you. Can you tell me what those were? A. The ones we found you did not furnish us?

Q. You got a document which apparently was a copy of our permits? A. Yes. 40

Q. Permits produced by us. Now I want you to tell me what were the permits that you found in the city office that were not produced by us? A. Here is my record of that.

Q. Is that a list of them? A. Yes.

Q. You have a supplementary list of permissions granted by the City Engineer to the Dominion Natural Gas Company in the City of

Hamilton. By supplementary you mean those not produced by us?
A. Yes.

Q. On October 1st, 1923, Maple Avenue; and then another for Barnesdale Avenue; another for Spadina Avenue; another for Melrose Avenue, and two for Main Street. "I beg to advise that permission has been granted to open the pavement on Lorne Avenue." You spoke about that, didn't you? A. Yes, Lorne Avenue and also Chedoke.

Q. Then, "Permission is granted to open the street in front of 33 Albert Street." You had that too, didn't you? A. What is the date
10 of that?

Q. 21st of May, 1915. A. May 21, 1915, is Albert Street.

Q. And "Permission is granted to open the street at Prospect and Maple Avenue," on Nov. 30, 1914. You had that too, didn't you? A. Yes.

Q. I think you had them all.

EXHIBIT 42. Supplementary list of permissions granted by City Engineer.

WITNESS RE-EXAMINED by MR. TILLEY:

Q. Mr. King, the plan, Exhibit 39, does not cover all the district
20 that was annexed? A. You asked me if that covered all the districts that have ever been annexed to the city?

Q. Yes. A. You see this plan, the extreme east and south-west, it does cover. Back here on the mountain, this is the city line again, say Fennell Avenue on the extreme south, still covers it. There might be something there but in general that covers it all.

Q. You have not filled in anything to show permits except in the particular area we have been discussing here? A. Nothing but permits from the City Engineer of Hamilton. I have nothing from any other locality.

30 Q. What permits did you not show on the map? A. For instance, I know they have pipe on those streets there.

HIS LORDSHIP: The others were under By-law 533 of the Township of Barton.

WITNESS: There is streets in that area, there never was a permit in the City of Hamilton. I suppose it came under the Barton Township.

HIS LORDSHIP: It has been said here before by Mr. Tyrrell that that large plan, Exhibit 34, shows it as laid out in By-law 533 of the Township of Barton. The others were the ones that were laid out under the authority of the City of Hamilton.

40 MR. TILLEY: Q. What you have taken is City of Hamilton only?
A. Yes, on that particular plan.

MR. STAUNTON: Would your Lordship allow me to ask a further question?

HIS LORDSHIP: Yes.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 7.
Eugene W.
King,
Cross-
Examination.
30th May,
1932.

—continued

Plaintiffs'
Evidence.
No. 7.
Eugene W.
King,
Re-Exami-
nation.
30th May,
1932.

In the
Supreme Court
of Ontario

Plaintiffs'
Evidence.
No. 7.
Eugene W.
King,
Re-Exami-
nation.
30th May,
1932.

By MR. STAUNTON:

Q. I understand what you say is that all you reproduce there on plan 39 is what you found authority in the City Hall for putting down?

A. In the City Engineer's office we found permission from the City to the Dominion Natural Gas Company to lay all those pipes.

Q. That is all you put down? A. Yes.

MR. TILLEY: Q. That includes the memorandum had of their productions, with some additions? A. We found that in the City Hall, too.

MR. STAUNTON: Q. You are just reproducing a record of what you found? A. Yes.

—continued

Plaintiffs'
Evidence.
No. 8.
Matthew
Byrnes,
Examination,
30th May,
1932.

MATTHEW BYRNES, Sworn. Examined by MR. TILLEY:

Q. Mr. Byrnes, what position do you occupy with the United Gas Company? A. Construction Superintendent.

Q. How long have you held that position? A. Since September, 1905.

Q. Were you with the company before that? A. Yes sir.

Q. In what capacity? A. The same capacity.

Q. But hadn't the title? A. No, different company, different name.

Q. What was the name? A. Kentucky and Ohio Gas Company of Findlay, Ohio.

Q. That was a different place. You came here in 1905? A. Yes.

Q. So you are familiar with the system of the United Company from 1905 down to this time? A. Yes.

Q. At that time the company was known as the Ontario Pipe Line Company? A. Yes.

Q. What was it distributing then, natural gas or artificial? A. Natural gas.

Q. Is it distributing natural gas only to-day? A. No, we distribute both kinds.

Q. When did they commence distributing artificial gas? A. Around 1912 or 1914.

Q. When you came here in 1905 was there any other company distributing natural gas in Hamilton? A. No, sir.

Q. And when did this company commence to supply the people in the south-west part of Hamilton with natural gas? A. September, 1905.

Q. And then when did it supplement that gas with manufactured gas from a plant on Park Street? A. Later on, yes, sir.

Q. When was that? A. About 1912.

HIS LORDSHIP: That was when you started in to manufacture gas?

MR. TILLEY: Yes, my Lord.

Q. Then were you familiar with the annexation that took place,

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bringing parts of Barton Township into the city? A. Yes, sir.

Q. As these different portions of Barton Township were brought in, what did the United Gas Company do? A. Went on and laid their lines on the different streets.

Q. Did they supply gas? A. Supplied gas to the houses.

Q. Will you just explain any difference in the work that the Dominion Company was carrying on prior to 1928 as compared with subsequent to 1928? Just compare the two. A. They done very little work.

10 Q. Done very little work when? A. From 1905 on to 1926 or 1927, somewhere along there. Then they laid a little pipe on the mountain.

Q. In what area? A. In Barton area—Barton Township.

Q. That had been brought within the city? A. No, not in the city.

Q. When did the Dominion Company commence to serve to any extent in the City of Hamilton? A. Around 1927—that is the district east of Sherman Avenue.

Q. And what did they do then? A. They started laying pipes around in the district east of Sherman.

Q. On streets where the United Company had pipes? A. Yes.

20 Q. Had that ever happened before, that they put pipes along streets where the United Company had pipes? A. I don't remember of any place.

Q. Did they commence serving customers with gas there? A. Yes, sir.

Q. Were you familiar with their activities? Were you in a position to say what they were doing with your customers? A. Yes, sir.

Q. What did you find they were doing? A. Cutting over and changing the service on to their lines, the service that we had put into those houses, changed them over on to their lines.

30 Q. Can you describe how that developed? Did it develop gradually or was it a rather sudden affair? A. As they went along with their construction work, immediately after they had their lines laid and gas in the lines, they would change those services over.

Q. Were you called to those places where that was being done yourself personally? A. Yes, our company gave me orders to go and see what they were doing.

Q. Did you see the Dominion Company's representatives there? A. Yes, sir.

Q. And carrying on this campaign. A. Yes.

40 Q. Where did they cut the services off from your mains? A. On the inside of the walks usually, between our curb stop and the property line.

Q. Between what? A. Our curb stop. That is the valve that would shut the gas off at the street.

Q. Between that and the property line? A. Yes, the house.

Q. You fix 1927—have you any particular time in 1927 when that

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 8.

Matthew
Brynes,
Examination,
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 8.

Matthew
Brynes,
Examination,
30th May,
1932.

—continued

started? A. I think in 1927 they done a little work on the mountain.

Q. Within the city? A. Within the city.

Q. Was it to any great extent? A. There was five or six streets there.

Q. How long? A. It would be over 500 feet in length.

MR. ROWELL: My learned friend is asking the witness about our cutting off a supply of their customers in 1927. No such issue is raised in the pleadings, as I recall it.

MR. TILLEY: Certainly, I press that most strongly.

MR. ROWELL: I am not aware of any issue of that kind raised in the 10 pleadings, my Lord.

HIS LORDSHIP: What paragraph, Mr. Tilley? Paragraph 4 alleges that in or about the year 1928 they entered on the streets and still supply gas, but nothing here that they took away your customers and supplied them themselves.

MR. TILLEY: We say they supplied the inhabitants. In paragraph 6 we say, "The defendant is violating the rights of the plaintiffs and each of them and unless restrained will continue so to do."

HIS LORDSHIP: That would have reference to the exclusive franchise set out in paragraph 5. 20

MR. TILLEY: I am not putting it forward in 1928 as a thing that gave a cause of action.

HIS LORDSHIP: But just as evidence of the invasion of your rights?

MR. TILLEY: The intent with which they did it, and the knowledge they had at the time.

HIS LORDSHIP: It is not put forward as a claim for damages.

MR. TILLEY: If they had the right to go there, and had the right to serve, they were entitled to go there and inveigle our customers to buy from them. My friend is setting up estoppel against me. I want to show how they came into the area. 30

MR. ROWELL: My learned friend is making a claim for damages. I don't know what he is basing it on. There is one issue, whether we have a legal right to be there or not.

MR. TILLEY: Just to clear it up, I do not at all base any claim to damages prior to the time when my rights became exclusive. My rights became exclusive at a certain time.

HIS LORDSHIP: 1931.

MR. TILLEY: That is when my damages start.

MR. ROWELL: Then there are no damages claimed in this period. Then I submit there is no issue raised here with reference to our cutting 40 off the supply of gas by this company to its customers. There is nothing on the pleadings suggesting it.

HIS LORDSHIP: As I understand, it comes up in this way; it shows that your clients were asserting rights to a franchise which the plaintiffs say you never had.

MR. ROWELL: We undoubtedly did.

HIS LORDSHIP: Is it any more than that, Mr. Tilley?

MR. TILLEY: It comes in on the question of what is equitable and fair, and on the question of estoppel they are raising. I think I have covered it now. I am not labouring it in detail.

HIS LORDSHIP: It is not a subject of damages.

MR. TILLEY: No, not on that date.

MR. ROWELL: My learned friend is trying to introduce it as an element of atmosphere. If we go through all the controversies between these two companies we will be here for some time.

10 MR. TILLEY: Q. Did you go over with Mr. King the list of permits granted to the Dominion Company? A. I don't think I have, only on the maps here.

Q. Have you checked over to see whether these maps indicate the extensions of their system since 1928? A. Yes, sir.

Q. And what do you say about them? A. I say they are correct.

Q. Does the plan that was produced of the United Company's system correctly show their system? A. Yes, sir.

Q. As indicated on the plan. I mean as to the date and so on?
A. Yes.

20 Q. You have checked it up? A. Oh, yes.

Q. Do you know of any connection between this company's and any other company's mains so that gas comes through? A. Through the Dominion Company?

Q. Through the Dominion Company? A. I do.

Q. What do you know about that? A. I know that Manufacturers' gas line is connected to the Dominion Gas System as a belt line, what they call the Manufacturers' line. It runs through the centre of the city here.

30 HIS LORDSHIP: It connects with the lines of the Defendant Company.

MR. ROWELL: Again there is no issue raised in reference to the Manufacturers' Gas Company and this in any shape or form. I do not know what my learned friend is seeking to do by bringing in the Manufacturers' Gas Company. We are prepared to meet the allegations in the pleadings.

HIS LORDSHIP: That is all you will have to meet. I do not know what this evidence is introduced for. Possibly Mr. Tilley might state now.

40 MR. TILLEY: I would not think that on any construction of my friend's franchise he could claim it gave him the right to take gas from another company within the City of Hamilton and distribute it there.

HIS LORDSHIP: Are you alleging they did?

MR. TILLEY: We allege they distribute gas. We can show it in any way. Possibly I have shown enough.

HIS LORDSHIP: Do you differentiate between gas they got themselves, their own product, and gas they got from another company?

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 8.

Matthew
Frynes,
Examination,
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 8.
Matthew
Brynes,
Examination,
30th May,
1932.

—continued

MR. TILLEY: I have not raised that issue. Probably I should not try to pursue it.

Q. Do you remember when the working arrangement that existed between the Dominion and the United Company came to an end, the arrangements shown in some of the agreements that have been put in here? A. Yes, sir.

Q. They had a sort of operating arrangement? A. They did.

Q. When did that come to an end, about? A. In 1925, I think in March.

HIS LORDSHIP: Are those agreements in now as an exhibit? 10

MR. ROWELL: No, they are not in.

HIS LORDSHIP: I have no recollection of any agreements being in. There was one agreement as to the price. Had that anything to do with the two companies?

MR. ROWELL: No, my Lord. The agreement my learned friend is referring to now is a 1905 agreement, and there were several agreements extending that agreement. Those are not yet in before your Lordship. They are referred to, my Lord, in the agreement which I put in. I asked the City Clerk if he had a copy of it. He said no.

MR. TILLEY: Q. I will put it this way then; from March, 1925, on, 20 say until 1928, did the Dominion Company do anything to install services in Hamilton, between 1905 and 1928? A. 1927 they done some on the mountain.

Q. What you have referred to on the mountain? A. Yes.

Q. Did the United continue to supply the customers they had before 1925? A. Oh, yes.

Q. Take from 1928 on, did the Dominion later than 1928 continue to extend their system east of Sherman Avenue in the annexed area? A. They did.

Q. And also 1930? A. Yes, sir. 30

Q. And what about 1931? A. I don't think they done much in 1931.

Q. Can you say what they did do? A. I couldn't say exactly, no.

Q. But did they continue to supply gas to those who were taking their service before 1931? A. Oh, yes.

Q. And are they still continuing to supply? A. They are.

Q. In the City of Hamilton? A. Yes.

Q. That is to say, they have not stopped supplying any? A. We have taken some over, in fact.

HIS LORDSHIP: That is in the ordinary line of business. 40

MR. TILLEY: Q. They are continuing to supply? A. Yes.

Q. And that has continued right through 1931 and into 1932? A. Sure.

HIS LORDSHIP: I suppose they are still asserting their rights to do so.

MR. TILLEY: Q. Do the United Company's pipe lines and so on

still continue on the streets where the Dominion Company has taken customers from them in the way you described? A. Yes.

Q. Still there and ready to operate? A. Still there.

Q. Mr. Byrnes, is it right to say that in that district east of Sherman, as a result of what has happened since 1927, each company now has mains practically on every street? A. Yes, all except two (2). Really the Dominion has lines on every street, but there is two streets we have no lines.

10 Q. There are two that they have lines on that you have not, but all the others you are both on the street? A. Yes.

Q. And just running parallel on the street? A. Yes.

Q. Then, Mr. Byrnes, just to clear up a question that may be material later, when this arrangement came to an end in 1925, what did the United Company do then to supply itself with additional gas? A. They took some gas from the Dominion for a spell after that, some natural gas and mixed it with the artificial.

Q. They took some natural gas from the Dominion for a spell after that. Then what did they do? A. They built the coke ovens and supplied their customers with artificial gas.

20 HIS LORDSHIP: Q. Is your sole supply now artificial gas? A. No, east of Sherman Avenue most of it is natural.

MR. TILLEY: Q. You have artificial? A. Both artificial and natural.

Q. Do you know approximately at what expense they built that plant? A. No, I wouldn't know that.

Q. Why was it necessary to build that plant?

MR. STAUNTON: They did not build it. It was another company entirely.

HIS LORDSHIP: They acquired it.

30 WITNESS: They got their gas from there anyway.

MR. TILLEY: Q. Why was it necessary to do that? A. We couldn't get natural gas from the Dominion to supply all our customers.

HIS LORDSHIP: Q. Was there enough natural gas available to supply all your customers? A. They claimed not.

MR. TILLEY: Q. Who claimed not? A. The Dominion.

Q. That they had not the gas for you? A. We offered them before we built the coke ovens down there to take all their gas.

MR. ROWELL: I cannot possibly hear Mr. Byrnes.

40 HIS LORDSHIP: You will have to speak up, Mr. Byrnes, if you possibly can.

MR. TILLEY: Q. With the result of that work that was done, or facility that was provided, what is the position now with regard to the supply of gas by the United? A. It is very good.

Q. I mean as to quantity. Have you got all that is necessary? A. All that is necessary.

Q. All that is necessary in Hamilton? A. Yes.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 8.

Matthew
Byrnes,
Examination,
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 8.

Matthew
Byrnes,
Examination,
30th May,
1932.

—continued

Plaintiffs'
Evidence.
No. 8.

Matthew
Byrnes,
Cross-
Examination,
30th May,
1932.

MR. ROWELL: This is something on which there is no issue raised, as to whether they have now capacity to supply gas. I don't know what my friend is directing the evidence to.

MR. TILLEY: That is all.

WITNESS CROSS-EXAMINED by MR. LYNCH-STAUNTON:

Q. You are a brother of the late P. V. Byrnes? A. I am.

Q. Do you know his signature? A. Yes, sir.

Q. Will you look at those documents, those extensions I am speaking of, are those signed by your brother? A. That is his signature.

Q. Is it his signature? A. It is. 10

Q. Look at them and tell me. A. That one is.

HIS LORDSHIP: Q. Look at them all. A. I will say that is his signature.

MR. STAUNTON: Q. At the time he signed these he was President of the United Gas and Fuel Company? A. Let me see the date.

Q. He was president as long as you were here, wasn't he? A. No sir.

Q. When wasn't he president? A. He was vice-president for some time.

Q. Let us see how he signs it. He was vice-president in those years, 20 was he?

HIS LORDSHIP: What are these extensions of?

MR. STAUNTON: The agreement for supplying gas to them.

WITNESS: In 1922 he was president of the company.

MR. STAUNTON: Q. Did he hold the office that he has signed as in the years that he signed?

HIS LORDSHIP: Is there any doubt about this? Perhaps it will be admitted.

MR. STAUNTON: Q. Sept. 22, 1924, was he vice-president? A. He was president. 30

MR. TILLEY: I am not going to raise any question if he signed as vice-president.

MR. STAUNTON: Q. You know, do you not—I think you have said—that the Dominion Company was supplying gas to the Ontario Pipe Line Company from 1904, was it not, when you came here? A. 1905 I came here.

Q. It supplied gas all the time up to 1925, did it not? A. Yes, sir.

Q. Do you know whether it was under this agreement? Do you object to this agreement?

MR. TILLEY: No, the agreement will speak for itself. 40

HIS LORDSHIP: That is Exhibit 43.

EXHIBIT 43. Copy of agreement between Defendant and The Ontario Pipe Line Co. Limited, Sept. 25, 1905, with extensions attached.

MR. STAUNTON: Q. My impression is that the Dominion supplied

all the gas that the United sold from 1905 on to 1925? A. No, sir, they did not.

Q. Where did the United get any gas from? Had it any line into Hamilton? A. From the Park Street artificial plant.

Q. I mean natural gas. A. I don't know. They did not get any.

Q. They bought all their natural gas from the Dominion, did they not? A. No, they bought some from the Manufacturers' before the Dominion bought them out.

Q. Did they use that gas from up Sarnia way? A. No.

10 Q. That was all the Manufacturers' had, wasn't it? A. No.

Q. They bought some of their gas from the Manufacturers'? A. They did for one winter. I don't just remember the year.

Q. But all the natural gas they sold, excepting what they bought for one winter from the Manufacturers', was bought from the Dominion?

A. Yes, sir.

Q. They mixed that gas, the natural gas, with gas that they manufactured from the old Hamilton Gas Company on Park Street? A. Yes.

Q. They owned that plant, and used its pipes in the City of Hamilton. They bought out the Hamilton Gas Company. That is right?

20 A. Yes.

Q. You say they built a plant. It was another company that built the plant, wasn't it, for the Coke Company? A. The Hamilton By-Product Coke Ovens that built it.

Q. They built the plant about 1925, wasn't it? A. Somewhere around there.

Q. And the By-Product Company supplied this company, the Plaintiff Company, with its artificial gas since that time? A. Yes, sir.

Q. When did the plaintiff cease manufacturing gas itself in the Hamilton Gas Company plant? A. I don't remember the date, sir.

30 Q. Was it about the time that the Coke Company began to supply them, or before that? A. No, before.

Q. Many years? A. No, sir.

Q. A year or two? A. Probably a year or two.

Q. A few years anyway? A. Yes.

Q. During the time that the Dominion was supplying gas to the plaintiff, the plaintiff was taking that gas and distributing it in East Hamilton through the Plaintiff Company's pipes and the Dominion pipes, was it not? A. Not through the Dominion pipes that I know of.

40 Q. The Dominion Company's supply for its east end business was received out of the supply sold to the plaintiff, was it not? A. I couldn't say for that part, but I know that they got the gas through the Dominion's line.

Q. Don't you know this, that all the gas distributed in East Hamilton entered East Hamilton at the one point? A. Yes, I know that.

Q. So that the gas for the plaintiff and the gas for the Dominion went through the same pipe to all East Hamilton, did it not? A. I

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 8.

Matthew
Brynes,
Cross-
Examination,
30th May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 8.
Matthew
Brynes,
Cross-
Examination.
30th May,
1932.

—continued

believe it did.

Q. And they were operating together, were they not? A. I think so.

Q. The two companies were operating through the same pipe into East Hamilton.

MR. TILLEY: What do you mean by operating through the same pipe?

HIS LORDSHIP: The gas was coming, I suppose, from the gas plant.

MR. STAUNTON: The defendant had a trunk line coming into Hamilton. When I say Hamilton, I mean into Barton and Hamilton, and they made this agreement, and they supplied the gas to Hamilton to the plaintiff, and by an agreement between them— 10

MR. TILLEY: Are you giving evidence?

MR. STAUNTON: I am not giving evidence. I am answering your question.

MR. TILLEY: You made the statement, operating through the same pipe.

HIS LORDSHIP: Better proceed in the regular way. Let the witness give the evidence.

MR. STAUNTON: I did not want to give evidence. You asked a question and I was answering it. 20

WITNESS: I want to correct that. I did not understand you. The gas we got from the Dominion Company came from their lines to our lines through regulators. We wasn't hooked up with their lines.

MR. STAUNTON: Q. It was passed on through your line down to—I think the place was on Sherman Avenue. Wasn't there a station on Sherman Avenue? A. Down to the holder.

Q. On Sherman Avenue? A. No, Depew Street.

Q. Where was it carried by your pipes to supply East Hamilton?

A. It was carried to the holders from the Dominion's line at the corner of Main and Gage Avenue. 30

Q. From there where was it carried? A. It went into the holder, and mixed with artificial gas.

Q. From there where was it carried? A. Throughout the city.

Q. Was it not carried then to the Dominion's customers as well as to yours? A. I don't see how it could.

Q. I am instructed it was, so I want you to tell me. A. I never knew that happened.

Q. Where did the Dominion get their gas for East Hamilton? A. They got it out of their field over here. 40

Q. Did it come by an independent route to Hamilton? A. Surely.

Q. How was it you were selling gas to them? Don't you know they were, as a matter of fact? A. I never heard of it.

Q. You will hear it before the case is done if you stay here.

HIS LORDSHIP: I understood you were going to put in that agreement and the renewals. (Ex. 43).

MR. STAUNTON: Q. Listen to this. I am reading now from one of these extension agreements.

MR. TILLEY: Part of Exhibit 43.

MR. STAUNTON: The one of Sept. 22, 1924.

MR. TILLEY: Could we have them listed, what is being put in?

HIS LORDSHIP: I suggested that the agreement and renewals might all go in as one exhibit.

MR. TILLEY: I would like to have them listed so we will know what is in.

10 MR. STAUNTON: I want to put in copies of them, if that is all right.

HIS LORDSHIP: They all go in as one exhibit, but the dates of the renewals are to be given, so they can be distinguished one from the other.

(Reporter's Note: This discussion about Exhibit 43, which has been noted as filed on Page 62, Line 42.

MR. STAUNTON: The renewals begin with Sept. 22, 1924.

HIS LORDSHIP: I did not understand you wanted to put in copies of the agreement.

MR. ROWELL: If my learned friend, Mr. Tilley, does not object to copies. I understood the company preferred retaining the originals.

20 HIS LORDSHIP: Mark the original and mark the copy the same.

MR. STAUNTON: September 22, 1924; October 22, 1924; November 22, 1924; December 26, 1924. Those are the extensions.

Q. I am going to read you from the extension of September 22, 1924, to locate certain places: "All deliveries of gas during said term of 30 "days shall be made to the United Gas and Fuel Co., Ltd., at our "meters as at present located at or within the limits of the City of "Hamilton that is at Gage Avenue, Wellington St., and Dundurn "Street——"

Gage Avenue—do you know the point referred to there? A. Yes, I do.

30 Q. That is not a holder, is it? A. No, sir.

Q. That is a pipe line leading from that point on Gage Avenue to the holder, or to the customers? A. To the holder.

Q. Are you sure of that now? A. Yes, sir.

Q. Wellington Street—do you know the point of delivery on Wellington Street? A. Yes, sir.

Q. Where did that lead to? A. That led into the central part of the city here.

Q. It was distributed among the customers? A. Yes.

Q. Dundurn Street? A. Yes.

40 Q. That was distributed among the customers. That is away in the west end of Hamilton, isn't it? A. Yes.

Q. "at which points of delivery the United Gas and Fuel Co., Ltd., "agrees to accept and take possession thereof."

You were wrong, or incorrect in your statement—I don't mean improperly wrong—that all this gas was delivered by the Dominion into the holder of the Plaintiff Company? A. No, I didn't deny that.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.

No. 8.
Matthew
Prynes,
Cross-
Examination.
30th May,
1932.

—continued

In the
Supreme Court
of Ontario

Plaintiffs'
Evidence.
No. 8.
Matthew
Brynes,
Cross-
Examination.
30th May,
1932.

—continued

Q. You said it. A. I did tell you I didn't know where our gas would go through Dominion lines to their customers.

HIS LORDSHIP: What the Dominion sold was the natural gas, not the mixed gas—what they sold to their customers.

MR. STAUNTON: What I am trying to prove by him is that we did deliver natural gas to them into their pipes here.

HIS LORDSHIP: That is not being disputed, but the reverse was, that they were delivering you gas, that your clients were getting their manufactured gas, and mixing it with their natural and distributing it to the customers. 10

MR. STAUNTON: I want to prove we delivered to them natural gas which they carried and re-delivered to us. That is the point.

HIS LORDSHIP: Bought and sold the same gas?

MR. STAUNTON: In other litigation that all came up, so I am quite familiar with it.

Q. I want you to tell me whether you know that the Dominion Company sold and delivered gas to—or delivered gas rather, to the plaintiff? A. To the United Gas and Fuel Company, yes, sir, they did.

Q. Which the United afterwards carried and delivered into the Dominion pipes? A. I absolutely know nothing about that. 20

Q. All right. Are there any more stations than those I have given you at which the gas was delivered? A. No, sir, not that I know of.

Q. Are they all in the old City of Hamilton? Are they all west of Sherman Avenue? A. No.

Q. Is Gage Avenue east of Sherman? A. Yes, sir.

Q. It is in the annexation though, is it? A. Yes.

Q. Isn't it west of Gage Park? A. It is right at Gage Park.

Q. And Gage Park is east of Sherman Avenue? A. Yes.

RE-EXAMINED by MR. TILLEY:

Q. Was there not a small supply of the kind Senator Staunton mentioned at Springer Avenue? A. I can't recall that. 30

Q. I thought we could clear it up now. If you do not remember it, we cannot. A. Somebody else will be around.

Q. Oh, yes, the case is not over yet.

Court adjourned at 6.10 p.m. until ten a.m., May 31, 1932.

ON RESUMING at ten a.m.:

MR. TILLEY: My Lord, I had thought probably of putting in some confirmatory proof of the markings on these plans, but I think they have been checked and probably we are fairly in agreement. If we could clear that up it would save a bit of evidence. 40

HIS LORDSHIP: What do the other counsel say?

MR. STAUNTON: I put in the agreement of 1905 last night, and I should think it would be helpful to read it before we go further.

HIS LORDSHIP: What about the plans in the meantime?

Plaintiffs'
Evidence.
No. 8.
Matthew
Brynes,
Re-Exami-
nation.
30th May,
1932.

Plaintiffs'
Evidence.
No. 9.
Discussion
as to
Exhibits.
31st May,
1932.

MR. ROWELL: Exhibit 34 we believe to be correct. Exhibit 35 is also correct. Exhibit 36 showing the annexations is correct except on our information two dates which appear to be in error.

HIS LORDSHIP: Would that not be checked up with the orders of the Railway Board.

MR. ROWELL: Quite, and it is on that checking we think it can be corrected. We think it is a clerical error.

HIS LORDSHIP: What about the others, Mr. Rowell?

MR. ROWELL: Exhibit 37 is correct. Exhibit 38 we do not admit.

10 HIS LORDSHIP: What is the difficulty there?

MR. ROWELL: That is the one showing the lines laid by the Plaintiff Company. We have no information on that, and we have no means of checking it.

HIS LORDSHIP: You want to have some confirmatory evidence as to that?

MR. TILLEY: I think I have covered that one pretty well. It was more as to the defendant's lines that I was in trouble.

HIS LORDSHIP: 39?

MR. ROWELL: In so far as it shows permits granted by the city, we
20 believe it to be correct. I think that is all it purports to show.

HIS LORDSHIP: 40 is the last one, is it not?

MR. ROWELL: My instructions are that is not correct, my Lord.

HIS LORDSHIP: Mr. Staunton at this stage wants to read that agreement, or the material parts of it. That is Exhibit 43.

MR. STAUNTON: (Reads Exhibits 43 and 22).

HERBERT GEORGE HENRY, Sworn. Examined by MR. TILLEY:

Q. Mr. Henry, what position do you occupy? A. Assistant Secretary and Assistant Treasurer of the United Gas and Fuel Company.

Q. Have you compiled a statement, or have you got out information
30 as to the meters taken out by the Dominion Company? A. I have.

Q. That is United meters taken out by the Dominion? A. Yes,
sir.

MR. ROWELL: I submit, my Lord, there is no issue raised on that question in the pleadings.

HIS LORDSHIP: What is the object of the evidence, Mr. Tilley?

MR. TILLEY: I propose to show that the plaintiffs are—

HIS LORDSHIP: Interfering with your business?

MR. TILLEY: Yes.

HIS LORDSHIP: I suppose that is admitted?

MR. TILLEY: Is it?

40 MR. ROWELL: We admit we compete for the same customers in the City of Hamilton.

*In the
Supreme Court
of Ontario*

Plaintiffs'
Evidence.
No. 9.

Discussion
as to
Exhibits.
31st May,
1932.

—continued

Plaintiffs'
Evidence.
No. 10.
Herbert G.
Henry,
Examination.
31st May,
1932.

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 10.
Herbert G.
Henry,
Examination.
31st May,
1932.

—continued

HIS LORDSHIP: And have, I suppose, in a general way, secured customers that were former customers of the United Company?

MR. ROWELL: We are prepared to supply anybody who desires it, where we have mains and pipes laid.

MR. TILLEY: Your Lordship, I suppose, is not going into the question of damages?

HIS LORDSHIP: No. In view of that statement, Mr. Tilley, is it necessary to go further? It could be evidence on a reference.

MR. TILLEY: That applies since the Act of 1931 as well as before?

MR. ROWELL: Since the Act of 1931 we have been continuing to supply gas to the same customers who were receiving it from us before 1931. 10

HIS LORDSHIP: How about new customers?

MR. ROWELL: I cannot say on that, my Lord.

MR. TILLEY: Q. What can you say about that? A. I have a statement with regard to new customers that have been taken over since April 2nd, 1931.

Q. What does that show? A. That shows that there has been an increase from 5865 to 5963 as of May 5, 1932.

Q. That is an increase of how many? A. Approximately 100. 20

Q. That is where the service which was formerly given by the United Company has been disconnected and the Dominion Company service established? A. Correct.

HIS LORDSHIP: Q. Does that relate to the annexed portions of Barton Township, or is that the city generally? A. That only relates to annexed portions.

Q. That is all that is in question I suppose in the action. Your loss of customers amounted to 100 since the Act of 1931—customers that the Dominion have taken over since then. Is that it? A. Yes.

CROSS-EXAMINED by MR. ROWELL: 30

Q. How long have you been with the company? A. Since February, 1929.

Q. You are not familiar with the situation prior to that date? A. Only through the records of the company.

Q. You have no personal knowledge of any matter prior to that date. A. No.

MR. STAUNTON: Q. What date did you say you came in in 1929? A. February, 1929.

MR. ROWELL: Q. Have you a list of the customers you have taken away from the Dominion during the same period? 40

MR. TILLEY: Is that material?

WITNESS: I have not here with me, no, sir.

HIS LORDSHIP: I suppose each was striving for the business?

MR. TILLEY: We are trying to take a great many more away from you right now.

Plaintiffs'
Evidence.
No. 10.
Herbert G.
Henry,
Cross-
Examination.
31st May,
1932.

MR. ROWELL: Not being able to do it from a commercial point of view.

MR. ROWELL: Q. Have you a list of the 98? A. Yes, sir, I have.

Q. Would you kindly give it to me? A. (Hands list to counsel).

HIS LORDSHIP: What does it show? Do you want to put it in as an exhibit?

MR. ROWELL: I wish to see what it is, my Lord.

MR. TILLEY: You have asked for it and got it. I suppose it is in.

MR. ROWELL: Not necessarily.

10 (Note: The document was not filed).

*In the
Supreme Court
of Ontario*

—
Plaintiffs'
Evidence.
No. 10.
Herbert G.
Henry,
Cross-
Examination.
31st May,
1932.

—continued

JAMES A. MARSHALL, Sworn. Examined by MR. TILLEY:

Q. Where do you reside? A. On the Eighth Concession.

Q. Of the Township of Barton? A. Yes.

Q. How long have you lived there? A. Since 1898.

Q. Do you know the road between the 7th and 8th Concessions pretty well? A. Yes, sir.

Q. And have you been living in that vicinity all these years? A. Yes, practically all the time.

20 Q. And can you say whether any pipe line, or gas main was laid along that road by the Dominion Company? A. Not in my time. No line has ever been laid nor heard about.

Q. Any gas delivered along that road? A. None delivered.

CROSS-EXAMINED by MR. LYNCH-STAUNTON:

Q. Do you know that the reason why that line was not built was because the gas was brought to the same point by a circuitous route, by another route? You know what you are talking about? A. Yes, I do.

Q. What is it?

HIS LORDSHIP: No, no.

30 MR. STAUNTON: I want to know the line. I am not asking to show he is wrong.

Q. What line are you speaking about? A. I am talking about the Caledonia Highway line.

Q. To where? A. Between lots seven and eight, between the Seventh and Eighth Concession.

Q. That was a main line to carry gas westward along that road to the Caledonia Road, was it? What road are you speaking of? A. I am speaking of the road between Concession Seven and Eight, a quarter of a mile from Caledonia Highway.

40 Q. What do you call it? Do you call it Concession Road? A. I suppose you would.

Q. Do you call it the Sixth or Seventh Concession Road when you are speaking of it generally? A. You don't call it anything.

Plaintiffs'
Evidence.
No. 11.
James A.
Marshall,
Examination.
31st May,
1932.

Plaintiffs'
Evidence.
No. 11.
James A.
Marshall,
Cross-
Examination.
31st May,
1932.

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence.
No. 11.

James A.
Marshall,
Cross-
Examination.
31st May,
1932

—continued

Q. When you want to tell me what road it is, what do you say? Do you just say the road between these two lots? A. I say the road between the lots and the Township of Barton.

Q. Is it the township line between the two townships? A. No.

Q. What is it? A. It is just a concession between lots.

Q. And you have no more handy way of describing it than that? Your statement is that there is no gas line on that road up to the Caledonia Road? That is your statement, isn't it? A. Yes.

HIS LORDSHIP: Q. Does it join the Caledonia Highway? A. Yes, it runs across to the Caledonia Highway. 10

MR. STAUNTON: Q. Isn't there gas comes down the Caledonia Highway to that point? A. It comes down past there.

Q. Yes, down at that point. That is all.

MR. TILLEY: That is the plaintiff's case, my Lord.

MR. ROWELL: Mr. Kent, my Lord, was to look up a matter.

HIS LORDSHIP: That can be put in again.

DEFENCE

Defendant's
Evidence.

No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

WILLIAM L. McFAUL, Sworn. Examined by MR. ROWELL:

Q. Mr. McFaul, you are City Engineer of the City of Hamilton. A. Yes, sir. 20

Q. For how long have you held that position? A. A little over nine years.

Q. You are in charge of that department of the city government? A. Yes, sir.

Q. Do you keep the records in your office of applications for permits for the opening of streets by utility companies? A. Yes, sir.

Q. Do you pass upon these permits, the question of whether they should be granted or not? A. We issue the permits under the Statute. We issue the permits under the franchises of the various applicants for utility works. 30

Q. Are there any records in your office prior to 1921 relating to such applications? A. None that I can find, sir.

Q. What has become of the records prior to 1921? A. They are destroyed on Judge's order, with other documents.

Q. Up to what date have they been destroyed? A. Up to about 1921. I think we have the records from 1921 on. The other records are destroyed.

Q. Have you your files here showing the applications for permits? A. Yes, the clerk is just bringing them in now.

HIS LORDSHIP: Q. While you do not keep the original application or permit, do you keep some record of it, that a permit was granted on a certain date, anything of that nature? A. Your Lordship, I might explain that the application is made by letter usually with a plan attached, 40

sometimes without a plan. And the application is investigated, and a permit is written out by letter, and a permit issued under the streets by-law, No. 30, giving permission to make a cut in the street to install the work.

Q. How do you keep the record? A. The record is duplicate in our books. That is; the copy of the letter is filed in the letter file and the file of correspondence, and also a copy of the permit as issued is retained in our duplicate books.

MR. ROWELL: Q. Are the records which you retain, which you have explained to his Lordship, the records that have been destroyed under Judge's order up to 1921? A. Yes, sir.

Q. So that you have no records in your office of applications made or permits granted prior to 1921? A. Not that we can locate, sir.

Q. Will you kindly produce your file of applications for 1923? A. The clerk is just bringing them in.

HIS LORDSHIP: The witness says the clerk is there with a great amount of stuff. If there are any particular ones you want selected out, perhaps the witness had better retire.

MR. ROWELL: I want the applications and permits for the Dominion Natural Gas Company. That is the only matter I am concerned with at the moment.

Q. Will you kindly get your file for 1923, Mr. McFaul? A. This is the letter file for 1923, sir (producing file).

Q. Was 1923 the first year that you were in charge? A. Yes, sir, April, 1923.

Q. During that year were you looking into the position of the gas supply for the city and the gas franchises? A. No, sir.

Q. Did you have anything to do with the question of the gas supply upon instructions of the Board of Control? A. No, not as I recall it. The question of gas franchises had been gone into some time before that, in 1919 and 1920. That is my information.

Q. And then when you came in charge, what gas franchises did you find in existence then? A. The United Gas and Fuel Company.

MR. TILLEY: We ought to have them, if the witness is speaking of franchises. It is all right with the United. I mean we ought to have the documents.

HIS LORDSHIP: Oh, yes.

MR. ROWELL: Q. As Engineer, did you receive instructions from the city authorities or anyone else as to the franchises that were in existence?

MR. TILLEY: I object to that. That is not the way to prove a franchise.

HIS LORDSHIP: I am afraid you cannot prove it in that way, Mr. Rowell. You can prove what he did in connection with it. Wouldn't that be recognition?

MR. ROWELL: Q. Have you a copy of a letter in your file which you

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

wrote on June 2nd, 1923, to the Dominion Natural Gas Company? A. I presume it is here.

Q. Just look and see please. A letter to the Dominion Natural Gas Company, to which a reply was sent by the Dominion Natural Gas Company on June 8th? A. Yes.

Q. You have a copy of a letter written by yourself to the Dominion Natural Gas Company dated June 2nd, 1923? A. Yes, sir.

Q. I see it starts out, "The Board of Control have instructed me to report on the amount of natural gas supplied to the United Gas & Fuel Company." You were looking into this matter on instructions from the Board of Control of the city, were you? A. That was a question of the proportion of natural gas to artificial gas, which was a matter of agreement between the two companies. 10

Q. Under the agreement of 1905? A. I don't know the date of the agreement.

Q. And then you wrote asking for information and you received a letter in reply on June 8th, did you, giving the information desired?

HIS LORDSHIP: That would be a letter from the company?

MR. ROWELL: Q. From the company addressed to you? A. Yes, here is a letter. 20

MR. ROWELL: I put those in, my Lord, as exhibits, the letter and the reply.

HIS LORDSHIP: Very well.

EXHIBIT 44. Copy of letter June 2, 1923, City Engineer to defendants. Copy of letter June 8, 1923, defendants to City Engineer.

MR. TILLEY: I do not quite understand on what principle my friend is putting in a letter written to his company, and his company's answer as evidence in favour of the company.

HIS LORDSHIP: It is not evidence of the fact, but it is evidence there was such a communication. It is not proof of the contents. 30

MR. TILLEY: I do not know what the contents are yet.

HIS LORDSHIP: It is proof that there was some correspondence.

MR. ROWELL: Q. Have you an application from the Dominion Company dated the 22nd of September, 1923, for a permit to construct certain gas lines on certain boulevards and alleys in East Hamilton? A. Yes, I have a letter.

Q. Maple, Prospect— A. Maple, Prospect, and alley from Prospect.

Q. Did you grant that application? A. I issued a permit to open the street for the purpose of installing the mains. 40

Q. Upon what did you grant that, what franchise?

MR. TILLEY: That is a very suggestive way of putting it. How can the witness say he granted it on a franchise?

MR. ROWELL: Q. Why did you grant it?

MR. TILLEY: Is the reason material? There is the fact that he granted it. The documents are here. My friend can put them in. I am not objecting to that.

HIS LORDSHIP: Isn't he entitled to find out what he relied on, what justification he had?

WITNESS: My authority is in pursuance of my duty as City Engineer under By-law 30, to issue permits for construction on the street.

MR. ROWELL: Q. Would you issue a permit to anyone for opening a street?

MR. TILLEY: Is that the right way to proceed with this witness? I submit not. It is almost coaxing the witness to say, "I did it under a franchise."

10 HIS LORDSHIP: No. I think he is entitled to a further explanation than that. Why did you issue it?

WITNESS: No doubt I considered that they were entitled to the permit, or I would not have given the permit. I don't know that the franchise was especially considered.

MR. ROWELL: Q. Why entitled to a permit, Mr. McFaul?

MR. TILLEY: I do submit that this witness' view cannot help matters at all.

HIS LORDSHIP: No, you are quite right there. The fact was he issued it.

20 MR. ROWELL: You issued it.

HIS LORDSHIP: I think it is for the Court to say whether there was a franchise that justified its issuance.

MR. ROWELL: Quite so, my Lord.

HIS LORDSHIP: It shows the city authorities or officials recognized or gave the permit. Whether that is a recognition of anything or not, is another question.

30 MR. ROWELL: Q. Did you have a copy of the franchise granted by the Township of Barton to this company in your possession? A. I believe there was filed in the office a copy of the Barton Township By-law covering their extensions in that territory.

Q. Were you familiar with its terms? A. Yes, I did read them.

HIS LORDSHIP: Mr. Rowell, were you putting in that application and permit?

MR. ROWELL: Yes, my Lord; the application of Sept. 22, 1923, and your letter in reply granting the permit, of Sept. 26, 1923.

Q. Is that correct, Mr. McFaul? A. Yes.

40 MR. ROWELL: There is a further letter in reference to the same matter, my Lord, of October 1st, from the Dominion Natural Gas Company to Mr. McFaul as Engineer, in reference to the same subject-matter. (Hands letter to witness.)

WITNESS: Yes, sir.

MR. ROWELL: Q. That is in reference to laying— A. Commencing work at Maple and Gage.

Q. Then there is a further letter of Oct. 1st, 1923, in reference to commencing work. There are two letters of October 1st, are there not? A. That is the October letter, Maple and Gage. That is one letter.

Q. The first one is, "Due to the fact September 26, 1923."

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

--continued

A. Yes, I have that letter, the second letter of October first.
MR. ROWELL: The four letters will go in then, my Lord, as Exhibit

45. EXHIBIT 45. Copies of four letters passing between defendant and City Engineer McFaul; Sept. 22, 1923; Sept. 26, 1923; and two letters of Oct. 1, 1923.

Q. This application was for permits within the annexed portions of the Township of Barton, within the portions of the Township of Barton that had been annexed by the City of Hamilton? A. Yes, territory east of Sherman Avenue. 10

HIS LORDSHIP: Q. The description shows that? A. Yes.

MR. ROWELL: Q. Have you the file of 1924? A. Yes, sir.

Q. Would you kindly turn to that? A. Yes, sir.

Q. During 1924 you sent out a number of notices I am instructed, perhaps you can just check up and see, of paving, to the Dominion Company, asking them to be prepared to make the necessary changes to permit the paving being done? A. Yes, we sent out. It is the usual practice to notify all utility companies operating on the streets.

Q. You knew, of course, that this company was operating on the streets in the annexed area? A. Yes, sir. 20

Q. And that is the reason you sent the notices to them?

HIS LORDSHIP: Rather leading, but not doing any harm I suppose.

MR. TILLEY: Well, I don't know. My friend sometimes does us a lot of good that way.

MR. ROWELL: This is one of the city's witnesses.

WITNESS: One of the practices followed before a street is being paved, no matter what territory it is in, is to notify all the people on the list, and no doubt we might notify some people that were not operating in the particular territory on these notices. You are referring to October 4? 30

MR. ROWELL: Q. October 4 will show that, will it? Take October 4 to illustrate. A. That was notifying I suppose 15 or 20 different people, sewer contractors and others, as a matter of routine.

Q. Did you get a letter of reply from us on October 7th? A. Yes, sir, the letter is October 7th to me signed by E. Johnston, Cashier, "As to your communication dated October 4, we have no pipe lines on the streets mentioned. Therefore, we will not be doing any digging this year."

Q. That one does not apply to us. Have you got the August one?

A. The August notices or August reply? 40

Q. Both. A. Yes, I have a letter notifying work to be done on Huxley, Cannon and Gibson.

Q. Those are in other areas, are they? A. "In reply to your letter of August 18 last, re paving streets, we are not contemplating doing any work on these streets as we have no pipe lines on them. Dominion Natural Gas."

Q. I think the form of notice sent out is in. You sent out these

notices from time to time and got replies from the Dominion Company, either that they were not on the street, or were on, as the case might be.

A. Yes, that is the usual procedure.

Q. Then in 1924 you got applications for permits also.

MR. TILLEY: You are not putting in anything so far for 1924?

MR. ROWELL: Q. Are those the notices sent out in reference to paving? A. Yes, that is the notice sent out from our office.

Q. To which you have already referred? A. That is notice giving you permission to install a gas main.

10 Q. That is August 30, 1924. That is a permit to install a gas main. And a further one of Sept. 5, 1924.

HIS LORDSHIP: You are not putting that in?

MR. ROWELL: Yes. August 30, 1924, a permit to install a gas main on Confession Street. The other was a permit of Sept. 5, 1924.

WITNESS: One is between 25th Street and 300 feet west of Wentworth Street, and the other between East 18th Street and the East City limits.

EXHIBIT 46. Two letters from City Engineer, permission to install gas mains, dated Aug. 30, 1924, and Sept. 5, 1924.

20 MR. ROWELL: Q. All in the annexed territory? A. Yes.

Q. Did you issue any other permits in addition to sending the letters? Are those the permits? (handing documents). A. Yes, we issued on the standard form, a regulation extract of the City By-law No. 30 providing for permits to cut the roadway or pavement for the purposes of installing mains.

EXHIBIT 47. Number of permits on printed forms, from August to December, 1924.

30 Q. Coming to 1925, are those notices sent by you to the Dominion Natural Gas Company? (handing documents). A. Yes, sent from my department.

Q. Those relate—— A. Relate to the proposed pavements to be laid.

EXHIBIT 48. Number of notices re intention to pave, 1925.

Q. Then coming to 1926. Before I leave 1925, there are a good many more paving notices than those I put in? A. Quite a number, yes.

40 Q. Then coming to 1926; in reference first to permits and applications for permits, have you a letter of June 2, 1926, from the Dominion Natural Gas Company asking for a permit? My note is June 2nd, and apparently you replied on June 12. A. That was with reference to Cliff Avenue line. I have the reply here. I cannot find the original, or my copy of your application. I have my reply to you of June 12 here, re the two inch line on Cliff Avenue.

Q. Have you a reply to that letter of June 12th? A. Yes, I have a letter of July 31, 1926, signed by Messrs. Harley & Sweet.

Q. Then your letter of June 12th is as follows: (reads letter). What was the occasion of your writing that letter, Mr. McFaul? A. The application for the line on Cliff Avenue.

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

In the
Supreme Court
of Ontario
—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

Q. You had been granting permits from 1923 on. What was the special occasion for writing this in 1926? A. To refresh our memory with regard to the information concerning their rights. There had not been any permits issued up there for a year or so in that particular area.

Q. But that was part of the annexed portion? A. Yes, sir.

Q. And then you got Mr. Sweet's reply of July 31st. (Reads reply.) You got that letter? A. Yes.

EXHIBIT 49. Copy of letter June 12, 1926, City Engineer to defendant. Copy of letter, July 31, 1926, Messrs. Harley & Sweet, to W. L. McFaul.

Q. Following this reply did you grant the permit? A. Two inch and four inch gas main on Cliff Avenue, yes.

Q. That is August 10th, permit No. 7258. After getting the information you granted the permit? A. I granted the permit, yes.

Q. Had you any consultation with the Board of Control or any other authorities before granting it? A. I couldn't recall that.

Q. Then did you receive an application that year for a number of permits? A. Yes, sir.

HIS LORDSHIP: From the Dominion Gas Company.

MR. ROWELL: Q. All in the annexed territory? A. Well, all in the territory either on the mountain or east of Sherman Avenue below the mountain. 20

Q. Territory which at one time formed part of the Township of Barton, and had been annexed to the City of Hamilton? A. Yes, sir.

Q. Are these permits issued by you during that year for different construction work by the Dominion Company? (handing number of permits to witness). A. These are for services, permits to open the street for repairs or install services.

Q. And they include the Cliff Avenue line along with a number of others? A. This includes the Cliff Avenue with a number of others. 30

MR. ROWELL: The dates, my Lord, in this exhibit are permit Jan. 27, 1926, No. 5297.

August 13, 1926, No. 7076.

April 21, 1926, No. 7130.

July 21, 1926, No. 7243.

July 23, 1926, No. 7245.

Aug. 4, 1926, No. 7254.

Aug. 10, 1926, No. 7258. That is the Cliff Ave. one.

Aug. 31, 1926, No. 7294.

Sept. 28, 1926, No. 7340.

October 13, 1926, No. 7354. 40

EXHIBIT 50. Number of permits in 1926.

Q. That is (No. 7354) to install gas mains on several streets? A. Yes, sir.

Q. On October 29th, 7375. That is to install gas mains? A. Yes, Maple Avenue.

Q. November 11, 1926, 7383. That is also to install gas mains?

A. Yes, two inch gas main on Maple Avenue.

Q. November 11, 1926, 7384, also to install gas mains? A. Yes, sir.

Q. Then you also granted permits to cut pavements for laying gas mains during this year 1926? A. Yes, sir.

Q. These are permits issued by you during that year for that purpose? (handing another file of permits to witness). A. Issued by my department.

10 Q. I notice in this file the first one looks as if it were marked 1924. Is that really intended to be 1926? A. I don't know.

Q. It is in this file marked on your examination for discovery as being the 1926 ones. A. That is repairing a leak, in any case, down on Sherman Avenue North, whether it is 1924 or 1926.

Q. These are all permits issued by your department to cut pavements for the purpose of repairing or installing services? A. Repairing or installing.

EXHIBIT 51. 6 permits to cut pavements in 1926.

20 Q. During the year 1926 you also had sent out a large number of these pavement notices, and you granted a series of permits. Would you just look at those? (handing a further bundle of letters). A. Yes, these are a series of notices of intention to pave certain streets in the City of Hamilton, and notifying the party to proceed with any work they are contemplating in that area prior to the pavement. Here are some applications or permits for installing mains as well the same year; at least, they are the letters that follow, issued no doubt with them.

Q. The ones relating to permits for installing mains are August 10, 1926; August, 31, 1926; Sept. 28, 1926; October 13, 1926, and December 16, 1926. Those will all go in as Exhibit 52.

EXHIBIT 52. Further 1926 permits and notices.

30 Q. In 1926 did you receive requisitions from citizens, petitions to the city council to allow the Dominion Company to lay natural gas mains on certain streets? Have you got on your file a petition dated June 22, 1926? A. Yes, we have, sir.

Q. "We the undersigned parties——"

MR. TILLEY: Is that material?

HIS LORDSHIP: I do not think so.

MR. TILLEY: I do not understand how that establishes franchise.

MR. ROWELL: Q. Did that go to the city council that petition?

40 A. No, that was a list of people petitioning you, which you sent on to me with your application for permission to lay the main. It was not really a petition to the City Council. It is on your letterhead.

Q. But it is marked petition to the city council. You did not send it on. You dealt with it yourself? A. I don't think it went to the council, no.

Q. A permit was granted though for that street? A. Yes, a permit was granted.

EXHIBIT 53. Copy of petition of June 22, 1926.

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

In the
Supreme Court
of Ontario
—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

Q. Then you have a number of applications for permits in the year 1927? A. Permits to instal mains, sir?

Q. To install mains, yes. A. Yes, sir.

Q. Would you just see if those are copies, and we can put them in without taking the time to go through your file. A. Yes, these are copies of applications made for permits and sent to my office.

MR. TILLEY: How does he identify that?

MR. ROWELL: He went over it before.

WITNESS: On examination for discovery, sir.

EXHIBIT 54. Number of applications for permits in 1927. 10

MR. ROWELL: Q. I notice in the copy of the letter of May 4, 1927, part of Exhibit 54, it is noted,—

“This will be the first of a series of requests for permits, for distribution mains which we want to lay this summer. Within a few days we will send you a sketch showing our entire proposed extension for the summer. You will note that all of these extensions are adjacent to our present distribution mains in the City of Hamilton and the object of renewing these distribution mains is not only to increase the number of customers in Hamilton, but also part of this is necessary in order to render better service to our present consumers.” 20

You remember receiving that. And then did you get a plan of the proposed— A. Yes, I believe we received that.

Q. I notice in the letter of October 22, 1927,

“We hereby respectfully request permission to lay the following lines in the City of Hamilton, pursuant to By-law 583 of the Township of Barton, dated October 26, 1904.”

Do you remember receiving that, Mr. McFaul? A. Yes, I have it here, two letters of October 22nd.

Q. Covering different lines? A. Covering different lines. 30

Q. And both refer to the by-law of the Township of Barton? A. They refer to the territory east of Sherman Avenue, part of the Township of Barton which was annexed.

Q. But they both say pursuant to By-law 583 of the Township of Barton dated October 26, 1904? A. Yes.

Q. You knew they were applying pursuant to the provisions of that by-law? A. Yes.

MR. TILLEY: 583?

WITNESS: 533 it should be.

MR. ROWELL: Q. The date is given there, is it not? A. October 22nd you told me a minute ago. 40

HIS LORDSHIP: We have not in here any by-law except 533.

MR. STAUNTON: That is the only one there is.

MR. TILLEY: You are just reading the document, and the document says, does it, 583?

MR. ROWELL: The document says 583.

Q. Did you know to what by-law that letter referred? A. No

doubt it was presumed to mean 533, or whatever the by-law is.

Q. You replied to those two letters. First, you wrote in answer to each application for a permit a letter granting the permit, did you? A. Yes, these are letters in reply to applications covering permits for that year (identifying further letters).

Q. These are all letters written by you granting permits pursuant to the applications made by the Dominion Company. I put them in, my Lord, as Exhibit 55. The letters are dated May 21, 1927—

HIS LORDSHIP: Are the dates important?

10 MR. ROWELL: No, perhaps not, my Lord.

EXHIBIT 55. Letters from City Engineer, granting permits and so on in 1927.

Q. Will you give us the reply to the one of October 22nd? A. Well, there is a reply on November 5 to the Gas Company giving permits on certain streets, Barnesdale, Spadina, etc., in answer to a letter of October 22.

Q. That would be in addition to those contained in Exhibit 55.

MR. TILLEY: Are you adding it on to 55?

HIS LORDSHIP: Does it form part of it or is it another exhibit.

20 MR. ROWELL: It should be added on, my Lord. It is not included in the list I have. We can get a copy of it and add it to the list.

WITNESS: I will have a copy made of it for you.

(Reporter's Note: This letter was afterwards added to Exhibit 55.)

MR. ROWELL: Q. Then in addition to writing the letters, you issued permits, Mr. McFaul. Are these the permits you issued? (handing bundle). A. In the year 1927 these are permits issued for opening boulevards for services, for installing mains on certain streets, etc.

EXHIBIT 56. Bundle of permits issued in 1927.

30 Q. Will you kindly let us have the one of November 5? A. I guess you have got all that we have got. I can give you a copy of it.

MR. TILLEY: Aren't those from your possession?

MR. ROWELL: These are ours, yes. These are the actual permits.

Q. Then in addition to that, in 1927 you granted permits to cut pavements in connection with the laying of pipes and mains? A. Yes, sir.

Q. Are those permits you granted to the Dominion Company to cut the pavements? (handing). A. Yes, these permits are granted.

EXHIBIT 57. Number of permits to cut pavements granted in 1927.

40 Q. Then in 1928 you received a number of applications for permits from the Dominion Company. Can you tell me if those are copies of the applications for permits? (handing bundle). A. I believe they are.

Q. Those are applications.

EXHIBIT 58. Applications from Dominion Company to City Engineer to cut pavements in 1928.

Q. Then in answer to those applications you wrote a series of letters granting permits. Does this file contain the letters granting permits?

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

(handing another file). A. Yes, this file contains letters granting permits for construction of mains attached to the permits which were issued with them.

HIS LORDSHIP: They are not there now.

WITNESS: He has separated them.

MR. ROWELL: Q. In this letter of December 5th you say,—

“The above mentioned gas main to be laid with a minimum covering of three feet and subject to the supervision of this Department.

“These locations are given with respect to information of the locations of other gas mains, conduits, etc., available in this office. 10

“Should further information show that other gas mains, conduits,

“etc., exist on these locations or within three feet thereof, the Do-

“minion Natural Gas Co. must assume the responsibility of changing

“these locations at their own cost.”

What does that refer to? A. That refers to the location as given to protect the city's liability in case of issuing a permit.

Q. Did you not know where the others were located? A. Not always. Sometimes we didn't know where these companies' mains were.

Q. I see attached to this same file are certain of your notices sent out that you were paving streets? A. Yes. 20

EXHIBIT 59. Letters granting permits in 1928, also notices, etc.

Q. Are these the permits for putting in mains and services in 1928? (handing bundle to witness). A. Yes, these are permits issued for installing gas mains in 1928.

Q. All issued by you? A. All issued by my office.

EXHIBIT 60. Permits for 1928 on printed forms.

Q. During 1928 you also issued a series of permits to cut pavements. Are those the permits, 47 in all? (handing bundle). A. Yes.

EXHIBIT 61. 47 permits to cut pavement, 1928.

Q. Do you recall the fact that in 1928 the Dominion wished to erect a new regulating station in the City of Hamilton? A. I don't recall it. Where was the location of it? 30

Q. Did the city do any work for the Dominion Company that year in connection with a regulator station at Row and Glendale Streets? A. I have no doubt they did if application was made. I do not recall the thing specifically. If we did there must have been a permit.

Q. Will you look at November 14, 1928, and see if you can find an order from the Dominion Company to the city authorizing the city to build it, and the company would pay for it? A. This was in November, sir? 40

Q. November 14, 1928. A. Yes, I have a letter here of November 8th asking for permission to build the regulator.

Q. Will you let me see that? A. On the east side of Glendale Avenue?

Q. Yes. What was your reply to that? To aid you in looking it up, my instructions are that subsequently we gave you an order agreeing

to pay for it. A. That would not be in this file. At least, I do not see it here anyway.

Q. Let me see our application then. A. That order would go to the accounting department.

Q. We think there is an order form in your file accompanying that. I would like to put the two in together. A. Yes, here you are. That is the regulator at the corner of Row and Glendale.

Q. Did the city put it in? A. I haven't any doubt they did.

10 Q. And the company paid for it? A. I couldn't say from my own knowledge as to that. No doubt they paid for it. The only place I could prove that would be the accounting or treasurer's office.

Q. We have not copies of these. I should like to have copies of the letter and the order directing the putting in of the regulator, and put them in as Exhibit 62. The site of that is within the annexed territory? A. Yes.

EXHIBIT 62. Copy of order re regulator, Nov. 14, 1928. Also copy of letter, Nov. 8, 1928, defendant to City Engineer.

Q. I notice in your letter here of December 8, 1928, part of Exhibit 59, you say,

20 "My attention has been called to the very shallow covering, in some cases not more than six inches, on the gas mains and services belonging to your company in that part of Barton Township recently annexed to the city."

Can you tell me whether that relates to mains that were in the territory at the time of annexation, or relates to new mains laid down after annexation? A. I couldn't say off hand, sir.

Q. In 1929 did you receive a number of applications for permits from the Dominion Company to put down pipes? A. Yes, sir.

30 Q. Are those applications for permits for that year? A. These are the letters attached with the permits, with the exception of a few notices in the green file re paving.

Q. The green or blue letters in the file relate to paving? A. Yes.

EXHIBIT 63. Bundle of letters from City Engineer, 1929, granting permissions and notifying re paving.

Q. Are those copies of the Dominion Company's applications for permits in that year? (handing number of documents). A. Yes, these are copies.

EXHIBIT 64. Copies of defendant's applications for permits in 1929.

40 Q. Then you granted a number of permits in 1929, did you, Mr. McFaul? Are those copies of the permits? (handing). A. These are the permits granted for the laying of mains in 1929. Some of them may be for repairs, I am not sure. They are practically all mains. And those are the paving cuts that go with them.

Q. 19 permits to lay mains, and 34 permits to cut pavements.

EXHIBIT 65. 19 permits to lay mains and 34 permits to cut pavements in 1929.

*In the
Supreme Court
of Ontario*
—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

In the
Supreme Court
of Ontario

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

Q. At some period of 1929 you stopped issuing permits. Do you remember that, or did you? A. There was a period of discussion with the Board of Control as to the advisability or otherwise of issuing permits, and permits were stopped. I believe it was 1929.

Q. Did you resume granting permits? A. Yes.

Q. On instructions of the Board of Control? A. Yes.

Q. During the period in which the permits were not being granted, was the company requested to continue to file its applications with you? A. I believe the applications were filed during that period.

Q. Do you recognize this signature to the letter, or can you speak of it? A. Well, it is very similar to the signature of the Secretary of the Board of Control. 10

Q. This is a letter dated Nov. 2, 1929,—

“Replying to your letter of the 16th October last to our City
“Engineer——”

Have you the letter of the 16th of October to which this letter from the Board of Control is a reply? A. I don't think I have any letter of October 16th. I have one of the 18th. I have one of the 18th and one of the 19th, but I haven't got the one of the 16th here.

Q. (Reads letter of Nov. 2, 1929). Did the Dominion Company follow the instructions or request of this letter, and file the applications and plans with you? A. Yes, they continued to file applications and plans. 20

EXHIBIT 66. Letter, Nov. 2, 1929, Secretary of Board of Control to Dominion Natural Gas Co.

Q. Did you get formal instructions from the Board of Control? Is it in the form of a letter, to resume issuing the permits? How did you receive the instructions? A. I couldn't recall off hand whether I got a letter or not. We either had a letter or verbal instructions from them.

Q. And you resumed issuing the permits on the applications of the company? A. Yes, sir. 30

Q. After receiving this letter from the Board of Control, instructing the company to continue to file its applications, and the company did continue to file applications, did the company proceed and lay certain of the mains? A. Yes, they proceeded to lay mains the balance of that year.

Q. And did they lay them in accordance with the provisions in this letter of the Board of Control?

MR. TILLEY: Do you mean as to location?

MR. ROWELL: As to location.

HIS LORDSHIP: Q. Was the laying of the mains inspected, or under your supervision? A. The laying of the mains would be pursuant to the issue of a permit. 40

Q.—Who would supervise and see that they were carried out? A. We had an inspector on the job that inspected from day to day, and the locations on the street were also laid out by a junior engineer.

Q. The city indicated where they were to go, and had an inspector

to see that they went. The inspector was paid by the company but appointed by the city? A. Appointed by the city.

MR. ROWELL: Q. And that applied to all the mains that were laid that year? A. Yes.

MR. TILLEY: Q. Under permit or not under permit? A. Under permit or not.

Q. Where no permit was given was the same practice followed? A. I don't think there was any laid without a permit. They had no right to lay any. At least, not to my knowledge.

10 HIS LORDSHIP: They had no right to open a street without a permit.

MR. TILLEY: They threatened to. I thought probably it was done.

MR. ROWELL: Q. You have a letter of the 18th of October? A. Yes, two inch main on the west side of London and two inch main on the east side of London.

Q. Just let me see it for a moment. You see by this letter the company claimed the right to go on and lay mains. A. The letter is self-explanatory I suppose.

MR. TILLEY: Is that from the Engineer's file?

MR. ROWELL: Yes, that is in the Engineer's file.

20 Q. You cannot locate the letter of the 16th which is referred to in the letter in reply? A. No, I can't. I don't see it here, anyway. It may be in this file.

Q. It is marked on your examination for discovery as being one of the letters? A. I presume the original of this was sent to the Board of Control. I have got one here dated the 19th, if that is the correct date, dated on my file the 19th, on Balmoral. That is the same letter. My date is the 19th. You see, you change it. That is the same letter.

30 Q. Are these the letters you sent on to the Board of Control and referred to in that letter of the Secretary of the Board of Control, Exhibit 66? A. I presume it is. I presume I sent a copy of it. It is stamped with my office stamp, October 16, and their letter is dated the 19th. It is obviously a mistake in the date of yours because my letter stamp is dated as receiving it October 16th.

Q. You say you obviously sent a copy of that on to the Board of Control, and it would be in respect of that letter that the Board of Control through its Secretary wrote the letter, Exhibit 66? A. I have no doubt it was.

Q. That letter is already in as part of Exhibit 64. Then you received applications for further permits in 1930? A. Yes, sir.

40 Q. Would you just look and see if these are copies? Can you tell me if those would be copies, or letters of which you have the originals? I think you inspected them before.

MR. TILLEY: What has been taken out of that bundle?

MR. ROWELL: Letters that do not relate to Dominion at all.

MR. TILLEY: Could we see them?

MR. ROWELL: There is no objection to your seeing them.

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*
—
Defendant's
Evidence.
No. 12.
William L.
McPaul,
Examination.
31st May,
1932.

—continued

MR. TILLEY: They were all marked before on the examination for discovery.

MR. ROWELL: They are all manufacturers and they are no part of this.

WITNESS: Yes, these are copies of letters sent to me, of applications for permits to lay mains, 1930.

EXHIBIT 67. Copies of applications for permits, 1930.

MR. ROWELL: Q. Then your letters in reply granting the permits; will you look at those and see— A. These are letters giving permission to lay mains on certain streets in the City of Hamilton in the territory east of Sherman Avenue. 10

Q. All these are in the annexed territory? A. Yes, all in the annexed territory. There are some letters notifying of the intention to pave at the back of the file.

HIS LORDSHIP: They are all in connection with the laying of mains or the paving.

EXHIBIT 68. Letters granting permission and paving notices, 1930.

MR. ROWELL: Q. Then you issued permits, did you, in connection with those applications? A. In connection with those letters permits were issued for the installation of mains or repairs and cutting of pavements. 20

EXHIBIT 69. 1930 permits on printed forms.

Q. Have you a letter from Mr. Simpson in your file of March 14, 1930, as solicitor for the Dominion Company in reference to the issue of permits? A. March 14th, re Dominion Natural Gas Company, from Lee, Simpson. I don't remember what it was all about.

Q. You received this letter from Mr. Simpson in reference to this matter, dated March 14, 1930. A. Just let me read what it was about. Yes, about the question of permits. 30

Q. (Reads letter.) Will you kindly tell me what action you took? A. There is nothing in the file to show what action I took. If there was any correspondence with the Board concerning it, it would be in another file. No doubt permits were resumed anyway.

EXHIBIT 70. Copy of letter March 14, 1930, T. H. Simpson to City Engineer.

Q. Can you tell from the other file what communication you sent to the Board of Control, and what communication you received from the Board of Control in respect of it? A. I can look that up, sir, and get you copies. 40

Q. Were there any applications for permits in 1931? A. I believe there were.

Q. Would those be copies of the applications? A. Yes, these are copies of the applications.

EXHIBIT 71. Applications for permits in 1931.

Q. Were the applications granted? A. I believe they were.

MR. TILLEY: You mean permits were issued?

MR. ROWELL: Permits were issued, yes.

Q. Are those the letters you wrote in connection with the permits?

A. The first letter is a letter asking for information. There were a number of mains and sizes of mains. The others are in reference to permits.

Q. For services? A. No, for mains.

Q. All mains, or mains and services, or both? A. With reference to permits for mains. The blue sheets are notices concerning proposed pavement to be laid.

10 EXHIBIT 72. Letters granting permission and notifying of intention to pave, 1931.

Q. Then are those the permits issued? A. These are the permits issued for installing services and mains.

MR. TILLEY: Q. Are they in order of date? A. In 1931, sir, installing services and mains.

Q. Can you give what date they commenced, and what date they ended? A. From March 28th, sir, to December 29th, 1931, and also a pavement cut—permission to connect service.

EXHIBIT 73. Permits on printed forms for 1931.

20 MR. ROWELL: Q. Now, Mr. McFaul, during the period in which you were not granting permits, but covered by that letter from the Secretary of the Board of Control requesting the company to file its applications and plans showing the locations of the lines; can you tell me whether your superintendent or an official of your department supervised the laying of any mains laid during that period? A. I believe they were laid out by a junior engineer and an inspector on the job. That could be corroborated by the file. I am speaking from memory now.

MR. TILLEY: That means that they laid them without a permit.

MR. ROWELL: Certain lines were laid during that period.

30 MR. TILLEY: I thought the witness did know about that.

WITNESS: I believe some may have been laid without a permit. I would not say positively. If any were laid, we still had an inspector on the job, and the lay-outs were made just the same.

HIS LORDSHIP: Q. Weren't permits issued afterwards when you resumed to cover the work that had been done? A. No, I don't believe they issued permits for the work that had been done. I don't think there were very many, at that.

40 MR. ROWELL: Q. No mains were laid by this company so far as you know, and you are the engineer in charge, without applications being made and the plans filed with you, and without being done under the supervision of an official of your department? A. As far as I know, during the period from 1923 on.

MR. TILLEY: Does he know?

MR. ROWELL: I am asking him as the engineer in charge if he knows of any case where any mains were laid by the Defendant Company in which the application was not filed, in which plans were not given, and in which the work was not supervised by an official of his department.

*In the
Supreme Court
of Ontario*
—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 12.

William L.
McFaul,
Examination.
31st May,
1932.

—continued

MR. TILLEY: That is rather a negative proposition as to whether he knows of any that were done except under those circumstances. Does he know all that were laid, is the question?

MR. ROWELL: Q. Can you answer that? A. I don't know of any.

HIS LORDSHIP: Q. Were there any laid for which an application was not made, to your knowledge? A. Not to my knowledge.

Q. There may have been some laid without a permit being granted?

A. There undoubtedly were a few while the permits were withheld.

Q. And in connection with those that were laid during the period when the permits were withheld, was there an official of your department there to supervise the laying? A. As far as I recollect, I believe there was.

Q. I suppose you gave the instructions as to what official should attend and see that they were laid? A. Yes, the same official we carry on for all these things.

MR. ROWELL: Q. And the company paid for the official? A. For the service of the inspector only. Do not pay for the services of the engineer.

HIS LORDSHIP: Q. The engineer who laid out the plans? A. He is paid by the city.

Q. The inspector who sees that the plans are complied with is paid by the company? A. Yes.

Q. Would you kindly look at Exhibit No. 38, a map? The note is, "Plan showing portions of Township of Barton annexed to the City of Hamilton since October 26, 1924. United Gas and Fuel Company Limited lines in existence east of Sherman Avenue as of May 8, 1928, shown coloured———" as indicated. Can you tell me whether you have any information in your department that would enable you to say whether those lines were laid in that area by the United Gas and Fuel Company? A. I believe the matter could be checked up, yes.

Q. Did they get permits for all? A. Well, speaking of the period from 1923 on, roughly from July, 1921, when I first came here, I believe the policy for all mains was to issue permits. I think the companies applied for permits.

Q. Have you copies of permits in your office for all the lines shown on this plan? A. I couldn't say without checking them up.

Q. Have you plans showing the location of the lines? A. Yes, we have.

Q. Of all shown on this plan? A. I couldn't say that. That is a matter of checking the details. I presume we have the detail of them all.

Q. You could check, or permit us to check in your office this plan? A. Yes, we would permit you to check it in the office.

Q. Or you could check it too and find out if you had those lines shown? A. I could have it checked for you, yes.

CROSS-EXAMINED by MR. TILLEY:

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Cross-
Examination.
31st May,
1932.

Q. Mr. McFaul, these permits were all issued under By-law 30?

A. Yes, sir.

Q. Each permit has endorsed on it, hasn't it, an extract from the by-law? A. Yes.

Q. And do you require, or does the by-law require that the inspector shall always be paid by the applicant who wants to open up a street?

A. Yes, I believe it does. That is the practice, at any rate.

10 Q. I see that By-law 30, Section 25, Clause (2) reads,—
“Every person who may obtain such permission shall pay the ex-
“pense of an Inspector, who shall be appointed by said Engineer to
“superintend the work.”

And the permit on the face reads, “This permit is issued to Dominion Natural Gas Company for the purpose of,” and then the installation referred to, or the work to be done, and then it reads, “Subject to City By-laws and Regulations and conditions printed on back hereof.” And there is a form for the applicant to sign. I suppose in connection with these companies you do not insist on their signing? A. No.

20 Q. Or does the applicant ever sign those? A. Yes, I think any company—or any private contractor who is not an incorporated company with a franchise on the streets, or rights on the streets, has to sign it.

Q. What had you to show a franchise on the streets for the Dominion, according to your records? A. The only record we have is that by-law 533.

Q. Of the Township of Barton? A. Yes.

Q. Have you anything on record, or did you acquire anything at all by way of any opinion from solicitors, or the City Solicitor, as to whether it was a valid by-law, or did you ever consider it? A. I believe the City Solicitor wrote opinions on it to me.

30 Q. When? A. At different times. Probably in 1926.

Q. Commencing about 1926? A. Yes.

Q. Would it be right to say that from 1926 on the matter was in discussion and controversy? A. Yes, it would be.

Q. With the Dominion Company? A. Yes, in connection with the Dominion Company.

40 Q. And did it take the form at any previous time—that is previous to 1929—that permits were stopped, actually stopped? A. I don't recall the refusal of permits prior to that date, although I would not say that they had not been refused. I don't remember. There was some question in 1923 in connection with the Cliff Avenue correspondence filed there. I say there was some question in 1923 in connection with the application on the mountain.

Q. That would be Exhibit 45. What do you refer to? Do you remember the particular letter? A. I think there was an application.

Q. What is the particular letter? Do you remember? A. Could I see the file for 1923?

In the
Supreme Court
of Ontario

Defendant's
Evidence.
No. 12.
William L.
McFaul,
Cross-
Examination.
31st May,
1932.

—continued

Q. Yes. A. (Examines Ex. 45.) I may be wrong about that date. I guess it was the 1926 letter where Mr. Sweet wrote.

Q. I would like you to let us know how far back this has been in controversy? A. What I had in mind was the letter filed in 1926.

Q. Is this the one you mean? (handing letter). A. My request to them for information as to whether they carried out in their opinion the terms of that by-law.

Q. July 31, 1926, Mr. Sweet wrote to you in answer to a letter of June 12th, written by you to the company. You say in your letter, "In reply to your letter whether in your opinion you have carried out all the construction work designated in the provisions of By-law 533, Barton Township." (Ex. 49.) Is that the letter? A. Yes. 10

Q. Does that mark the first time that any question was raised so far as you know? A. As far as I can remember, I think that would be about the first time anything serious was raised.

Q. At any rate, that was very soon—two or three years after you went there? A. Yes.

Q. And the reply is,—“We are instructed to say that in the opinion of the company it has carried out as it would have been a duplication.” (Ex. 49.) Do you know whether any action was taken upon that? Did you refer it to the Board of Control? A. I couldn't say, sir. 20

Q. How would we get at that, whether you did? By the Board of Control minutes? A. I could look up my letter file to the Board.

Q. We would like to know. That was 1926. Did anything else take place by way of question about the franchise? A. In 1929 the Board instructed us to refuse to issue permits.

Q. What was the practice before 1929? Did you before 1929 see these applications yourself when they came in? A. Generally yes. The procedure was, generally I saw all the correspondence that came in. Part of the correspondence would be referred by me to the Sewer Engineer who had charge of all underground lay-outs. 30

Q. And the letters would usually be signed by you, although the permit would be signed by somebody else? A. The letters would be signed by me or the deputy authorized to sign.

Q. Were those permits referred to the Board of Control? I mean in practice. I am not caring about special cases. A. No, sir, with exception as I say of the time in question in 1929.

Q. We will come to that in a moment. Well, then, would it be right to say that from 1926 until 1929, the question of their rights or no rights was a matter that was considered by you—or did you not consider it when you were issuing these permits? A. I would say that from 1926 to 1929 permits were issued as a matter of routine. 40

Q. How did they stop in 1929? A. On instructions from the Board of Control.

Q. Do you know what it was that brought that instruction? What happened? A. Speaking from memory I believe it was objections of the United Gas and Fuel Company to further issue of permits.

Q. Was that in writing or verbal? A. Quite probably it was in writing. I could not say positively. It would not be to me. It would be to the Board of Control.

Q. If there was a letter of that kind, it would be to the Board of Control. Did you get your instructions in writing or verbally? A. My instructions were verbal. That is my recollection.

Q. Can you say the month that you stopped issuing permits, so we can fix the time in 1929? A. I cannot, except by the correspondence there.

10 Q. What would fix it now for us? I want to get that date. A. The time would be fixed approximately by the letter of the Secretary of the Board of Control, dated November 2nd, and referring to a letter of October 16th.

Q. Let us get that. On November 2nd, Exhibit 66— A. Yes, sir.

Q. That was a letter written by the Secretary to Mr. Sieger, the General Manager, "Replying to your letter of the 16th October may be obtained from the City Engineer." That is the letter you refer to? A. Yes. I imagine the question came up on the 14th of May then, or that may have been the question of the distance between the two mains. I am not sure which.

Q. Have you got a letter written to you on October 18, 1929? Is that in the bundle? A. Yes, that was a letter we had. (Part of Exhibit 64.)

Q. That letter reads, "As we have not as yet received permits we would expect to pay as usual." That would indicate that the permits asked on May 14, 1929, were held up. Would that be right? A. I think that is the assumption.

Q. If those permits had issued in the ordinary course I suppose they would have been issued within a day or two of May 14th? A. Yes, it generally takes two or three days, depending on the number in each application.

Q. Would that mark the time when the city through the Board of Control gave you instructions not to issue permits? A. I believe it would, sir.

Q. Can you fix the time when you commenced to issue permits again? A. October right after the 18th we began to issue permits.

Q. At that time did you issue the permits that were asked on May 14th, or do you know? A. I don't think we did, sir. The permits here show from the 18th on. I think most of these applications were re-applications of what had been made in May, although I don't see my letter here.

HIS LORDSHIP: Q. That would indicate then that there had not been much work done without a permit? A. My recollection is that there was not very much work done in that period. They continued to make applications during that period from May on.

MR. TILLEY: Q. What was the result so far as you were concerned

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Cross-
Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*
—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Cross-
Examination.
31st May,
1932.

of matters being in that condition, you as Engineer? A. Wait a minute. I find here that we gave them permit to lay two mains in July. I don't think they were held up as long as from May.

Q. That would seem to be what this letter indicates. Have you a letter there of October 31, 1923? A. From the Dominion Natural Gas.

Q. No, that would be from the Secretary of the Board of Control, I guess. A. The Secretary of the Board of Control's would be November 2nd.

Q. That is no doubt the instruction on which the letter of November 2nd was written? A. Yes.

Q. Now, Mr. McFaul, will you tell us how it came about that permits were granted after the cessation? Had you anything to do with that? A. The permits were renewed on the instructions of the Board. I don't think permits were granted during the period that we—

Q. Did you not communicate with the Board and point out the position matters were in because permits were not being granted, and from them the facility for keeping track of where the mains were, and that sort of thing? A. Yes, I believe I did.

MR. STAUNTON: Q. Told them what? A. I told the Board we could not keep track of the locations of the mains, or where the work was being done without we had some form of permit, or without permits being issued.

MR. TILLEY: Q. How many systems would there be in the streets that you had to keep track of in order to determine the locations of mains and so on? A. The utility companies were the two gas companies, the Hydro Commission, operating underground ducts, the D. P. & T. (Dominion Power and Transmission), the C. P. R. Telegraph and C. N. R. Telegraph, our own water mains and sewers.

Q. And from your standpoint as an Engineer, was it important that the formal permits should be given? A. Very important that locations be determined by my department rather than by the individual companies, and that a permanent record of the locations be obtained by reason of issuance of permit with the locations marked on. That is the chief reason for giving a permit.

Q. You then mark on your plan— A. These permits cover a definite location on the street.

Q. Would it be right to say that that was the cause of the permits being issued from that date? A. I am not sure that the permits were all refused from May 14th.

Q. Can you get at that more accurately so we can know the situation? A. Because I find that the permits were still issued here. These copies of letters are in my file. I presume they must have been sent.

Q. We will put it this way, that the practice of issuing permits by your department continued except for this lull through the time when the question of franchise was an open question, and even after an exclusive franchise was given to the United, so far as the City could grant

it, and confirmed by Statute—continued afterwards just as before? A. Issued the permits, yes.

MR. STAUNTON: Which is that an answer to, of those three questions?

MR. TILLEY: Q. It is an answer to all of them, is it? A. The question again please?

Q. The practice continued through the whole period when there were questions raised about franchise rights, and even after the city had, so far as it could, granted an exclusive franchise to the United Company, and that had been confirmed by legislation, subject to existing rights—

HIS LORDSHIP: Q. The same practice throughout? A. The same practice throughout was continued. I don't think there was any cessation of issue of permits, as long a period as from May to October. It was a short period I think.

MR. TILLEY: Q. If you could give us the definite time I would be glad to get it? A. I can't from my file because I see the permits here.

Q. You were brought through 1931. Were permits issued in 1932? A. I don't think there were any asked for.

Q. How late in 1931 were they issued? A. The last one in 1931 must be in the file there. The last permit in 1931 would be somewhere about December.

Q. December, is that right? A. Yes. These are for services anyway. December 29th, that is a service.

HIS LORDSHIP: Q. I think you said most of those in 1931 were service permits rather than for mains? A. Here is a gas main, a permit on Cannon Street, from John to Catharine, to be laid October 15th.

MR. TILLEY: Q. October 15, 1931? A. Yes.

Q. As to the services, that involved a service off a gas main? A. Yes.

Q. And it would be on the street? A. Yes, sir.

Q. The execution of work under a service permit would involve carrying a pipe from the main to the private property on the street? A. Yes, sir.

Q. And that continued how late in 1931? A. The last one of that was December 29th.

Q. December 29, 1931. Now as to these pavement notices sent out; they were all sent following a uniform practice to notify all public utilities when you are going to pave a street? A. Yes, sir, that is the uniform practice.

Q. And these companies are all on a list, are they? And when one gets a notice, they all get a notice? A. They all get a notice. That includes private contractors who do that sort of work for the property owners. Might I make here one reservation in connection with that? I think in connection with those permits for that period there may have been a period in which they were not issued, and the permits were then subsequently issued for the back work, and dated as the time that the

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Cross-
Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 12.
William L.
McFaul,
Cross-
Examination.
31st May,
1932.

work was done. I am informed that by my clerk. That is why there is no gap in the permit period.

Q. To make it clear then, you understand the practice was, or what happened in point of fact was, that later on permits were dated back to the time the work was done? A. Yes, and the work was carried on between. It may have been from May to October.

HIS LORDSHIP: Q. Would that lead to the conclusion that all the work that was done was covered by permit, although issued afterwards? A. That is the conclusion, sir.

--continued

RE-EXAMINED by MR. ROWELL:

10

Defendant's
Evidence.
No. 12.
William L.
McFaul,
Re-Exami-
nation.
31st May,
1932.

Q. The answer you gave to my learned friend in response to his last question, is not based on any personal knowledge or recollection, as I understood it. It is based on some information your clerk gave you? A. It is based on information the clerk gave me, and the records in the file do bear that out.

Q. When you say the records bear it out; do you say that where you issued a permit it was accompanied by a letter when you sent the permit out? A. It was the letter file I was referring to, and the copies of the letters are in the file of that year.

Q. Would the letter be dated back? A. This is just a short period. 20
The letter is a document accompanying the permit, on the back of it, and the letter is the record for our letter file which accompanies these permits.

Q. We have these letters here, bearing various dates. Did I understand you to say that these letters would be dated back some weeks or months? A. Well, the letters are similar—

HIS LORDSHIP: Q. Would it happen as a matter of fact that the letter would be the same date as the permit? The permit might be ante-dated and the letter enclosing it be the very date. How would that be? You could trace it up I suppose quite readily, because the letter refers to the particular work that is to be done. It could be checked up in that way. A. As I understood the question, I was asked by Mr. Tilley if the permits had been refused from May till October. In looking through my file I find letters giving permits between those dates, which lead me to believe that the permits had either been dated back or there had been no cessation, one of the two. 30

MR. TILLEY: Q. I suppose there is some person in your department who can tell accurately about that.

MR. ROWELL: Q. Do the letters appear in the regular course in your file as of the dates they bear? A. Yes, they appear in with the rest of the correspondence.

Q. Do you suggest that these letters were dated back to some earlier date than that on which they were sent? A. This is a composite file of both gas companies and all matters relating to gas. I may have made a mistake in noting those United Gas and Fuel letters. 40

MR. TILLEY: Q. Aren't the permits numbered? A. There are some here, Dominion Natural Gas, yes.

MR. ROWELL: Q. Later than May? A. Later than May. Here is one July, and there is another one July. There is May 28th.

Q. You did continue to issue permits all through the summer of 1929? A. Yes, sir.

Q. Can you fix the date then on which you stopped issuing permits? A. My clerk informs me that these permits were issued in territory that was not under dispute at the time, during that period, on the mountain.

10 Q. What do you mean, not under dispute? A. I mean the controversy, the beginning of the thing at least, was mostly on property annexed to the City of Hamilton below the mountain and east of Sherman Avenue.

HIS LORDSHIP: Q. Aren't these tracts of land that have been annexed to the city from Barton even upon the mountain? A. There are some of those may have been that. Most of these properties were east of Sherman and below the mountain. Here is a permit issued for property below the mountain in that period, on May 28th.

MR. TILLEY: Q. Mr. McFaul, the controversy developed over east of Sherman Avenue? A. That was the beginning of the controversy, the territory east of Sherman Avenue and below the mountain.

20 MR. ROWELL: If my learned friend will permit me.

HIS LORDSHIP: Go on and finish.

MR. ROWELL: Q. What did you mean by saying that the controversy related to the property below the mountain? Wasn't the property on the mountain in respect of which these permits were granted in the summer of 1929 part of the Township of Barton which had been annexed to the City of Hamilton? A. The permits that were under discussion there were mostly inside a small territory that had already been annexed to the City of Hamilton many years ago. That is north of Concession Street to the mountain brow. I don't recall issuing many gas permits 30 for the territory annexed to the City of Hamilton in 1928 and 1929, for the reason that most of that territory was already served before it came in. There may have been some permits. Undoubtedly there were, since annexation.

Q. The permits that were issued in the summer of 1929, most of them were for property on the mountain brow? A. No, some of them were down below the brow east of Sherman Avenue.

Q. Take, first, the ones that were on the mountain brow; they were all property that had at one time been in the Township of Barton, and at the time of granting of the permits had been annexed to the City of 40 Hamilton. A. Yes, sir, that is correct.

Q. Take the permits that were issued below the mountain in the summer of 1929, they were also in that territory? A. They were also in the territory east of Sherman Avenue.

Q. And that had been annexed? A. And that had been annexed.

Q. What did you mean by saying the controversy was principally the property east of Sherman Avenue? A. The activity of the company was in the territory east of Sherman Avenue. The activities of the Do-

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 12.
William L.
McFaul,
Re-Exami-
nation.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.

No. 12.
William L.
McFaul,
Re-Exami-
nation.
31st May,
1932.

—continued

minion Natural Gas Company were principally in extending east of Sherman Avenue in a territory that was already served by the United Gas and Fuel Company, and that is where the argument began.

Q. But that was all in the Township of Barton, and you understood, as far as your understanding was concerned, all covered by the franchise of the Township of Barton? A. It had been in the Township of Barton, yes, prior to annexation.

Q. I understood you to say to my learned friend, or you rather assented to a proposition of my learned friend, that the discussion and controversy had continued since 1926. I don't know whether you intended to assent to that proposition. Will you tell me what you meant by that? Was there any controversy— A. The controversy, the question of the franchise rights, was undoubtedly shown in the letters which you filed in 1926. How serious it was is probably pretty hard to say at this date. I do not imagine it was very serious at that time. 10

HIS LORDSHIP: Q. A mild protest? A. Yes, a mild protest might cover the situation.

MR. ROWELL: Q. There is nothing there shown further than an inquiry by you of the company as to whether they had complied with the conditions of laying the pipes referred to in the franchise, is there? A. There is nothing in that correspondence. No doubt I had reason for inquiring into the franchise. 20

Q. You made no inquiry other than that one. Isn't that correct? Have you made any others? A. Any other inquiry I made? That is only with reference to inquiry with the company itself.

Q. We are dealing with the company itself. A. As regards the validity of the by-law?

HIS LORDSHIP: Q. Wouldn't that indicate that your whole concern was whether they had become disentitled to any franchise; that they had not complied with the terms of the by-law and therefore could not have a franchise under it? Is that the attitude you took? A. Probably partly that— 30

Q. Because you asked them if they had completed the work mentioned in the by-law. A. To carry out the duties of my office it is necessary for me to be sure that my actions were correct.

Q. You see, all your letter asked them was whether they had completed the work, I think mentioned in section 22 of the by-law.

MR. ROWELL: Completed the work mentioned in the by-law. The letter is general and the reply is specific, my Lord.

WITNESS: That is chiefly the information that I acquired, that that is all they were to do as part of their work. 40

MR. ROWELL: Q. You were satisfied with the reply apparently, for you went on and issued the certificate or permit, did you not? A. We issued the certificates, yes.

Q. You raised no further objection—you asked no further questions. A. I raised no further objections, no.

Q. You asked no further questions of the company? A. I asked no further questions of the company, correct.

Q. And you went ahead and issued permits. Did you get instructions from anybody to issue the permits? A. I don't recall any specific instructions more than my authority under by-law 30.

Q. You told us before you would not have issued it under by-law 30 unless you thought they had a right to it on the basis of some franchise.

HIS LORDSHIP: Q. The letter you received in reply, did that satisfy you that they were entitled? A. So far as their information was concerned. No doubt I took it up with the city solicitor at that time, had his opinion on it.

MR. ROWELL: Q. Was he satisfied, and were you satisfied?

MR. TILLEY: If you are going to have the opinion, you must have the opinion.

HIS LORDSHIP: Q. Yes. You were satisfied from some source because you went on and issued the permits? A. Yes.

MR. ROWELL: Q. Did any other question arise after being satisfied from some source on the matter, and going on to issue the permits? Did any question arise until 1929? A. Not that I recall.

Q. Well then we can say that the controversy, so far as there was one, was something that arose in 1929. Is that correct? A. Yes, I think this is principally correct.

Q. Now in 1929 you told my learned friend that you had communicated with the Board of Control. You said to the Board of Control that you had difficulty in keeping track without permits. Was that a verbal communication or a letter? A. I couldn't say specifically; either by word of mouth or by letter.

Q. Well, can't you tell us which—look up and tell us? A. I can look up my file and tell you whether there was a letter or not.

Q. If there was a letter we would like to see what it was. If there was a letter, the letter speaks for itself. You will look that up, will you, at the noon adjournment, and see if you can find what the nature of the communication was. Look up all correspondence that you may have had with the Board of Control or the authorities in reference to the granting of these permits in 1929 or 1930; so that we will have the record. You said in 1929 the difficulty arose. You thought the United Gas Company was objecting. I understood you to say through some objection on the part of the United Gas Company. Is that correct? A. Yes, there was an objection by the United Gas Company to the issuance of further permits.

Q. Was that the time when the two companies were negotiating for a franchise with the city? A. There were a lot of negotiations on in connection with—

MR. TILLEY: Mr. Rowell, your question suggests there—first, you say both companies. I suppose you mean the United Company and the Dominion?

MR. ROWELL: Yes.

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.

No. 12.
William L.
McPaul,
Re-Exami-
nation.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.

No. 12.
William L.
McPaul,
Re-Exami-
nation.
31st May,
1932.

—continued

MR. TILLEY: You say negotiating a franchise?

HIS LORDSHIP: Were they both applying for a franchise at that time to the city?

WITNESS: No. The situation was rather involved. It was a question of augmenting the gas supply, and the question of bringing in natural gas, and using coke oven gas from the Steel Company. I don't recall all the details. The primary question was with regard to the right to lay mains and distribute gas in this territory.

MR. ROWELL: Q. You have told us that the general question was up of a supply of gas to the city. 10

MR. TILLEY: What year do you say?

MR. ROWELL: 1929.

MR. TILLEY: Does the witness say that?

WITNESS: If I said that I misunderstood your question. I don't think there was any question of there being an adequate supply from both sources at that time.

HIS LORDSHIP: Q. What was the question at that time? A. The question as I understood it was of argument between these two companies, as to whether the Dominion had the right to lay mains in this territory east of Sherman Avenue. 20

Q. Anyway, it was a controversy between the two concerns, and the United objected to the issue of further permits to the Dominion? A. That is correct, sir.

MR. ROWELL: Q. In the end you got instructions from the Board of Control, you have told us, to go ahead and issue the permits? A. Yes.

Q. You told my learned friend the practice continued of issuing permits after 1931, through 1931. Did you issue any permits at any time to this company other than such as you thought them entitled to?

MR. TILLEY: I object to that question. The permit is in black and white. 30

HIS LORDSHIP: He is not the judge in the matter.

MR. TILLEY: They are entitled to it under By-law 30.

MR. ROWELL: No.

HIS LORDSHIP: He is not the forum that determines that. He did it I suppose in pursuance of what he considered to be his duty.

MR. ROWELL: If the witness could look up at the noon adjournment any correspondence with the Board of Control, my Lord.

HIS LORDSHIP: Very well.

MR. ROWELL: Or the City Solicitor.

HIS LORDSHIP: I am not so sure about that. 40

Court adjourned at one until 2.30 p.m.

ON RESUMING at 2.30 p.m.

HIS LORDSHIP: Mr. Kent I understood had those documents here this morning.

MR. TILLEY: He gave us the certificate and it was put in. He has copied the other one.

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 13.
Samuel H.
Kent,
Recalled.
31st May,
1932.

SAMUEL HORATIO KENT, Recalled. Examined by MR. ROWELL:

Q. You were going to put in a copy of By-law No. 2564? A. Yes. (Producing copy.)

Q. And that is a copy, is it? A. Yes, that is a copy. (Exhibit 18.)

Q. This was to provide for taking a vote on the By-law No. 400 as amended by By-law No. 443? A. Yes.

10 Q. Then, Mr. Kent, you were going to look up to see if there is any minute or instructions of any kind in reference to bringing this action. A. I have no council records of it whatever.

Q. No council records of it whatever. Who was the Mayor of the city in 1931? A. John Peebles.

Q. Do you recognize his signature, Mr. Kent? (handing document). A. Yes, that is Mr. Peebles' signature.

Q. A letter dated December 17, 1931, to Hon. George Lynch-Staunton. "Dear Mr. Staunton—"

MR. TILLEY: What is that?

20 HIS LORDSHIP: You had better show it to Mr. Tilley.

MR. ROWELL: On this same point, my Lord.

HIS LORDSHIP: You cannot give Mr. Peebles' evidence by producing a letter he wrote. That would be an easy way for some witnesses. You have the evidence here of Mr. Kent, to testify to it.

MR. ROWELL: Q. No vote was taken in connection with the by-law of 1931—no vote of the electors? A. 1931?

HIS LORDSHIP: You had better tell him the number.

MR. ROWELL: The by-law of 1931 is 4168, also the agreement, Exhibit 20. That is the by-law conferring the franchise upon the defendant United Gas Company, the by-law of the 24th of March, 1931.

30 HIS LORDSHIP: Was that not the very object of the special act, to avoid the necessity of it?

WITNESS: That was the object, yes. No, sir, there was no by-law submitted to the people on that.

MR. ROWELL: Is Mr. McFaul here? (Witness does not answer.)

40 I might, so as not to delay the Court, turn to another branch of the case, my Lord. There are a number of witnesses on the question of the laying and building of those lines in 1904 and 1905 in the Township of Barton. My submission is that at this date we cannot be called upon to prove it, but I do not want to leave anything open that can be properly dealt with. Insofar as there are witnesses alive and in existence and available, I have them here, my Lord.

HIS LORDSHIP: If you think it is necessary, why call them. Is it in controversy, this point?

MR. TILLEY: I have no knowledge on the point.
HIS LORDSHIP: Call the witnesses then.

JOHN FRANCIS CARMODY, Sworn. Examined by MR. ROWELL:

Q. Mr. Carmody, I believe you reside in the City of Brantford?

A. Yes, I live in Brantford.

Q. Were you a contractor in the putting in of certain gas pipe lines in the year 1904 and 1905? A. Yes, sir.

Q. For the Dominion Natural Gas Company? A. Yes, sir.

Q. What line did you put in? A. We called it from Hamilton to Dundas. It would be at the intersection here. We started a dead line at a dead end there. 10

Q. On Exhibit 34? A. Yes.

Q. That is marked "Fennel Avenue" on this plan. You started at a dead end you say, and where did you go to? A. We went by the asylum, and went down to where—we went down the mountain and on to Dundas through the T.,H. & B. and the golf course and the highway, and then to a gas station at Dundas.

HIS LORDSHIP: Q. Could you give the start and finish of the lines? You say they started at a dead end at what point? A. At this point.

Q. Was there a street or avenue? 20

MR. ROWELL: It is marked on this Fennel and Gage. The witness says he could not remember the name of the street. The point is at the corner of Fennel and Gage as marked on this plan. It is the intersection of the main line on Gage Avenue.

Q. You built from that point by starting westerly? A. Yes, sir.

Q. And on past—just describe it as best you can, Mr. Carmody.

A. We went right straight along there to the point where we went down the mountain.

Q. Along Fennel Avenue? A. There was a stairs there but there was no street where we went down at that time. 30

Q. That is a point beyond the end of the red line shown on this plan? A. Yes, sir, I would say so.

Q. The mountain is shown marked on the plan, "the Niagara Escarpment." That is as accurate as you can describe it, is it? A. That is just exactly what happened. I can't say the names of the streets. I know that is by the asylum, and over where we went straight down the mountain by those steps that are there. There was some name for it. I forget just now. Through the golf course and down the T.,H. & B. on the highway to the gas house in Dundas.

Q. Will you tell us the date on which you put in that line? A. I have the time books. 40

HIS LORDSHIP: Q. That is the best way. You can refresh your memory. Have you got them there with you? A. Mr. Sweet has them.

Q. Have you looked at them recently? A. Yes, about the 4th of December we started the line.

Q. What year? A. 1904.

Q. Started about the 4th of December, 1904, and when did you finish? A. The last I have there is the 13th of January.

Q. 1905? A. 1905.

MR. ROWELL: Q. Do you know who had the contract for any other portion of this work? A. I know that Mr. — I just forget his name at the minute. I know the contractor. He was from Marion, Ind.

Q. Did you know Mr. Bunker? A. Bunker is the man, yes. It just slipped my memory for the minute.

10 Q. Bunker is the man who had the contract? A. From Selkirk to where I started.

HIS LORDSHIP: Q. That is Selkirk in the gas—A. Yes, sir, Haldimand County.

MR. ROWELL: Q. That is the time book, is it? A. Yes. I also had a letter from Mr. Aikens after the line was completed, some time after the line was completed.

Q. Who was Mr. Aikens? A. He was Superintendent of the Dominion Gas Company at the time.

Q. His letter to you is dated— A. June 27, 1905.

20 Q. And at that time the line had been— A. Yes, for some time the line had been completed.

HIS LORDSHIP: Those letters and the book are just to refresh his memory; that is all.

CROSS-EXAMINED by MR. TILLEY:

Q. The line you built was a line to supply Dundas? A. Yes, sir.

Q. And went on to Dundas? A. Yes, sir, a six-inch line right to Dundas.

MR. ROWELL: Mr. McFaul is here now, my Lord.

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 14.

John F.
Carmody,
Examination.
31st May,
1932.

--continued

Defendant's
Evidence.
No. 14.

John F.
Carmody,
Cross-
Examination.
31st May,
1932.

W. L. McFAUL, Recalled. Examined by MR. ROWELL:

30 Q. Have you been able to turn up any correspondence with the Board of Control in reference to the permits or franchise of the Dominion Natural Gas Company. A. Yes, I have a letter of October 19, 1929—two letters, copies of which were attached, of October 16 from the Dominion Natural Gas Company to me, and October the 18th.

Q. Is that the first and only communication you had in 1929 in reference to these permits? A. Yes, that is the only communication as far as I can find.

40 Q. I see this first letter of October 19, 1929, is to the Chairman and Members of the Board of Control. (Reads letter). Then the letters attached are the letters we had this morning, are they? A. Yes, copies of the letters.

Q. Copies of the letters that we put in this morning. Then what reply did you get from the Board of Control? A. I got no written

Defendant's
Evidence.
No. 15.

William L.
McFaul,
(recalled).
Re-Exami-
nation.
31st May,
1932.

*In the
Supreme Court
of Ontario*
—
Defendant's
Evidence.
No. 15.
William L.
McFaul,
(recalled)
Re-Exami-
nation.
31st May,
1932.

—continued

reply, and instructions to hold up the permits for the time being. The permits were held up, in any event. The next correspondence was March 17, 1930, at which time I forwarded a copy of the letter referred to this morning from Mr. Simpson of Lee Simpson. A copy of Mr. Simpson's letter was attached, asking for permission to proceed, and that was referred to the Board of Control.

EXHIBIT 74. Letter Oct. 19, 1929, City Engineer to Board of Control. Letter Oct. 16, 1929, Dominion Natural Gas to City Engineer. Letter, Oct. 18, 1929, Dominion Natural Gas to City Engineer.

Q. The letter of March 17, 1930, is as follows: (Reads letter). 10

EXHIBIT 75. Letter, March 17, 1930, City Engineer to Board of Control. Letter, March 14, 1930, from Messrs. Lee, Simpson & Murgatroyd to City Engineer.

Q. What communication if any did you receive from the Board of Control in answer to that? A. There was a further letter. My boy is making a copy of it. It ought to be here in a couple of minutes. Instructing me to proceed to issue permits, about April from the Secretary of the Board.

Q. Does that cover the communications you had that passed between you and the Board of Control in reference to this matter during 1929 20 and 1930? A. I think that covers it pretty well.

Q. Have you searched? All I wish to know is, if we have all the correspondence. A. We searched all we had time to search.

MR. ROWELL: The letter of instructions, my Lord, might go in as Exhibit No. 76.

HIS LORDSHIP: Q. You say it is coming? A. Yes, we are making copies, your Lordship. The boy will be here in a few minutes.

MR. ROWELL: Q. Do you remember about the date of that letter? A. I think it would be about the middle of April. I know they started work on April 16th again, two permits being issued. I checked this up 30 from the diary of the engineer immediately in charge of the work.

Q. Can you tell me if you communicated with the Board of Control at the time you had that correspondence in 1926 with the company about their franchise? A. I don't find any communication with the Board of Control at that time—no communication with the Board of Control.

Q. What communication do you find at that time? A. There was communication with the solicitor at that time.

Q. With the City Solicitor? A. Yes.

Q. Have you got copies of the communication with the City Solicitor? A. Not here. We have copies, yes, on our files. The communi- 40 cation I have reference to there was dealing specifically with the Cliff Avenue application of the Dominion Natural Gas Company, and the permit was issued and filed here among the documents.

Q. The permit was issued and filed here after you heard from the solicitor? A. Yes.

Q. Then did you have any communication at any intervening period with the Board of Control or the Solicitor in reference to the franchise

of the Dominion Natural Gas Company, or permits to them? A. I think these cover all the communications—all we could find, at any rate.

MR. ROWELL: I would ask, my Lord, that we might have the production of the letter to the Solicitor and the reply.

HIS LORDSHIP: What would it be evidence of, Mr. Rowell? Would it not be a privileged communication—a communication between Solicitor and client?

MR. ROWELL: If it is a basis of action, my Lord; that is the only ground on which I could ask it, if it is the basis on which he took action.

10 HIS LORDSHIP: You had no communication with the Solicitor?

MR. ROWELL: No.

HIS LORDSHIP: The result of the communication is that the witness issues the permits.

MR. STAUNTON: They sent us a copy of it.

HIS LORDSHIP: I suppose the Solicitor would give his opinion and that would hardly be binding on the Court.

MR. ROWELL: I am informed a copy was sent to us. We will just check that up, my Lord.

20 EXHIBIT 76. Copy of letter, April 1, 1930, Board of Control to City Engineer.

By MR. TILLEY:

Q. Does the production of the further letters you have found during the adjournment refresh your memory at all as to the length of time there was a stoppage in issuing permits in 1929? A. Investigation of the letters and of the diary of the engineer in charge of the work shows that on August 26, 1929, the work on the permits issued up to that time was completed, and they were closed down, and was not resumed again until April 16, 1930, which I presume was subsequent to this letter of instruction of the Board of Control. I am sorry that copy is not here
30 (Ex. 76) but it ought to be here any minute.

Q. We will get that later. What about the period from May? You stopped issuing permits in May, but the work went on under permits previously granted until August, I gather. A. No, the file does not show we stopped issuing them until some time in August, the 14th of August I think there was some question raised about it by one of the companies.

Q. I did not understand how it was that Mr. Simpson wrote that the permits applied for in May had not been granted. A. There was some difficulty—

40 Q. The Dominion Natural Gas Company wrote you on October 16th (Ex. 74) "On May 14th we requested permits to lay mains on a number of streets east of Sherman Ave. in the City of Hamilton. Up to date we have not yet received these permits." A. I take it that part of the difficulty was with regard to the location on the street. The question came up about that time—I think to be precise some time after May—about

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 15.
William L.
McFaul,
(recalled)
Re-Examination.
31st May,
1932.

—continued

Defendant's
Evidence.
No. 15.
William L.
McFaul,
(recalled)
Re-Cross-
Examination.
31st May,
1932.

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 15.
William L.
McFaul,
(recalled)
Re-Cross-
Examination.
31st May,
1932.

—continued

the distance between the United Gas and Fuel Company's mains and any other gas mains or any other utility.

HIS LORDSHIP: Q. A question of detail then? A. There was a question of detail, yes. I think that had some—the correspondence shows that that question came into the picture in August.

MR. TILLEY: Q. I gather from what you say in describing the stoppage of the work, that in 1929 there was a definite program of extending lines in that particular area of the city? A. Yes.

Q. By the Dominion? A. Yes. Quite a number of permits had been issued earlier in the year. 10

Q. There was a particular locality in which they were making these extensions? A. In the area east of Sherman Avenue.

Q. That was a definite program of extension rather than detailed or individual extensions for short distances as we had in the earlier years that were produced, like 1923 and 1924, one or two permits a year? A. The program in 1929 was primarily an extension of the scheme following the years 1926, 1927 and 1928.

HIS LORDSHIP: Q. But on a larger scale? A. Well, about the same scale as had been carried on in the year before.

MR. TILLEY: Q. I gather that 1929 was a larger scale than 1928, 20 and 1928 was a distinctly larger scale than any year before? A. I couldn't say without checking the amount of work that 1929 was greater than 1928.

Q. Could it be checked? A. Yes, it could be. I don't believe there was as big a program in 1929, speaking from memory, as there was in 1928.

Q. Possibly I should have put it this way. 1928 was quite different from any former year? A. 1928 was a big program.

Q. And it was a big program where they were commencing to duplicate the United lines, put their lines on the same street? A. Yes. 30

Q. I don't know whether that was done in 1927 at all, but at any rate, it was a definite program, and a large program in 1928? A. Undoubtedly quite a number of these streets, if not all of them were duplications of existing lines.

By MR. ROWELL:

Q. Mr. McFaul, in Exhibit 54, put in this morning I notice the first letter dated May 4, 1927, states, "This will be the first of a series of requests for permits, for distribution mains which we want to lay this summer. Within a few days we will send you a sketch showing our entire proposed extension for the summer." Does that enable you to recall that the definite plan of extension commenced in 1927? A. I believe the bigger program started in 1927. There was a beginning of it made in 1926. 40

MR. TILLEY: Q. I wish you would check that, Mr. McFaul. A. I withdraw that statement. The item of 1926 was extensions on the mountain as I recall. 1927 was the beginning of the big program.

Defendant's
Evidence.
No. 15.
William L.
McFaul
(recalled)
Re-Exami-
nation.
31st May,
1932.

MR. ROWELL: Q. And this was an application of May 4, 1927, in which they told you they were commencing that program? A. That is correct.

Q. And they filed with you a general plan I think you told me? A. Yes.

MR. TILLEY: Q. Have you got that plan? A. Not here. We probably have it in the office.

HIS LORDSHIP: The Clerk is here now, and you can put in that letter.

10 MR. ROWELL: Q. The program outlined, starting in 1927, continued on through 1928 and 1929? A. Yes.

MR. TILLEY: Mr. Rowell, do you mean by that, that the plan that was submitted in 1927 was for more than the year 1927?

HIS LORDSHIP: Provided for the work of 1928 and 1929?

MR. ROWELL: I did not mean to suggest that, my Lord, but the general plan of extensions in this district.

HIS LORDSHIP: The plan I apprehend would only relate to the application—

MR. ROWELL: Yes, for 1927.

20 WITNESS: I have a letter here to the Board of Control of August 14, dealing with the situation, and advising the Board that there was a difficulty about the location of the mains on the street to get the sufficient clearance. According to an amendment of the Utility Act, a six foot clearance between other utilities was required.

HIS LORDSHIP: That would only relate to the detail. It did not deal with the large question at all.

WITNESS: No. Also, on August 14th I wrote a letter—1929, I wrote a further letter to the Board—"I beg to attach herewith list of gas mains
30 "for which the Dominion Natural Gas Company have applied, together with the locations for same as determined by a survey on "the ground and from information available at this office. Kindly "instruct me whether I am to issue these permits or not."

MR. ROWELL: Q. This letter of August 14th to which you have referred grew out of a request for permits from the United Gas and Fuel Company. Is that it? A. No, I think it grew out of the question, or the objection, of the United Gas and Fuel Company to permits being issued to the Dominion Natural Gas Company to lay mains within six feet of their mains, a regulation which had been laid down by, I think it is, the Public Utilities Act in the year 1927.

40 MR. TILLEY: Q. Have you any letter from the United Gas? I am told their protest was not limited to six feet. A. There is a copy of a letter attached, isn't there?

Q. That is a report from the engineer. A. This is all dealing with the locations.

MR. ROWELL: Q. In this letter I see you state, "I have never been notified of or shown any regulation governing the laying of these gas mains." Are you referring there to United Gas and Fuel Company's

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 15.

William L.
McFaul,
(recalled)
Re-Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.

No. 15.

William L.
McFaul,
(recalled).
Re-Exami-
nation.
31st May,
1932.

—continued

mains? A. I am referring to the regulation requiring a clearance of six feet, or some other. We required up to that time three feet, but the Legislature apparently put a clause in that act requiring a clearance of six feet. Here is also a letter from the Secretary of the Board of Control to me, dealing with the situation and instructing me to issue—

HIS LORDSHIP: Q. That was Exhibit 76? A. I don't think you had this letter. This is November 6th. This is a new one.

MR. ROWELL: This is to Mr. McFaul from Mr. Barr, the Secretary, "I beg to inform you . . . United Gas and Fuel Company."

Q. Is that the letter to which you referred this morning when you said you received instructions not to issue permits? A. Yes, that is the letter I believe. 10

EXHIBIT 77. Copy of letter, Secretary of Board of Control to City Engineer, Nov. 6, 1929.

MR. ROWELL: (Reads Exhibit 76).

WITNESS: That is the copy of the works order covering the chamber. This is a copy of the letter of Nov. 5th you asked for, 1927.

MR. ROWELL: It is to be added to the Exhibit granting permits in 1927. (Ex. 55).

WITNESS: (Producing various letters). That is the letter in which I asked for instructions, the letter of August 14th. 20

MR. ROWELL: Then on August 14th, 1929, you wrote the Chairman and Members of the Board of Control. (Reads letter). That is the one you promised to give us copies of?

WITNESS: Yes, I did not have a copy here.

MR. ROWELL: Perhaps we had better make this a separate exhibit.

EXHIBIT 78. Letter Aug. 14, 1929, City Engineer to Board of Control.

MR. ROWELL: Q. You promised to produce copies of the letter and the order in connection with the building of the gas regulator in 1928? A. Yes, that is a copy of the blue order you have here, that they have in the letter file. (Ex. 62). 30

Q. A letter was to accompany it. A. I have no letter from them. All I got was the order.

Q. I thought you showed us a letter this morning, November 14, 1928. Did you find that this had been paid for by the company? A. The accountant is looking it up. I have no doubt it is. The initials of my cost accountant show that a requisition was made out, and that would cover automatically an order to the accountants' department to collect the account. 40

Q. So this regulator was built by the City of Hamilton for the Defendant Company in 1928? A. Yes.

Q. In connection with their gas distribution in the annexed portions of the City of Hamilton? A. Yes, sir. One correction, sir; that should be regulator chamber.

HIS LORDSHIP: Q. That is the building? A. The structure to house it.

MR. ROWELL: When the letter is turned up it could be attached to the exhibit, my Lord. I need not detain your Lordship.

WITNESS: We have the copy of their letter to me asking for permission to do that.

MR. ROWELL: Q. Will you have that copied? A. We will have to make a copy for you.

HIS LORDSHIP: Attach it to the copy of the order. (Ex. 62).

MR. TILLEY: May I just ask one question?

HIS LORDSHIP: Yes.

10 By MR. TILLEY:

Q. I don't know quite how you left it, but you were asked about a letter that you got from your Sewer Engineer in August, 1929, reporting on the location of mains of the Dominion Company with respect to the mains of the United Company. Do you remember that? They had to be six feet away? A. Yes, sir.

Q. I did not know whether you said that the only complaint the United Company were making at that time was as to the mains being too close to their mains, or whether the complaint was broader, and they were then complaining that the mains should not be there at all. I have some
20 correspondence at that time. When was it the complaint was broader than that? A. The complaint was broader than that, but that was another feature that entered into the complaint. The complaint about the mains not being there at all was earlier than that, and this was another feature that entered into it, and that was the complaint at the time.

HERBERT L. BARR, Sworn. Examined by MR. ROWELL:

Q. You are Secretary of the Board of Control of the City of Hamilton? A. Yes.

MR. TILLEY: You were going to close up, Mr. Rowell, whether the
30 letter of the solicitor was sent to you. Did you close that up?

MR. ROWELL: I am instructed it was not sent.

MR. ROWELL: (Resuming examination). Q. For how long have you held that position? A. About eighteen years.

Q. Can you tell me if a communication from the City Engineer came before the Board of Control on October 21, 1929, in reference to an application of the Dominion Gas Company, in reference to the granting of permits. A. Yes, I received that letter.

Q. Can you tell the Court what action the Board of Control took?
A. I can't talk from memory. I have to read from my minutes.

40 HIS LORDSHIP: Q. You made the minutes at the time? A. I did. This is October 21, 1929. "W. L. McFaul, City Engineer, wrote enclosing copies of application of the Dominion Natural Gas Company, "advising that up to date they have not received permits requested "by them on May 14th last, and that they are now giving notice that

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.

No. 15.
William L.
McFaul,
(recalled)
Re-Examination.
31st May,
1932.

—continued

Defendant's
Evidence.

No. 16.
Herbert
L. Barr,
Examination.
31st May,
1932.

In the
Supreme Court
of Ontario

Defendant's
Evidence.
No. 16.

Herbert
L. Barr,
Examination.
31st May,
1932.

—continued

“they will lay gas mains on Balmoral Avenue, and to have an inspector on the job if you consider it necessary.”

MR. ROWELL: Q. Was any action taken that day? A. I don't think any action was taken until October 31st.

Q. Will you tell the Court what action was taken? A. The Secretary was instructed to advise the Dominion Natural Gas Company to continue to file their applications for laying of mains together with plans showing locations which are to be at least six feet from existing gas mains. Also United Gas and Fuel Company to file with the city an up-to-date plan of their general distribution system; also file applications with plans of any new mains which are to be located at least six feet from existing gas mains. That is the action of the Board. 10

Q. Did the letter from Mr. Simpson come before the Board in 1930? A. Yes.

Q. We have a letter produced this morning which was sent on I understand to the Board. A. March 19, 1930.

Q. What took place on that occasion? A. I will still have to read from my minutes. “T. H. Simpson wrote asking on behalf of the Dominion Natural Gas Company that construction permits be issued by the City Engineer, advising that they are willing to file plans showing locations of their mains, and to pay inspector of city.” “The City Engineer wrote advising that this would be the most satisfactory way to proceed, which was referred to the City Solicitor for his opinion.” 20

Q. When did the matter come before the Board again? A. On the 21st, two days afterwards.

HIS LORDSHIP: Q. 21st of what? A. Of March, 1930.

MR. ROWELL: Q. What took place on that occasion? A. “The City Solicitor forwarded an opinion in this matter of granting a permit to the Dominion Natural Gas Company Limited for laying gas mains in area in the eastern portion of the city formerly the Township of Barton, in which he states that it is not lawful to make a hole in the city streets without a permit. The City Engineer to be instructed to issue permits to the company, provided plans showing location of such mains are filed with him, and the company bear the cost of inspector on the work for that section of the city wherein the Company have a franchise.” 30

Q. Did you communicate the decision of the Board of Control in both cases to the City Engineer? A. Yes, I did that. I have copies of my letters. I think I heard them read here.

Q. Yes, they are both in. A. I have one to Mr. Levitt and one to Mr. McFaul, and one to Mr. C. M. Sieger of the Dominion Natural Gas. 40

Q. Can you tell me if the matter came before the Board of Control in 1926? Can you tell me if the question of the Dominion Company's permits or franchise came before the Board in 1926? A. I have no recollection of 1926. I did not go back that far. I did not expect you would want to go back that far. I was asked more particularly to submit this letter of Mr. Simpson's to the Board, and Mr. Waddell's opinion.

Q. I wish you would see if there is anything in 1926 or earlier, from

1920 to 1926. See if anything came before the Board of Control in the matter? A. What was that about?

Q. About the Dominion Company's franchise or permits. A. I will do that.

MR. TILLEY: I am not sure that all these letters are in. I thought you said that notice was given following the meeting of March 21, 1930. Are those in?

MR. ROWELL: Yes. The letter of the Secretary of the Board, from him to Mr. McFaul?

10 MR. TILLEY: Yes.

WITNESS: Yes, I heard it read.

MR. TILLEY: You heard it read?

WITNESS: Yes.

MR. TILLEY: Then we won't need that.

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 16.
Herbert
L. Barr,
Examination.
31st May,
1932.

—continued

WILLIAM J. AIKENS, Sworn. Examined by MR. ROWELL:

Q. Mr. Aikens, you reside in the City of Hamilton at the present time? A. I reside in Vineland, Ontario.

20 Q. You were at one time connected with the Dominion Natural Gas Company? A. I was.

Q. During what years? A. 1904 to 1906, two years.

Q. What were your duties during that period? A. Superintendent.

Q. During that period did you have anything to do with securing a franchise for the company in the Township of Barton? A. I did.

Q. Did you have anything to do with the construction of the lines in the Township of Barton? A. Just overseeing them.

30 Q. Who had the contracts for putting in these? Perhaps you can look at this plan, Exhibit 34, Mr. Aikens, and tell us who had the contracts for putting in the different sections of the line? A. Putting in this main line coming down Gage Avenue, Main Street, and up Main Street to the city limits, Mr. Bunker. And a line running from that main line west down the mountain through to Dundas, Carmody and Ormond were the contractors.

Q. Do you remember who had the branch lines? A. The branch lines were laid by Mr. McGarrah.

Q. Was he an employee of the company at that time? A. An employee of the company at that time.

40 not. Q. Do you know what has become of Mr. McGarrah? A. I do not. I have not heard of him for 25 years.

Q. The line which Mr. Carmody laid, perhaps you can describe it now definitely on this plan, Mr. Aikens, commenced at what point? A. Commenced at the point where the eight-inch line runs to Gage Avenue.

Q. Corner of Gage and Fennel? A. I don't know the name of that—

Defendant's
Evidence.
No. 17.
W. J. Aikens,
Examination.
31st May,
1932.

In the
Supreme Court
of Ontario
—
Defendant's
Evidence.
No. 17.
W. J. Aikens,
Examination.
31st May,
1932.

—continued

Q. That is marked "Fennel" on the map? A. Running west, it went down the mountain on the west side of the city. Then it crossed the golf links, struck the T.,H. & B. property, along the T.,H. & B., crossing the T.,H. & B. into Dundas.

MR. STAUNTON: Q. It went west of the asylum? A. Yes.

MR. ROWELL: Q. He laid the whole of the east and west line from Gage Avenue? A. Through to Dundas.

Q. What did you say was the line Mr. Bunker laid? A. This main line coming in from the field, down Gage Avenue to Main Street, and up Main Street to the city limits at that time, which was Sherman Ave. 10

Q. That covers all the lines shown on this plan except the dotted line, and the short north and south feeders off the main line? A. Yes, I don't know anything about these short feeders, or this line. It is the main trunk line I know about.

Q. What do you say as to the date when these were done? A. The main eight-inch line laid by Mr. Bunker was started in 1904 at Canfield or thereabouts, near Canfield, and finished in the early spring of 1905

Q. And Mr. Carmody has told us when he finished his work? A. Yes.

Q. You cannot speak as to Mr. McGarrah's work? A. No. 20

CROSS-EXAMINED by MR. TILLEY:

Q. You were there until 1906? A. Yes.

Q. And you have described all the work that was done up to the time you left? A. That I had knowledge of.

Q. So we may take it that up to 1906 the work done consisted of the line along Fennel Avenue out to Dundas, and the line along Gage up, with a turn over— A. To the city limits. That is all that I am personally aware of that was laid.

Q. If any more had been laid up to 1906, you would have known about it? A. All I know of is that Mr. Lowrie, who was the General Manager, gave Mr. McGarrah instructions to lay these connecting lines out to Bartonville, and some service lines on the mountain. All I know is the instructions Mr. Lowrie gave. 30

Q. Were you there when they were given? A. Yes.

Q. When were they given? A. In the early spring of 1905.

Q. And it was not done that year? A. I can't tell you. I don't know that it was ever done.

Q. And then you know nothing about these lines running north from Fennel Street? A. No.

Q. Nor do you know anything about the dotted line along south? A. No. 40

Q. Do you know anything at all about the line along James Street? A. No.

Q. Are you in a position to say that that line was not built by the Dominion Company, but was built by— A. I know nothing about it.

Q. You know nothing about that line? A. No.

Defendant's
Evidence.
No. 17.
W. J. Aikens,
Cross-
Examination.
31st May,
1932.

MRS. ABBIE ALLAN, Sworn. Examined by Mr. ROWELL:

*In the
Supreme Court
of Ontario*

Q. Mrs. Allan, you reside in the City of Hamilton? A. Yes.

Q. I believe you were at one time in the employ of the Dominion Natural Gas Company? A. Yes, sir.

Q. Do you recall the date at which you entered their employ. A. I stopped school in the end of June, and I think I entered about the first of August in 1905.

Q. What was your position with them? A. At first I was just Assistant Cashier, and the next year I took the position as Cashier.

10 Q. Can you tell me whether in 1905 this would be a book in which you made entries, such as where customers purchased gas, and the entry of the customer and the receipt of the payment for the gas? A. Yes.

Q. Will you tell us where your entries commence then? A. This is 1905. Well, part is Mr. Ford, he was the Cashier, and part is of my writing. This is Mr. Ford's writing, and this is my writing.

Q. On this page there appears some of Mr. Ford's writing and some of your writing? A. Yes.

Q. And this covers March and April? A. This goes over to February, 1906.

20 Q. Month after month? A. Yes.

Q. Can you tell me as Assistant Cashier—the company was supplying gas in the City of Hamilton, or in what was then the Township of Barton, now the City of Hamilton, in the summer of 1905? A. You want to know what?

Q. If they were selling gas in the City of Hamilton—in Barton then, now the City of Hamilton, in the summer of 1905? A. Yes, it is in this ledger.

HIS LORDSHIP: Q. Does that ledger show where the customers lived, the streets and so on? A. Yes, sir.

30 MR. ROWELL: Q. Will you tell us where they were selling gas in the Township of Barton in 1905? A. In Bartonville, down in East Hamilton, which I think was from Sherman Avenue—it would be east of Sherman Avenue; and then up on the mountain as far as Binbrook and Dundas. Those are the ones I had on my ledger.

Q. Dundas is not in Barton? A. No.

Q. The other three were all in the Township of Barton? A. Yes.

Q. And were they selling gas there when you came with the company in August of 1905? A. Yes sir.

40 Q. Can you tell us the streets in the Township they were selling gas in, in what you have referred to as East Hamilton? A. I can't remember them all.

HIS LORDSHIP: By reference to the book.

WITNESS: By reference to the book I could tell you quite a few of them. Blake Street, and Maple Avenue, and Main Street, Prospect Street, Lorne Avenue, Sherman Avenue, Fairholt, and I don't know—there was a Regent Street; it has changed its name since then. It would

—
Defendant's
Evidence.
No. 18.
Mrs. Abbie
Allen,
Examination.
31st May,
1932.

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 18.
Mrs. Abbie
Allen,
Examination.
31st May,
1932.

—continued

be Gage Avenue now. It was Trolley Street when I was writing the ledger.

Q. What kind of gas were you supplying at that time? A. Natural gas.

Q. From the gas fields in Haldimand County? A. Yes.

Q. Coming through the pipes of the company in the Township of Barton? A. As far as I know, yes.

Q. Are there any other streets that you can recall in East Hamilton? A. I think that is as near as I can remember for East Hamilton.

CROSS-EXAMINED by MR. TILLEY:

10

Defendant's
Evidence.
No. 18.
Mrs. Abbie
Allen,
Cross-
Examination.
31st May,
1932.

Q. How long were you Cashier? A. I went in in August, 1905, and I was with the Dominion as Cashier till, well, it is 16 years ago. When will that be?

Q. 1916? A. The 16th of August, 1916.

HIS LORDSHIP: That would be eleven years.

MR. TILLEY: Q. You could tell from the books then just how many customers they had right down to the time you left, if you had the books? A. Yes, sir.

Q. How long does that book run? A. It runs a year.

Q. That is for one year? A. For one year.

Q. There would be similar books for the other years? A. Yes.

Q. This is 1905, is it? A. Yes, this is 1905. It starts in March.

Q. How many customers were there then, in March, 1905? A. That is impossible for me to tell, to remember.

Q. Probably you would help me how to go about finding them? A. You want for East Hamilton, do you?

HIS LORDSHIP: Q. For Barton Township. A. Then you would have to go over. It was kept separate from Dundas, you see.

MR. TILLEY: Q. This part of it is Dundas, is it? A. Yes. Then you have to go over to get to there. It starts there.

Q. That is to say, Hamilton, Ontario. Does it go on then? A. Yes, it goes down there, and then we would leave pages for new customers, and then we went on down to Binbrook, and then Bartonville.

Q. To find out you would have to go through the books? A. Yes.

Q. Any person else can go through the books and get it as well as to bother you with it? A. Yes.

MR. TILLEY: We can see the books if we want to, Mr. Rowell?

MR. ROWELL: Certainly.

20

30

Defendant's
Evidence.
No. 19.
Charles
Lindsay,
Examination.
31st May,
1932.

CHARLES LINDSAY, Sworn. Examined by MR. ROWELL:

40

Q. Mr. Lindsay, what is your position with the Defendant Company? A. I am Field Foreman.

Q. In the agreement, Exhibit 22, there is a provision, paragraph 5—'The Dominion Company agrees that for gas produced from wells

10 “in the Townships of Binbrook, Glanford, Oneida and North Cay-
 “uga and delivered into its main lines conveying gas to Hamilton,
 “it will pay 25c per 1,000 cubic feet and the Company also agrees
 “that it will accept all gas offered and delivered into the Company’s
 “main line and that it will on or before the expiration of two weeks
 “from the date hereof, commence drilling in the Townships afore-
 “said at least five new wells, and complete the same before the 15th
 “January, 1921, and will turn into said Hamilton line all gas from
 “such wells as produce gas in paying quantities, and that said gas
 “so delivered and produced will be available for distribution in
 “Hamilton subject to the said agreement of September, 1905.”

*In the
 Supreme Court
 of Ontario*
 —
 Defendant’s
 Evidence.
 No. 19.
 Charles
 Lindsay,
 Examination.
 31st May,
 1932.

—continued

Were you in charge of drilling at that time? A. I was.

Q. Did the Dominion Company drill the new wells called for by this agreement? A. They did.

Q. And they drilled five new wells in the two weeks, that would be the 13th of October and the 15th of January? A. Yes.

Q. Was the gas from those wells turned into the Hamilton line? A. Yes.

Q. As required by the agreement? A. Yes.

20 MR. TILLEY: No questions.

ALFRED BROUGHTON, Sworn. Examined by MR. ROWELL:

Q. You are Clerk of the Township of Barton, Mr. Broughton? A. Yes.

Q. And you produce a certified copy of the By-law No. 533 passed by the Township of Barton? A. Yes, sir.

HIS LORDSHIP: It was put in.

MR. ROWELL: A photographic copy was put in.

HIS LORDSHIP: Has he got a certified copy? The photographic copy is not very readable.

30 MR. ROWELL: This is a certified copy.

HIS LORDSHIP: Substitute that for Exhibit 41.

MR. ROWELL: Q. You have the original by-law? A. Yes.

Q. Just let me see the original, will you? A. (Produces).

Q. Did you at any time furnish the city with a copy of that by-law? A. No, sir.

HIS LORDSHIP: Q. How long have you been in office? A. Since November, 1928.

CROSS-EXAMINED by MR. TILLEY:

40 Q. Is there any record of any copy having been furnished to the city that you know of? A. Yes, sir. We have a statement here to the effect. Shall I read it?

Q. What are you reading from? A. From the Township Clerk of that date, but unsigned.

Defendant’s
 Evidence.
 No. 20.
 Alfred
 Broughton,
 Examination.
 31st May,
 1932.

Defendant’s
 Evidence.
 No. 20.
 Alfred
 Broughton,
 Cross-
 Examination.
 31st May,
 1932.

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 20.

Alfred
Broughton,
Cross-
Examination.
31st May,
1932.

—continued

Q. What do you mean from him? Something to you? A. No.

HIS LORDSHIP: Q. Where did you find it? Among the papers?

A. Yes.

Q. Is it a duplicate of a letter? A. Yes.

Q. Copy of a letter? A. Yes.

MR. TILLEY: Q. That is to say, you find amongst the papers a copy of a letter, written, or supposed to be written by the Township Clerk, but it is unsigned, addressed to Mr. F. R. Waddell, City Solicitor of Hamilton, enclosing at his request a certified copy of the Dominion

Natural Gas by-law? A. Yes.

10

Q. That is the only record you have? A. Yes.

MR. ROWELL: What is the date?

MR. TILLEY: The date is Sept. 12, 1918.

Q. That is all that you have, is it? A. You mean all the transactions with the City of Hamilton?

Q. I do not know that this is a copy. This has a by-law attached to it. A. I have two copies of the by-law, sir.

Q. When you found this letter was a copy of the by-law attached to it? A. Yes, sir.

Q. Is a letter attached to the other one? A. No, sir.

20

Q. This was found in that form. Whether it was sent or not you could not say? A. I can't say.

Q. Do you find any record amongst the papers or books of the Township as to any permits being granted to the Dominion Company to lay mains? A. Only in 1925, sir.

Q. Do you find any record before 1925 of any application to the Township Council, or of any permit granted by the Township Council?

A. Not the same class of permit as you were discussing this morning from the City of Hamilton.

Q. I am not asking about the class for the moment. Any permit?

30

A. There were applications to the Township Council in past years, and there was a controversy with regard to them.

Q. I mean now before 1925. A. Yes.

Q. Tell us what the application was, and what the controversy was?

A. I am unable to say as to what the controversy was only from the records.

HIS LORDSHIP: What the minutes show.

MR. TILLEY: On November 6th, 1905.

“Special meeting at seven o'clock p.m. at the call of the Reeve to consider request of Dominion Natural Gas Company. All the members were present. The Reeve in the chair. Mr. McGowan represented the Company and paid to the Clerk expenses of this meeting. He stated in brief terms what the Company required of the Council.

40

“Moved by Mr. Hunt, seconded by Mr. Marshall, that the request of the Dominion Natural Gas Company, Limited, to extend the time for placing line or laying pipes on roads, 4th Concession, Lots

“10 and 11, and between Lots 12 and 13, until 15th July, 1906, be granted, and the seal of the Township be affixed to this resolution.—Carried.”

Q. That is what you are referring to? A. That is one, sir.

Q. Have you got another? A. (Produces minute).

EXHIBIT 79. Copy of minutes of meeting, Barton Township Council, Nov. 6, 1905.

Q. Then on Sept. 5, 1906, special meeting at the request of the Natural Gas Company. Is that the Dominion Company? A. As far as I am aware.

Q. “Re laying pipes on Stone Road without the consent of this Council. Mr. Anderson who represented the Gas Company stated his company had refused to accept the Township by-law because of some objectionable clauses, and they had applied and got a by-law from the County which they thought gave them power to lay pipes. The Council was advised by Solicitor Duff who was present, that in his opinion the Council could issue an injunction and stop the work. Mr. Anderson said he was not prepared to say on what terms an amicable settlement could be arrived at. He asked that another meeting be held on Friday night, the company paying costs, to which the Council agreed.”

MR. ROWELL: My instructions are that is an entirely different gas company.

MR. TILLEY: Q. In the minutes of the Council of December 16, 1908, you have this, “Moved by Mr. Hill, seconded by Mr. Gallagher, that “the Dominion Natural Gas Company be requested to place gas in “lamp on west side of Prospect Street between Main and Maple “Avenue.”

I see in the expenses for the year apparently there is a payment made—expenditures for 1908, November 2nd, Dominion Natural Gas Co., gas for street lights, \$21.34. Have you anything in the other book? A. Yes.

Q. May 18, 1925, item No. 95, “Moved by Councillor Broughton, seconded by Councillor Smith, that permission be given to the Natural Gas Company to lay mains as per request with the exception of East 31st Street, over which we have no jurisdiction. Work to be done under the Township Engineer’s supervision.—Carried.” Have you anything to show what streets those were? A. No, I could not find anything. I am under the impression that under our system the request would have been referred to the Township Road Superintendent at that time to see that the work was done.

Q. That would be the practice, you assume. I wanted you to identify the streets, if you could. A. Only from memory by living in the district.

HIS LORDSHIP: Q. Are you the Mr. Broughton who is noted there as moving the resolution? A. Yes.

MR. TILLEY: Q. What streets were they? A. They were streets running east of Sherman Avenue on the mountain to 36th Street, which would mean 32nd, 33rd, 34th, 35th and 36th Street, the other street which

*In the
Supreme Court
of Ontario*

—
Defendant’s
Evidence.
No. 20.

Alfred
Broughton,
Cross-
Examination.
31st May,
1932.

—continued

In the
Supreme Court
of Ontario

Defendant's
Evidence.
No. 20.
Alfred
Broughton,
Cross-
Examination.
31st May,
1932.

—continued

is mentioned there, 31st Street, was one which was owned by private individuals, and we had no Township rights to enter there.

Q. That was a private road? A. Yes.

Q. And the other streets, being the ones you mentioned, permission was given on this date in 1925? A. Yes.

Q. And so far as the records show, that is the first permission ever given to lay mains? A. Of that nature.

Q. We will come back to that in a moment. Can you tell us whether that area came into the city ultimately? A. That area came into the city on October 1st, 1928. 10

Q. So this would be about six months before it came into the city? A. Three years.

Q. Oh, yes, quite. You said no permission of that kind, what do you mean? Have you got anything else? A. What I mean, sir, in my opinion in the perusal of the minutes it indicates the Council's permits—

Q. I am not asking your opinion. If you have anything else on record let me see it? A. No, I have not.

HIS LORDSHIP: Q. Nothing else in the minutes at all? A. Only those that were read. That indicates that the acceptance of the by-law was really the permit. 20

MR. TILLEY: Q. You have given us all that the records show of any action by the Township Council in granting permission to lay mains? A. Yes.

RE-EXAMINED by MR. ROWELL:

Q. You have the by-law book here? A. No, sir, I had a copy of the minutes, but we can have it on a moment's notice if you desire. Our office is downstairs.

Q. Have you a record of the passing of the by-law 533? A. The resolutions of the Council? 30

Q. Yes. A. Yes. (Turns up book).

Q. On page 166 of the minute book.

"Special meeting (October 26, 1904). Council met at the call of the Reeve to consider application from the Dominion Natural Gas Company for the privilege of laying pipes on the highways of the Township of Barton. The Company agreeing to pay all legal and other costs, including special meeting. A draft by-law was submitted to the Council for their approval by Mr. W. A. H. Duff and was read clause by clause and discussed at some length.

"Moved by Mr. Hunt, seconded by Mr. Hills, that By-law No. 533, re the Dominion Natural Gas Company Limited, be introduced and read a first time.—Carried." 40

A. Yes.

Q. "Moved by Mr. Filman, seconded by Mr. Lowden, that By-law No. 533, re the Dominion Natural Gas Company, Limited, be read a second time, be read a third time, be passed, signed and sealed."

That is carried, signed by the Reeve.
Do you find any reference here to when the agreement was executed?
Is there a minute in reference to that? A. No, sir, I have not seen one.

Defendant's
Evidence.
No. 20.
Alfred
Broughton,
Re-Exami-
nation.
31st May,
1932.

By MR. TILLEY:

Q. Have you certain correspondence of November, 1920, where the company was refusing to make the connections with the consumers? A. December, 1920?

—continued

Q. November and December. The letter is from Mr. Simpson. He is solicitor for the Township, is he not? A. Yes.

Defendant's
Evidence.
No. 20.

10 Q. Mr. Simpson, solicitor for the Township, addressed to Mr. Bry-
ant, who was then the clerk? A. Yes.

Alfred
Broughton,
Re-Cross-
Examination.
31st May,
1932.

Q. He writes on the 20th of November—

MR. ROWELL: I submit the question of whether they were making connection or not with certain people in the Township of Barton in 1920 is not an issue in this action. I have not heard of the matter before. There is nothing raised suggesting any question of that kind.

HIS LORDSHIP: I will receive it subject to objection. I do not at present see the force of it.

20 EXHIBIT 80. Letter, Nov. 20, 1920, T. H. Simpson to Township
Clerk. Letter Dec. 3, 1920, T. H. Simpson to Township Clerk. Letter,
Dec. 11, 1920, R. H. Davies to Lee, Simpson & McCallum. Letter, Dec.
13, 1920, T. H. Simpson to Township Clerk.

(Mr. Tilley reads Exhibit 80).

MR. TILLEY: Q. Do you know what was done following that cor-
respondence? A. No, sir. I did not become a member of the Council
until 1922. I can speak from that time.

MR. ROWELL: Subject to my objection that this is not relevant, my
Lord, just a word.

By MR. ROWELL:

30 Q. You came to the Council in 1922? A. Yes.

Q. There is no record of any further action in reference to that
matter in your minutes? A. Which matter have you in mind?

Q. The one you have just referred to, the letter from the company.
A. As to supplying service?

Q. Yes. A. No.

Q. No further record? A. No.

Q. The company has been supplying service since in the Township
of Barton? A. Now the area in the city, yes.

Defendant's
Evidence.
No. 20.
Alfred
Broughton,
Re-Exami-
nation.
31st May,
1932.

By MR. TILLEY:

40 Q. Are they supplying in the Township now? A. That is, area
that is still in the confines of the Township of Barton, yes.

HIS LORDSHIP: Q. Are the services still in the Township of Bar-
ton? A. Yes, my Lord.

Defendant's
Evidence.
No. 20.
Alfred
Broughton,
Re-Cross-
Examination.
31st May,
1932.

In the
Supreme Court
of Ontario

Defendant's
Evidence.
No. 20.
Alfred
Broughton,
Re-Cross-
Examination.
31st May,
1932.

—continued

MR. TILLEY: Q. Are the services just along the main lines? A. Yes.

Q. The main pipes. They have not extended beyond that in the Township? A. No, not speaking of Mt. Hamilton.

Q. I don't follow what you mean by that? A. The feeder lines come through the Township of Barton from Binbrook from the wells, you see, and we have some of our consumers resident in the Township of Barton who are getting service from that source.

Q. Along that line? A. Yes. We also have quite a settled colony in Bartonville outside of the city limits. They may be getting similar service to that area that is now in the city, that was in Barton till 1928. That is a residential section. 10

Q. Is it in the Township still? A. The Bartonville section is still in the Township.

Q. And do they get service? A. Yes.

Q. They get service at Bartonville? A. Yes.

By MR. ROWELL:

Q. They always got service on the mountain till the mountain passed into the city, and they are still being served in the city? A. No change.

Q. They were being served by the company, and they are being served now in the city, the top of James Street? A. South into the Township? 20

Q. Yes. A. Same condition exists.

Q. There was quite a settlement down there at the top of James Street. Is that correct? There was quite a settlement at the top of James Street? A. Oh, yes, seven thousand people in that area.

Q. That was being served by the company under its Township of Barton franchise?

MR. TILLEY: Now—

HIS LORDSHIP: Q. Was it served by the company? A. Approximately from 1916 until we went into the city in 1929—approximately from 1916. 30

MR. ROWELL: Q. Why do you say 1916? A. Because I got it in myself about that date.

Q. Do you say other residents did not have it in before that? A. No, I didn't say that.

Q. You are only speaking of the time you got it yourself? A. Yes, but I lived in the populated section where we signed petitions at that time to have the gas put in.

Q. And it was put in for those who asked it? A. Yes. 40

Defendant's
Evidence.
No. 21.
Ernest
Stammers,
Examination.
31st May,
1932.

ERNEST STAMMERS, Sworn. Examined by MR. ROWELL:

Q. Mr. Stammers, what is your position with the Dominion Natural Gas Company? A. Foreman of the Dominion Natural Gas Company.

Q. For how long have you held that position? A. Since 1919.

Q. When did you enter the employ of the company? A. 1913, the Dominion Natural Gas Company.

Q. What was your position from 1913 up to 1916? A. Foreman of Dominion Natural Gas Company.

Q. So you have been with the company since 1913 in an active way? A. Yes.

Q. Can you tell me where the company was supplying gas when you became foreman in 1913? A. On the top of the mountain, and
10 down in this section of the city east of Sherman.

Q. Down in the city east of Sherman Avenue? A. Yes.

Q. Any other points? A. Along the main line in the country.

Q. In Bartonville? A. Yes.

HIS LORDSHIP: Q. That is, I suppose, east of Sherman Avenue? A. Yes.

MR. ROWELL: Q. At that time we have got in evidence that there was an agreement in force made between the Dominion Company and the United Company in 1905 for delivery of gas to them? A. That is before
20 my time.

Q. Was the Dominion Company supplying gas to the United Company when you became an employee of the Dominion Company? A. The city limits?

Q. Yes. A. Yes, sir.

Q. Can you tell us where the Dominion Company was making delivery to the United Company of the gas which it was supplying at that time? A. On Gage Avenue.

Q. What did your duties consist of from 1913 on? A. The same as before, foreman.

Q. Looking after construction work? A. Yes, sir.

Q. Can you tell me if any new lines were laid between 1913 and
30 1922? A. New lines were laid on the mountain between 1913 and 1922.

Q. In what year? A. I would say about 1914.

Q. And any further lines laid that you recall between those dates? A. Not to my knowledge.

Q. Then during that period were new services put in so as to serve additional customers from the existing lines? A. Yes, sir.

Q. Where were the new services put in during that period. A. On the mountain mostly.

Q. To supply new customers? A. Yes.

Q. In 1923 was there any change in procedure? A. Yes, sir.

Q. What was the change in 1923? A. I laid a main in the city on Gage Avenue—started on Gage Avenue, laid it at Gage Avenue and Maple, laid on Maple.

HIS LORDSHIP: Q. To Springer Street? A. Yes, along Maple to Springer, down Springer to Main, Main to Fairholt.

MR. ROWELL: Q. The permits are in, I believe, that you got from the city for laying those lines? A. Yes.

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 21.

Ernest
Stammers,
Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 21.
Ernest
Stammers,
Examination.
31st May,
1932.

—continued

Q. Were they all laid under the supervision of the city's inspector?
A. Yes.

HIS LORDSHIP: Q. Did you have the plans and sketches from the City Engineer, or do you remember? A. I don't remember.

Q. As to distances and depths? A. We had those on the city permit. Give you the distance and the depth, laid on the inspector's instruction.

MR. ROWELL: Q. Did you file a plan or sketch with the City Engineer, showing the location? A. I didn't. I don't know whether the company did or not. 10

HIS LORDSHIP: The City Engineer said that the engineer of the city did certain work as part of his duty as City Engineer, and then that the inspector saw it was carried out according to his plans, that the inspector was paid by the company? A. Yes, sir.

MR. ROWELL: Q. Will you just tell us the developments after 1923? You have told us this work that was done in 1923. Will you just continue on please? A. We laid a line on Gage Avenue. I am not sure of the date in 1924, a four-inch main, corner of Gage and Main or practically, from the meter station at Gage and Main back to Maple Avenue, along Maple Avenue on the south side to Lorne Avenue. 20

Q. Just show us on the plan so we can follow it. (Producing a plan).

HIS LORDSHIP: This is a new plan?

MR. ROWELL: This will be Exhibit 81. We will have it identified later.

EXHIBIT 81. Defendants' Plan showing annexed areas, lines, etc.

MR. ROWELL: Q. Will you tell us where on this plan, Exhibit 81, these mains were laid in 1923? A. Here is Gage Avenue; along Maple to Springer, down Springer from here to this station on this side of Main—down Springer to Main, and down Main to Fairholt. In 1924 we laid 30 these pipes down here.

Q. So both 1923 and 1924 were in East Hamilton east of Sherman Avenue, and not many blocks away from Sherman Avenue? A. That is right.

Q. How about 1925; or did you lay any in 1925, do you remember; or have you anything from which you can refresh your memory? A. No.

Q. Then in 1926? A. I think I laid on the mountain in 1926.

Q. Where is the mountain shown on this plan? The yellow part, is it? A. On Concession Street—laid on Concession Street west of 40 Wellington Street, down to Summit Avenue.

Q. Then anything further in 1926? A. On Summit, on Wentworth and Fifth Avenue and Hamilton Avenue. I started west on Wellington Street, and laid east on Concession Street to Summit Avenue a six-inch line across the street on Summit Avenue. And laid down Concession Street on the north side to Poplar Avenue; Poplar Avenue one side, and Viewpoint both sides, and Hamilton Avenue both sides, and

Summit Avenue one side, across the street to two houses; and Mountain Park Avenue from Poplar Avenue up to the church on Mountain Park Avenue.

Q. Those pipes were laid in 1926? A. Yes.

Q. In 1927, where did you lay pipes that year? On Balsam Avenue.

Q. Where is that—east of Sherman? A. Yes.

HIS LORDSHIP: Mr. Rowell, is this just duplicating the evidence as to the issue of the permits, doing the work which the permits authorized?

MR. ROWELL: Yes, it is only doing the work the permits authorized.

10 HIS LORDSHIP: There is some evidence already that that work was done. I do not know that it is seriously questioned that the work was in point of fact done.

MR. TILLEY: We have made up our plans on the theory that it was done. We coloured it as we found the permit for it. I assumed that our plans showed it accurately. I think my friend agreed to them.

MR. ROWELL: I will not ask in detail then.

Q. In 1927? A. Balsam, east of Sherman Avenue.

Q. In what district was the 1928 work? A. East of Sherman Ave.

Q. And the 1929? A. All east of Sherman Avenue.

20 Q. And the 1930? A. All east of Sherman Avenue. All the lines we laid were east of Sherman Avenue.

HIS LORDSHIP: There is no contention I understand that west of Sherman Avenue this company laid any at all. The work was confined entirely to the portion of the city formerly in the Township of Barton. Sherman Avenue is the original boundary of the city.

MR. TILLEY: From 1891, my Lord.

MR. ROWELL: Except on the mountain, because the mountain runs to the south of the city.

30 HIS LORDSHIP: The eastern section of the city, the mountain and the west end are separate sections.

MR. ROWELL: Q. Then the Chedoke section, that is in the west end? A. Yes.

Q. Work was done there? A. Yes.

Q. During all these years in addition to laying these mains, were there new connections established? A. Yes.

Q. Where during this period up to 1924 was the Dominion Company delivering its gas to the United? At what points? A. At Gage Avenue.

40 Q. At what is now referred to as East Hamilton, and where else? A. At Wellington Street on the mountain, Dundurn Street in the west end.

CROSS-EXAMINED by MR. TILLEY:

Q. Now, Mr. Stammers, from 1913 until 1922 there was very little if any work done by way of extending mains? A. No, sir.

Q. Was there any at all? A. Some on the mountain, yes.

Q. How much? A. A lot.

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 21.
Ernest
Stammers,
Examination.
31st May,
1932.

—continued

Defendant's
Evidence.
No. 21.
Ernest
Stammers,
Cross-
Examination.
31st May,
1932.

In the
Supreme Court
of Ontario

—
Defendant's
Evidence.
No. 21.
Ernest
Stammers,
Cross-
Examination.
31st May,
1932.

—continued

- Q. Between 1913 and 1922? A. Yes.
- Q. In the township or in the city? A. In the Township of Barton.
- Q. In an area that was still in the Township of Barton? A. Yes.
- Q. Between 1913 and 1922 you did not construct anything in the City of Hamilton, did you? A. No, sir.
- Q. When did you first start constructing any mains in the City of Hamilton? A. In 1923.
- Q. And how much did you do in 1923? A. A line on Maple—up Maple to Springer Avenue.
- Q. What was the distance of it? How many consumers there? 10
Let us have some idea of what it meant in magnitude? A. I don't know how many consumers we had in that section.
- Q. Did they have 100 in the whole area? A. They have that at the office on the records. I have not got that.
- Q. Was that a part where the United had its lines or mains? A. Had some at that time I believe.
- Q. On that street? A. I think so at that time; I am not sure.
- Q. That is 1923. And then 1924, how much did you build in the City of Hamilton? A. The line on Gage Avenue, from the regulator station at Gage Avenue, along Gage to Maple. 20
- Q. Can you give the distance roughly? A. The company has the distance; I have not.
- Q. Isn't that just one block? A. I would say 600 feet on Gage Avenue. The blocks would run around 400 feet on Maple Avenue where there is a block.
- Q. When did the company first commence extending its lines in the City of Hamilton with energy and enterprise? When did it first commence; 1927, 1928 or 1926, or when? A. Started in 1924, or 1927—more in 1927 and 1928.
- Q. And a great deal more in 1928? A. More in 1929. 30
- Q. Each year there was more done than in the year before? A. Yes, sir.
- Q. The company became more active? A. Yes.
- Q. The company became more active each year. Is that right? A. Yes, sir.
- Q. And the big year was 1929? A. Yes, sir.
- Q. Can you make any comparison? Was 1929 half as large again as 1928? A. I would say so.
- Q. 1928 half as large again as 1927, or double 1927? 1927 was comparatively small, wasn't it? A. 1928 was a pretty good year. 40
- Q. That is what the United thought. And then in 1928 you were building right along on streets where the United Company had its mains already? A. We didn't know that for sure.
- Q. What do you mean by that? You could have found out. A. Where could we find out?
- Q. Couldn't you find out? A. We went to the city and the city didn't know for sure whether they had these lines on the street or not.

Q. Did you ask them? A. Yes.

Q. When did you ask them? A. Asked at the City Hall.

Q. Did you do it? A. No, I didn't do it. Mr. Sieger, I think done it.

Q. I thought in 1928 you were actually engaged in the enterprise of taking business away from them, taking over their meters. Wasn't that what you were doing? A. We were laying mains at the same time, and putting on services.

Q. I mean in 1928 is when you started after their customers. A. I don't know whether 1927.

Q. In 1927 did you duplicate their lines on the same street and take over their customers. A. No, sir.

Q. Are you sure about that? A. To the best of my knowledge, they had their lines on the streets they done in 1927.

Q. Was that so as to 1926 then, or did that start in 1927? A. In 1926 we laid on the mountain. They had lines, Summit Avenue and Mountain Avenue.

Q. Was that in the City of Hamilton? A. At that time, yes.

Q. That was then in the City of Hamilton. You became very active in 1928. That would be the fact, wouldn't it, as compared with any previous year? That is right, isn't it? Well, is that right? A. We done a lot of work in 1928. I am not prepared to say just how much.

Q. Can you give an estimate of the number of customers the company had in 1925, your company? A. No, sir.

Q. Down to 1925 it was supplying gas to the United wasn't it? A. 1925 or 1924, I am not sure which.

Q. I am told it was the 26th of March, 1925, but you cannot speak of that accurately? A. No.

Q. When was it that you commenced, if you did commence, serving customers, using the United Company's pipes to do it with? When did you start that? A. I can't swear to that.

Q. Well, their service pipes. When you got a customer to leave the United you used the United pipe to serve them with, didn't you? A. Not to my knowledge. We used the consumer's pipe.

Q. And you would cut it off at the property line, and put yours from the property line into the house. Is that it? A. Not our pipe. We would use the consumer's pipe.

HIS LORDSHIP: Q. It would end at the property line? A. Yes.

MR. TILLEY: Q. Whose pipe was it up to the property line? A. The United gas to the property line, the United Gas and Fuel Company's to the property line.

Q. Did you use their lines? A. No, sir.

Q. Not at all? A. No, sir.

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.

No. 21.

Ernest
Stammers,
Cross-
Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Examination.
31st May,
1932.

CHARLES M. SIEGER, Sworn. Examined by MR. ROWELL:

Q. Mr. Sieger, what is your position with the Defendant Company?

A. General Manager here.

Q. For how long have you held that position? A. Since 1926.

Q. The company gets its supply of natural gas from what fields?

A. From the Haldimand County fields, and by purchase from the Southern Ontario Gas Company, which gets its supply in the Tilbury fields.

Q. Is this a plan showing the lines of the Dominion Company? (handing plan). A. Yes, sir.

Q. This is a plan issued by the Province of Ontario, and it shows the lines of the Dominion Company in what colour? A. In green. 10

Q. It shows the pipe line through which you get the gas from the Tilbury field, and also the line through which you get it from the Haldimand field? A. Yes, sir.

EXHIBIT 82. Provincial Government map, showing fields and lines.

Q. Now then in the Haldimand field you get that gas from your own wells? A. Yes, sir.

Q. How many wells have you in the Haldimand field? A. We have at present 999 wells. 20

Q. In addition to that, do you purchase gas from independent operators in that district? A. Yes, sir.

Q. How many operators do you purchase gas from? A. From about 25 independent operators, who own about 400 wells.

Q. Then your lines are constructed from the field into Hamilton? A. Yes, sir.

Q. And what proportion of that development is required for the service of Hamilton? A. Pardon, what is that?

Q. What proportion is required for the service you are now giving to Hamilton? A. About 60% of all the gas is required for Hamilton— 30
63.7, about 64% of all the gas required for Hamilton.

Q. You were not here during the period that the Dominion was supplying the United? A. No, sir.

Q. Under that contract. And at the present time your Hamilton customers are such as you have obtained, and as are shown on some of these plans? A. Yes, sir.

Q. Can you tell us about Exhibit 81? What does Exhibit 81 show?

A. First of all, it shows in colours the annexed areas and the dates on which they were annexed, and also it shows in those annexed areas in colours the year, in which was laid lines; for example, in the green section there are some red lines. It shows that green section was annexed 40
at a certain time, and the line was laid in a certain year, shown by the legend below.

Q. The legend below indicates the year that the line was laid? A. Yes.

MR. TILLEY: How does this witness get that?

MR. ROWELL: I am going to ask him.

Q. Are you speaking from personal knowledge? Over what period can you speak from personal knowledge as to when the lines were laid?

A. From the middle of 1926.

Q. Prior to that— A. Prior to that I got the information from the books, and from our job orders and from the city permits.

Q. Does this map then correctly show what you gathered from your records, and the city permits—what is shown in the records and city permits throughout the period? A. Yes, sir.

10 Q. Then from the middle of 1926 you can speak from personal knowledge? A. Yes.

Q. You got a notice from the Board of Control or the City Engineer that you should continue to file your plans and make your applications for permits, and did you continue to do so? A. Yes, sir.

Q. In all cases? A. Yes, sir.

Q. Are you able to estimate the expenditure your company has made applicable to this service which you are rendering to the City of Hamilton? A. You mean in the city? Or what we spent to supply Hamilton.

20 Q. What you have spent to supply Hamilton roughly. I do not want any detail.

MR. TILLEY: I don't know how we are concerned with that, my Lord. That is not a matter we are concerned with here I submit, what they have spent some place else to supply Hamilton. They have been supplying Hamilton with gas indirectly for a long period of time. They were well paid for their gas, and the accounts are square. They had a contract.

HIS LORDSHIP: It will be sufficient to say a very large expenditure was incurred. I suppose it is put on the equitable ground that the city would be estopped as they have acted to their prejudice and spent a lot
30 of money on the assurance of permits and so on.

MR. TILLEY: It is not on the permits quite as I understand. This is going back to the acquisition of the gas field I presume and piping in. As has been shown, the Plaintiff Company had a contract with them from 1905 and I presume they had equipped themselves to supply, and that the contract they made with us was satisfactory.

HIS LORDSHIP: After the original expenditure and installation there were a great many lines laid in the City I suppose—at least, in the portions of Barton now within the city. That entailed a large expenditure. I think it would be sufficient to state that it was a large expenditure. It
40 is not contended, is it, that all the works of the Dominion Gas Company are connected up with Hamilton? They distribute gas elsewhere?

MR. ROWELL: We supply other towns, my Lord, and cities.

Q. In connection with the City of Hamilton itself, in the City of Hamilton itself, the laying of pipes and mains and putting in services to supply customers, have you spent a substantial sum of money? A. Yes.

Q. Over a series of years? A. Yes.

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Examination.
31st May,
1932.

—continued

In the
Supreme Court
of Ontario

Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Examination.
31st May,
1932.

—continued

Q. Amounting—

MR. TILLEY: This will be from the books I suppose.

MR. ROWELL: Q. Can you give a rough estimate within the City of Hamilton? A. Half a million dollars.

Q. Half a million dollars within the City? A. Yes.

Q. To supply natural gas.

HIS LORDSHIP: Q. You are limited entirely to natural gas? A. We are not limited entirely to natural gas.

Q. But you do as a matter of practice; that is the fact? A. Yes.

MR. ROWELL: Q. Then my learned friend has asked questions 10 about where a citizen is a customer of one company and desires to change his service to that of another company, what is the procedure having regard to the position of pipes and mains? A. Well, when a customer wishes to change to our company they sign a meter card. In addition to that they sign a letter which is addressed to the other company, requesting them to disconnect their service and take out their meter within 36 hours. That is sent to the other company, and after 36 hours our service is connected and our meter is installed.

Q. Is that the general— A. That is the general practice.

Q. How are the pipes laid? How is it done? Explain the situation 20 as it exists on the street? A. They have a pipe line on the street, and so do we also. They have a curb box and curb cock on the street, and so do we. When the customer signs for gas they turn off their curb cock, and we cut in on the other side of the curb cock and connect our gas to it.

HIS LORDSHIP: Q. Do you utilize the curb cock in connection with the control of your gas? A. Our own curb cock.

Q. You put in a new one? A. Yes, sir.

MR. ROWELL: Q. And the meter inside the customer's house, whose property is that? A. That is our property.

Q. And the gas pipe running from the house out to connect with the 30 line? A. That is his property.

HIS LORDSHIP: Q. Right out to the main line, or right out to the street? A. Sometimes we make them sign a card first, where they say they own it to the main, and can produce bills where they have been charged for so many feet of pipe to the main.

Q. In some cases they own just to the street line, and others to the main? A. When they do that, we do it differently. Then we have to go out farther.

MR. ROWELL: Q. In all cases you get from the customer the point where his— A. We get a signed slip from the customer, saying he 40 owns out to a certain point.

CROSS-EXAMINED by MR. TILLEY:

Q. You came to the company when? A. About the middle of 1926.

Q. And who was in charge before you? A. Mr. Stammers was the local superintendent, the man who was here before.

Q. You occupy a different position? A. Yes.

Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Cross-
Examination.
31st May,
1932.

Q. Who had your position before? A. There was no position.

Q. Is it the same work but a different title? A. No, we worked under different conditions after 1925.

Q. What different conditions? A. We had a contract with the other company to furnish gas, wholesale gas to them, and after 1925 they refused to take it. So we were left here with a lot of money and lot of line not earning anything. We had to earn some money on it.

Q. You were not here then? A. No, but that is why I was brought here.

10 Q. You were brought in, were you, to get some activity in the enterprise? A. Not necessarily, no. I was brought here to look over and see if we could— We had a franchise here. We wanted to see where we could sell some gas.

Q. Franchise where? A. We had the Barton franchise.

Q. You never had any other franchise for Hamilton? A. No, we had the Barton franchise.

Q. At least so you say.

HIS LORDSHIP: You came here to try to develop it.

MR. TILLEY: Q. To try to develop the Barton franchise. Is that
20 right? A. It was quite well developed before.

Q. To what extent? A. We had quite a few customers.

Q. How many? I mean in Barton. A. That is what year?

HIS LORDSHIP: Q. Prior to your coming? A. In 1926 we had 1496 customers; in Barton we had 1011 customers, and in the city we had 485 customers.

MR. TILLEY: Q. You had 485 customers in areas that had been in Barton, but had been brought into the city? A. That is right.

Q. What time in 1926 was that? A. That is December, 1926.

Q. What had you in December, 1925? A. December, 1925, we had
30 394 just in the City of Hamilton, which is about 100 less, and we had practically the same amount in Barton.

Q. And then December, 1927? A. We had 836.

Q. Have you a statement of this you could give us? A. How do you mean?

Q. A typewritten statement. A. I had it this morning. There was a little bit of mix-up here, and I had to go down at noon and change it. I can give you one.

Q. In 1927? A. We had 836.

Q. And outside? A. Outside we had 1052.

40 Q. Remaining rather constant there? A. Yes.

Q. In 1928? A. In 1928 we had 2880 in the city. Mount Hamilton, 746.

Q. Mount Hamilton? A. Wait a minute. The man that made this up forgot that part of the mountain was annexed.

Q. Were some brought into the city? A. Yes, 1928. That is what mixes this thing up.

Q. I want to get at how many you add to your list of customers in

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Cross-
Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Detendant's
Evidence.
No. 22.
Charles M.
Sieger,
Cross-
Examination.
31st May,
1932.

—continued

1928 in Hamilton. A. Is your question this way; would you want the number of customers added through extension of lines?

Q. Well, divide it? A. In 1928 in the City of Hamilton?

Q. Yes. A. The total number of customers we had at December is 2880.

Q. How many of those were brought in by annexation? A. I would say roughly—I haven't got exactly but pretty nearly, I would say 500.

Q. So you would have probably 2300 as compared with what the December before? A. 836. 10

Q. So you added 1500 customers in 1928 in the area that was in at the beginning of the year? A. Yes.

Q. In 1929? A. In 1929 there was another annexation.

Q. How many came in by annexation? A. About 700.

Q. And what did it stand at the end of the year? A. At the end of the year in the city 5837.

Q. You added how many that year in the area that was there at the beginning of that year? A. From 2880 to 5880 is about 3,000 customers.

Q. In 1930? A. In 1930 we had 8187.

Q. And did any come in by annexation that year, or were they all increased in old localities? A. No annexation, I don't think so. 20

Q. How did it stand in Barton Township apart from the city in December, 1930? A. That left about 80 customers the other side of Fennel Avenue that was not annexed; that is, it was far out on the mountain, left about 80 customers on top of the mountain in Barton.

Q. You brought in practically all your township customers except 80 by annexation? A. Yes, sir.

Q. And then you have indicated these customers, the way they increased. Will you tell me how many customers you took away from the United in 1926? A. That is a very difficult thing to say. 30

Q. I know, but I am asking a very competent man, because you were, I would think, almost imported for this job. They selected a good man for it too, I should think. A. I will tell you why I would say it is difficult; because we installed a lot of lines, and although we took a lot of customers from the other company; on the other hand, we put a new business department in, and had a number of canvassers. We put in a lot of services that were completely electrified. We obtained a lot of customers that were not that we took them away from the other company; we got services in houses that were completely electrified.

Q. You changed them from electricity to gas? A. Yes. 40

Q. I know you will help me as well as you can. How many gas consumers did you take away from the United Company in 1926? A. I would say we took away about 80.

Q. About 80 in 1926? A. Yes, about 80.

Q. Have you got anything to show how many you took in 1925? A. In 1925 we didn't take—

Q. Any? A. We might have down town.

Q. It is insignificant? A. Yes, it is from 402 to 399—no, we lost three that year.

Q. Now then 1927? A. We went from 487 to 836. That is about 350.

Q. 1928? A. That annexation is in there. I would say about 1500.

Q. And 1929? A. Another annexation. I would say about 2500.

Q. About 2500? A. Yes.

Q. 1930? A. About 2,000.

10 Q. 1931? A. Practically none. I wouldn't say—I think we took—as a matter of fact, we took, I think it was 90 customers away from them.

Q. And then you I suppose prepared for this by getting a standard form of notice for them to send to the United Company? A. Yes.

Q. Did you have them printed or typed? A. We had those brought out as a result—we had a Court decision that told us how to make them out.

Q. That is, you had to give notice? A. Yes, sir.

20 Q. Prior to that had you been giving notice? A. I really don't remember.

Q. You don't remember what you did in the early stages? A. We gave them notice, but I don't think we gave them that much time. We just told them we were going to cut them off, cut off these customers.

Q. Who was your guiding man on the law, with regard to your methods of operation?

MR. STAUNTON: Is that any of your affair.

MR. TILLEY: Yes.

Q. Were you consulting solicitors about this? A. I did sometimes.

30 Q. Who? A. I consulted—

MR. ROWELL: Surely, my Lord, that is not evidence.

MR. TILLEY: We are having some equitable doctrine I understand set up here.

HIS LORDSHIP: Does the personnel of the solicitors make any difference?

MR. TILLEY: Q. The regular company solicitors. Would that be a fair way to put it? A. We have several solicitors.

Q. I don't want to pry into it. How many solicitors? A. Well, I can call on about three or four.

40 Q. In fact, it needed some guidance, this company of yours, the last few years? A. No, that is not it, not necessarily that. Some little case I might ask advice on.

Q. You took advice on this situation, didn't you? You took advice before you commenced laying pipes along the same streets that the United had pipes on? A. Not necessarily.

Q. Did you do it, or did you not do it? A. I formed my own opinion mostly.

Q. After discussing it with the legal fraternity, I hope. A. No, I

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Cross-
Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Cross-
Examination.
31st May,
1932.

—continued

worked it out myself, and then probably discussed it with them. I am not so sure.

HIS LORDSHIP: Q. Before any actual work was done, did you have legal advice? A. Oh, yes.

MR. TILLEY: Q. In fact, your General Manager is Mr. Staunton, is he not? A. No, sir.

Q. Doesn't he occupy some such position, or didn't he? A. No, sir.

Q. I thought he had some such title for Canada. A. No, sir.

Q. You took advice before you went ahead and did anything? A. 10
Sometimes.

Q. And when did you decide to parallel the United Company's lines or mains on the same street? When did you decide on that? A. Well, it was done really before I came here.

Q. Was it decided on before you came here, or were you the one who decided on that as a policy? A. No. For years we knew that we could do it.

Q. How did you know it? A. Why, we had the Barton franchise.

Q. When did you decide to put it into execution as a deliberate policy? A. When the United Gas and Fuel Company refused to take 20
our gas, we naturally had to sell this gas, and so we went back to our old franchise.

HIS LORDSHIP: And I suppose got customers wherever you could.

MR. TILLEY: Q. The contracts with you had been completed. The time was up. A. That does not mean anything though. We certainly would not build our plant up and stop it, and have millions of dollars lying around at the end of the contract, and stop. We certainly built this up so in case this fell through we had Barton.

Q. I thought that in 1928 or 1929, about then, you were complaining of a real shortage of gas? A. No, sir. 30

Q. Not at that time? A. No, sir.

Q. You were not here before 1926? A. No, sir.

Q. Didn't you file a statement with the Minister of Mines that you had a shortage of gas? A. No, sir, I did not.

Q. Did you see it? A. No, sir.

Q. You were no party to it? A. No, sir.

Q. And didn't know anything about it? A. No, sir, not that year.

Q. Did you any year? A. Not while I was here.

HIS LORDSHIP: Q. The shortage of gas, if any, was before your arrival here? A. A shortage of gas occurred, could occur almost any 40
time, and for that reason mostly we did not parallel those lines before in some cases.

Q. Was the supply increasing? Were you drilling more wells as time went on? A. As time went on we spent more money.

Q. In drilling more wells? A. Yes, thinking this contract would go on, but knowing if it didn't go on we could fall back on the other franchise.

MR. TILLEY: Q. You knew that the United Gas Company had been required to build coke ovens at big expense by the city?

MR. STAUNTON: They did not build them.

MR. TILLEY: They had to procure them to be built.

MR. STAUNTON: No, they did not.

MR. TILLEY: Q. Did you know about the building of the coke ovens? A. I knew about it.

Q. Under the by-law of the city? A. I didn't know about that, no.

Q. Do you know how much they cost? A. Yes, sir, approximately.

10 Q. How much? A. I would say a plant like that would cost as far as I know a couple of million dollars. That is not as much money as we have spent.

Q. You have said what you spent here for mains. What did you spend in your construction work in 1926? A. In the city?

Q. Yes. About \$11,000.

Q. \$11,000 on construction work? A. Yes.

Q. 1927? A. \$46,000.

Q. 1928? A. \$121,000.

Q. 1929? A. \$169,000.

20 Q. 1930? A. \$150,000.

Q. 1931? A. \$11,000.

Q. When was that spent? What time of the year? A. 1931, that was all through the year.

Q. Doing what? A. We did very, very little extension in 1931.

Q. You were making extensions? A. No.

Q. In 1931, no extensions at all? A. 200 feet.

Q. Where? A. Different localities. Somebody may have wanted—we had one 35 feet here, or 40 feet there.

Q. A comparatively small amount? A. Yes.

30 Q. In that year you gave us the number of customers you took away. Can you tell us whether they were taken before or after April 2nd? A. Before or after?

Q. Yes. A. That is pretty hard. Let me explain this, Mr. Tilley. The \$11,000 would be spent for meters and services, not for extensions or mains. We could take them all year. They spread every month, all through the year.

Q. Can you divide the taking of customers before and after the 2nd of April? Would the bulk of them be after April? A. The bulk of them would be after April.

40 Q. When you did make a change, do you say you would take the meter down and leave it there in the cellar? A. Yes, sir.

Q. And then you used some of their piping? A. No.

Q. Just think it over. You used their piping as I am instructed.

A. Well, let us see. Not that I know of.

Q. Do you say that? A. Yes.

Q. What guarantee did you get that you were not using their pip-

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.

No. 22.
Charles M.
Sieger,
Cross-
Examination.
31st May,
1932.

—continued

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Cross-
Examination.
31st May,
1932.

—continued

ing? A. The peoples' statement that they owned the line from a certain point into the meter.

Q. You took their statement for it? A. They signed for it.

Q. Did you get them to sign for it? A. Yes.

Q. You would present them something to sign, and they would sign, and you would go on on the assumption it was all true? A. Oh, no, it was not as fast as all that.

Q. Those figures you gave me I suppose are the details of what you said amounted to about \$500,000? A. Yes, sir.

Q. If you added those up they would amount to about \$500,000? A. 10
There is a tremendous quantity of money spent before that time in the mountain and different districts—tremendous quantities.

Q. When did you first know—I suppose you knew all the time that the United Company would be complaining that you were trespassing on their preserve? A. No, they didn't complain. They asked an opinion, and I followed it pretty carefully, and the opinion of the City Solicitor as early as 1921 said that we had a right there.

Q. When did you learn that? A. I learned that when I first came here in 1926. It was taken up again in 1926.

Q. How did it come to your knowledge in 1926? A. I requested 20
permission, and I took the permits in to the City Engineer, and he said he would not issue any permits until he got the opinion of the City Solicitor, and the authorizing of the Board of Control, and he would give me no permits till he got that authorization.

Q. When was that? A. I think that was 1926.

Q. Did you see the opinion of the solicitor about it? A. I think it was that time. My mind is pretty hazy whether it was 1926 or 1927.

Q. It was one or the other? A. Yes.

Q. You came the middle of 1926, so it must have been between the middle and the end of 1926 if you saw the Engineer and he refused to 30
give permits some time in 1926? A. No. Those permits in 1926 were procured entirely by Mr. Stammers.

Q. When did you first come into the picture? A. The beginning of 1927.

Q. Did he tell you he would not give them to you? A. He said he would not give them to me till he got complete authorization.

Q. He told you there was doubt about your right? A. No. I asked for a considerable extension, and he said before he would do anything he would get the matter straightened out.

Q. What was the considerable extension you asked for at that time? 40
Was it in any plan that was outlined to the engineer? A. Yes, sir.

Q. Was it in a document? A. It was in a letter and a plan.

Q. Has the letter been read here? A. I believe it has. It is filed here anyhow.

Q. This was quite a large area you were asking for in 1927? A.
Not so big. It was larger than 1926.

Q. It was pretty big according to the notions of people in 1927, and

then your notions grew about what was large from then on. A. No, they were too small in 1927.

Q. You are in the Engineer's office and you are talking to him, about the thing. He says, "I won't do this till I get some authority."

A. Yes.

Q. Then did he show you the solicitor's opinion? A. I believe he did.

Q. Will you tell us whether this is the opinion? You have a copy of it? A. No, I don't think I have.

10 Q. Will you say you have not? A. I don't know whether I have or not.

Q. You have seen it lately, haven't you? A. Yes.

Q. Will you let us have the one you saw? A. I saw the one that Mr. Simpson has.

Q. Will Mr. Simpson give it to us then, the one he saw.

MR. STAUNTON: He saw it in the Engineer's office.

MR. TILLEY: Don't tell him what he saw.

HIS LORDSHIP: Perhaps the witness will be able to identify it.

20 MR. TILLEY: Q. Will you go over Mr. Simpson's file and pick out the one that you saw?

I do object to the witness being told he has not seen what he has told me in the witness box he has seen, when he comes down to look at the papers.

HIS LORDSHIP: Q. The opinion you have seen here today, is that the one you saw in the City Engineer's office? A. I will tell you—as a matter of fact, he had an opinion, he showed me an opinion that was asked for in 1921. And then the City Solicitor said the same opinion referred to that opinion, and he repeated it. It would come out about three years in succession. It was about in 1926 or 1927.

30 MR. TILLEY: Q. Is this the one, a letter to Mr. McFaul signed by Mr. Waddell, May 11, 1927? A. It might be it.

Q. "Re application of Dominion Natural Gas Company for permit "to lay mains in the district annexed 27th September, 1909. Your "letter of the 9th inst. duly received. I enclose copy of By-law No. "533 of the Township of Barton passed on the 26th of October, 1904, "authorizing the Dominion Natural Gas Company to lay gas mains, "supply gas, etc., in certain portions of the Township of Barton. "In 1904 when the said By-law No. 533 of Barton was passed the "lands annexed by order of the Ontario Railway and Municipal "Board, dated the 27th of September, 1909, were in the Township "of Barton. The Municipal Act, Section 33, provides that in case "of annexation, by-laws of the township conferring rights, privi- "leges and franchises (which could not have been lawfully repealed "by the council which passed them) shall remain in force. "Section 1 of By-law No. 533 refers to laying lines and mains on "certain highways in Barton. Section 2 of said by-law provides that "from and after the construction and laying of lines and mains men-

40

*In the
Supreme Court
of Ontario*
—
Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Cross-
Examination.
31st May,
1932.

--continued

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Cross-
Examination.
31st May,
1932.

—continued

“tioned in Section 1, the company shall be at liberty to enter on and
“lay mains on other highways of the Township. To entitle the com-
“pany to lay mains on other highways, the company shall have laid
“all the lines and mains mentioned in Section one of the by-law.
“It would appear that the city has power to give the Dominion Com-
“pany permission to lay mains on streets in said annexed district
“provided the company has carried out the provisions of By-law No.
“533 of Barton. Without doubt the United Gas and Fuel Company
“will object, and as the City Corporation would not desire to have
“the mains of both companies on the same streets I would suggest 10
“that you refer the matter to the Board of Control or the Committee
“of Works.”

Is that the one you read? A. No, it was not as long as that.

Q. It was snappier than that. I would like to get it. A. It is in
the City Engineer's office.

Q. We will have to have him let us see it. Is that the effect of
the letter? A. The effect of the letter is that the City Solicitor says we
have absolute rights in that area.

Q. No, no— A. Not absolute rights, but equal rights.

Q. There is nothing here to that effect, except they can give you 20
permission to lay mains. Isn't this the one you saw? It is right at the
time you were dealing with it, in May, 1927. A. This letter I saw was
dated 1926, I am almost sure. It was shorter than that, but it was to
that effect.

Q. It was to that effect, that the United Company would object? A.
No, they did not have that in.

Q. Are you sure about that? A. Yes.

Q. You knew the United Company would object? A. I didn't
doubt that they would.

HIS LORDSHIP: That is the only opposition that there could be I 30
suppose.

MR. TILLEY: Q. Did you take advice then when that question was
raised that the United Company would object? Did you take advice
then? A. After I saw the opinion of the City Solicitor?

Q. Did you take advice?

HIS LORDSHIP: Legal advice.

MR. TILLEY: Q. Discuss the legal aspect with your solicitor, or
with any officer of the company that was a solicitor? A. I might have
the next day requested permits, I am not too sure.

Q. Did you take advice on your rights at that time when the ques- 40
tion was raised? A. I don't know.

Q. You are serious about that, are you? A. I really don't know.

Q. Had you taken advice before that? A. I did, yes.

Q. On your rights? A. Yes, I certainly went into the franchise
with legal advice, certainly.

Q. Did the Engineer tell you he had taken it up with the Board of

Control? You said he indicated to you he wanted to do so. A. He must have.

Q. You are the one who is giving the evidence. Did he? A. I don't know. He said he was going to do it. I put in the permits and got them, so he must have.

Q. Weren't the permits (applications) in when you went and saw him? A. No, I wrote him a letter in 1927 we were going to do some main extensions.

Q. And it was important work, and you went in to see him about it? A. Yes.

Q. When did you next have any question about it? A. I don't think we had any question about it until about July, 1926, something like that—July or August, 1926.

Q. You came in July, 1926? A. Not 1926, 1929.

Q. But then you had difficulty between those two dates? A. No trouble at all.

Q. Nothing at all? A. Nothing at all.

Q. Did you get your permits right along? A. Yes, sir.

Q. At any rate, when you started this in 1927 you had a discussion with the Engineer, when the question of legal right came up? A. Yes, sir.

Q. He told you he would not do it till he got some authority? A. Yes.

Q. And he told you that there were opinions got? A. He told me he had opinions before, but he was going to get it again.

Q. So you knew there was a legal question that had to be dealt with? A. Oh, undoubtedly.

MR. TILLEY: I would like to identify that letter by the engineer, have the engineer say what letter he had at that time.

HIS LORDSHIP: Is the Engineer here?

MR. TILLEY: I have sent for him. Possibly the witness could stand aside.

WITNESS: I think he has gone to Toronto. He was in a hurry this morning.

MR. TILLEY: Q. Mr. Sieger, I would have thought there could not be any question about the opinion you had, because we have got no trace of any opinion of 1921, but we do have this opinion of 1927. Isn't it a mistake on your part? A. Oh, no, 1921 I got the opinion.

MR. TILLEY: I would like to reserve that as long as I can, your Lordship. I may be able to get it out of the file if there is such a thing.

HIS LORDSHIP: It only bears on the question of good faith anyway.

WITNESS: As a matter of fact, the one in 1926 or 1927 was the exact wording as 1921; in fact, he refers to the 1921, exact wording.

RE-EXAMINED by MR. ROWELL:

Q. Mr. Sieger, my learned friend put the question to you to which you assented, that you knew a legal question was raised. Did you know

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Cross-
Examination.
31st May,
1932.

—continued

Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Re-Exami-
nation.
31st May,
1932.

*In the
Supreme Court
of Ontario*
—
Defendant's
Evidence.
No. 22.
Charles M.
Sieger,
Re-Exami-
nation.
31st May,
1932.

—continued

what was the nature of the legal question raised? A. I didn't know the nature of the legal question, but I knew this, that when you begin to parallel any lines somebody is going to ask a question. I knew that. I knew something was going to happen.

Q. My learned friend has asked you about taking customers from the plaintiffs. Were the plaintiffs engaged in the same efforts? A. Oh, yes.

MR. TILLEY: Would you have him explain what he means by that?

MR. ROWELL: Tell what you mean.

MR. TILLEY: We tried to get them back probably. 10

MR. ROWELL: Q. I mean was the Plaintiff Company engaged in the same effort? A. They did, and still do.

MR. TILLEY: Q. They did and do what? A. Try to get our customers away.

Q. That is, try to get ours back? A. Well, some of ours away.

HIS LORDSHIP: Q. Some that they never had? A. Yes.

MR. ROWELL: Q. What did they do to try to get your customers? A. The same thing as we did, practically the same thing as we did.

Q. How about the price of gas? A. The price of their gas was approximately three times as much as ours at that time. 20

HIS LORDSHIP: I suppose they lowered it to meet you.

MR. TILLEY: No.

MR. ROWELL: Q. How low did they put theirs? A. They gave it away for three months one time.

Q. When was that? A. About 1929, somewhere around 1929.

Q. You have given my learned friend information as to customers taken over. The figures you gave are, 1926, 80; 1927, 350; 1928, 1500; 1929, 2500; 1930, 2,000; and 1931, 90. Are those all former customers of the United Gas Company? A. Of course, the two sets of figures there are total customers. Mr. Tilley asked for the total customers we had. I mean our gain in customers, and how many of those were the United Gas and Fuel customers. 30

Q. Did your company pay the wages of the city inspector on the line at all times? A. Yes.

HIS LORDSHIP: The City Engineer stated that.

MR. ROWELL: Q. Were you assessed by the city for your lines and plant within the city limits? A. Yes.

Q. Have you paid taxes on them throughout? A. Yes.

MR. TILLEY: May I just ask one question?

HIS LORDSHIP: Yes. 40

MR. TILLEY: Q. I did not ask you about the price of gas. Did I understand that the price charged by the United Company was a dollar? A. At that time, per thousand cubic feet.

Q. And when you were starting in the campaign you put it at seventy? A. Seventy-five as it is now. We never changed it.

MR. ROWELL: Q. Was your price ever above seventy-five? A. No, sir.

Q. You have always maintained the same price? A. Yes.

MR. TILLEY: Q. Ever above? What do you mean? In Hamilton? Let us understand it. What is your Barton rate under the franchise? A. There is really no rate now because the rate is set by the Natural Gas Referee.

Q. What is the rate prescribed by the franchise? A. I couldn't tell you, but probably some ridiculous figure like twenty-five cents a thousand. It is in the franchise anyway.

Q. What were you charging in Barton? A. Sixty cents.

10 Q. When? A. We are still charging sixty cents.

Q. At all times sixty cents; is that right? A. Well, we have come up from forty-two to sixty, or whatever that price was.

Q. And then in Hamilton you put in seventy? A. Seventy-five.

MR. STAUNTON: That was for pure gas, and the other was mixed.

WITNESS: No, it was for pure natural gas.

MR. ROWELL: Q. The Dominion Company always sold pure natural gas? A. Yes.

MR. TILLEY: Q. You suggested something about a gas referee. You never had any authority to increase the rate charged in Barton, had 20 you? A. Oh, yes—now, wait a minute, that is before my time. I don't know anything about that.

Q. I am suggesting to you that as far as Barton was concerned it was just a transmission line really through Barton? A. Oh, no.

Q. And very little supplied to customers? A. No. That was a distribution franchise, not a transmission franchise. We had a great many people on the mountain.

Q. You never observed the rate required by the by-law? A. We might have at the time.

Q. You don't know that you ever did? A. No, sir.

30 Q. So far as you know, it has always been higher? A. I wouldn't say that, so far as I know, I don't know.

Q. Might I just ask you what right you would have to charge seventy-five in Hamilton if that was your Barton rate? A. That is the rate set by the city for natural gas in the United Gas and Fuel Company franchise.

Q. I am talking about your Barton franchise. What right have you to put in a seventy-five cent rate under that franchise? A. As I say, that is before my time.

40 Q. In Hamilton when you started after these customers, what right had you? A. We had customers in the city that were paying seventy-five cents long before I came here.

Q. And you know of no authority for charging that? A. I don't know anything about that.

MR. ROWELL: That is all.

MR. TILLEY: I may want to get you back if I can get the file.

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 22.

Charles M.
Sieger,
Re-Exami-
nation.
31st May,
1932.

—continued

In the
Supreme Court
of Ontario

Defendant's
Evidence.
No. 23.

John
Peebles,
Examination.
31st May,
1932.

JOHN PEEBLES, Sworn. Examined by MR. ROWELL:

Q. Mr. Peebles, you are Mayor of the City of Hamilton? A. Yes.

Q. And were Mayor in December, 1931? A. Yes.

Q. And Mayor at the time this present action was commenced? A.

I think so, yes.

Q. Is this a letter you wrote on December 17, 1931, to Mr. Staunton in reference to this action? (Handing letter to witness). A. Yes, that is correct.

Q. And the statement contained in the letter is correct? A. Cor-
rect. 10

MR. TILLEY: Subject to my objection.

MR. ROWELL: "In reply to your favour, I have to advise that the
"only intimation I have of any action by the United Gas and Fuel
"Company and the City against the Dominion Gas Company is that
"which I have noticed in reading the newspapers. I have handed
"your letter to Mr. Polson, the City Solicitor, and have requested him
"to reply to you."

HIS LORDSHIP: He states the fact. You cannot put in the letter.

MR. ROWELL: Q. You had no notice of the action till you saw it
in the paper? A. No. 20

Q. Do you know if Mr. Polson did reply? A. I didn't see his
reply, I don't think. I suppose he replied.

Q. Did you see Mr. Polson yourself and request him to reply? A.
I handed over the letter I received from Mr. Staunton.

Q. Did you request him to reply? A. Yes, requested him to reply.

Q. Did you discuss the matter with the City Solicitor? A. I don't
remember discussing it. I might have, but I am not sure.

Q. Do you recognize that as his signature? (handing letter to wit-
ness). A. Oh, yes, that is his signature.

Q. Are you familiar with the contents of the letter? A. That is a 30
quotation from the agreement made with the United Gas and Fuel Com-
pany.

Q. Do you know of any authority other than that agreement?

MR. TILLEY: I do submit this is very improper. It does not help
the trial of the action.

HIS LORDSHIP: As I understand, you rely on the agreement and the
Act validating it to authorize you to bring the action in the name of the
city.

MR. TILLEY: The City of Hamilton is a party plaintiff.

HIS LORDSHIP: Surely, there is some way of showing they are not, 40
that they are improperly added, or alleged to be, that they are not asking
anything, and never brought the action.

MR. TILLEY: But they did bring the action.

HIS LORDSHIP: Oh, no. Somebody issued a writ on their behalf.
Surely, it is open at some time to show that they never authorized the
action.

MR. TILLEY: That should be a motion to set is aside before the trial. There is plenty of authority for that.

HIS LORDSHIP: I will receive it subject to objection. I think perhaps the proper way would be to move to set it aside.

MR. TILLEY: Chief Justice Rose struck such a plea out, would not permit it to remain in the record.

HIS LORDSHIP: Then it is not in issue here. I will receive it because this case will go a long way, and perhaps some other Court may take a different view of it.

10 MR. ROWELL: Q. Who is the City Solicitor? A. Mr. Polson.

Q. The solicitors on the record in this action are Messrs. Kerr, McNevin & Kerr of Chatham. Have they ever acted as City Solicitors?

MR. TILLEY: Is that proper? They are acting as City Solicitors in this litigation.

HIS LORDSHIP: Q. Were they ever authorized to act as City Solicitors? A. By the city?

Q. Yes. A. Not that I know.

MR. TILLEY: Your Lordship is letting that in. I cannot object further.

20 HIS LORDSHIP: I will receive it subject to objection. It may be held in some other Court that the city have no right to be in the action.

MR. ROWELL: We have subpoenaed the City Solicitor.

WITNESS: He has been ill.

MR. ROWELL: I wanted to prove this letter he wrote to us in connection with the matter.

WITNESS: There is no question it is his letter.

HIS LORDSHIP: His letter is not evidence.

MR. ROWELL: I want to prove what he says in the letter, my Lord.

30 HIS LORDSHIP: A couple of witnesses have said that the city never gave any authority.

MR. ROWELL: Would not the letter from the City Solicitor be admissible from this point of view? This is an official communication to counsel for the defendant in reference to the institution of the action.

HIS LORDSHIP: Suppose you examined the City Solicitor under oath, his examination would not be evidence.

MR. ROWELL: It would only be evidence as to the ground on which the city is a party.

40 HIS LORDSHIP: A statement made by an official even under oath is not evidence against the city unless it is some matter that he is clearly authorized to state.

MR. ROWELL: I thought, my Lord, that when the Mayor in his official capacity sent the letter received from counsel for the defendant to the City Solicitor and requested him to reply—

HIS LORDSHIP: He could not go beyond the authority that the Mayor gave him, and the Mayor says no authority that he knows of was ever given. The City Solicitor could not go beyond that, and if he said contrary to that—

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 23.

John
Peebles,
Examination.
31st May,
1932.

--continued

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 23.

John
Peebles,
Examination.
31st May,
1932.

—continued

MR. ROWELL: But he has not.

HIS LORDSHIP: He could not abridge it. The real thing to determine, if it is proper to be determined, is whether this action is brought at the instance of, or on the instructions of, the city.

MR. TILLEY: I thought we had settled that point at the opening. I would have liked to cite authority for the proposition.

HIS LORDSHIP: You will have the opportunity to cite authority. I am not ruling at present, but I am going to hear the evidence.

CROSS-EXAMINED by MR. TILLEY:

Q. Reference has been made to a letter that is said to be dated 10 December 17, 1931. Did the matter not afterwards come up before the Board of Control? A. Which matter?

Q. The question of this litigation? A. The commencement of it?

Q. Yes, and whether the action should go on? A. I have no recollection of it.

Q. I am told that it came up formally before the Board of Control, and the Board of Control decided not to interfere? A. I think I recollect its being mentioned, and the Board of Control was of opinion it was a matter between the two gas companies and we would not take any part in it. That is my recollection.

Q. This is what is set out in your minutes. Possibly you can verify it for me.

“The City Solicitor wrote re United Gas and Fuel Company, the City and Dominion Natural Gas Company, respecting the action brought against the Dominion Natural Gas Company by the United Gas and Fuel Company, and the companies’ rights under the by-law, submitting a copy of the by-law, and advising that the City had no right to interfere in this action now pending in the Courts, and advising against the City’s name being struck out of the writ.”

A. I think that was brought up by a member of the Board of Control, brought up the question of the City’s name being connected with the litigation, and asking if the city would be responsible for any of the expenditures, especially in connection with that law firm, the other gentleman mentioned, Kerr somebody, and the City Solicitor was asked for his opinion, and I think that letter was in reply to that question.

Q. This is a minute of the Board of Control dated December 28, 1931? A. It refers to a letter from the City Solicitor to the Board.

Q. And on that reply the Board of Control— A. Took no action.

Q. Took no further action. Would that be your recollection? A. That is my recollection.

Q. Decided not to interfere? A. Yes.

MR. ROWELL: My Lord, that is the defence. If your Lordship is going to rise at six, there was one witness I wanted to see. I do not think I will be calling another.

HIS LORDSHIP: I thought possibly we could finish the evidence before adjournment. You have surely got through all the long witnesses.

Defendant's
Evidence.
No. 23.

John
Peebles,
Cross-
Examination.
31st May,
1932.

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MR. ROWELL: I think the result will probably be that I will not call any further evidence.

HIS LORDSHIP: You are going to call some evidence in reply I suppose, Mr. Tilley?

MR. TILLEY: I do not know that I am. Could not my friend decide now? What is delaying the decision?

MR. ROWELL: I want to ascertain whether I can find certain facts from a certain witness. I have not had a chance to have a talk with him.

(The Court then took a short recess.)

10 MR. ROWELL: That is the defence, my Lord. The Secretary of the Board of Control was to turn up another minute for us. If he produces that, I would like to have it put in. It would only be a minute from the book.

HIS LORDSHIP: With reference to what?

MR. ROWELL: With reference to whether the question of the franchise or permits for the Dominion Company had come before the Board of Control earlier than the dates he mentioned here. He was going to look back to see.

HIS LORDSHIP: Reply?

20 MR. TILLEY: My Lord, I want to, if I may, call the Engineer or his assistant if he is not here, and I am afraid they have gone now, to see whether there is any opinion that was shown to the witness.

HIS LORDSHIP: Do you consider that important?

MR. TILLEY: I do not consider it of the essence of things.

HIS LORDSHIP: I cannot see it, except on the question of whether the Defendant Company acted in good faith or not. After all, it turns on what their legal rights are.

MR. TILLEY: I think so. I think I will not call any reply.

Court adjourned at 6.05 p.m. until 10 a.m.

30 June 1st, 1932, on resuming at 10 a.m.

MR. ROWELL: Before my learned friend commences his argument, there is one point in the legend in this Exhibit 81 that did not appear to me on examining it this morning as clear as it should be. Perhaps I should show it to my learned friend.

HIS LORDSHIP: It can be spoken to again.

MR. TILLEY: I do not know that we will be able to check it up. My friend wants to say something later on about the legend that is on it.

40 MR. ROWELL: It is just to make clear what the legend applies to, my Lord. In a plan put in by my learned friend he showed the subdivisions made from time to time in the city with streets added. He did not show the dates of the different sub-divisions.

HIS LORDSHIP: The time that the plans were registered showing new streets—is it at all important? Isn't it the large question whether this annexed territory, no matter how it is divided—

*In the
Supreme Court
of Ontario*

—
Defendant's
Evidence.
No. 23.

John
Peebles,
Cross-
Examination.
31st May,
1932.

—*continue.*

Defendant's
Evidence.
No. 24.
Discussion.
1st June,
1932.

*In the
Supreme Court
of Ontario*

Defendant's
Evidence.
No. 24.
Discussion.
1st June,
1932.

—continued

MR. ROWELL: I think it is the larger question, but if anything turns on that we have them all here on the plan.

HIS LORDSHIP: I cannot see how that affects it. Of course, every possible piece of information should be before the Court. It does not strike me it makes one particle of difference.

MR. ROWELL: It is on the plan, the date of each sub-division.

HIS LORDSHIP: Well, have that checked up too.

MR. TILLEY: That will take some time.

HIS LORDSHIP: Is that from the registry office?

MR. STAUNTON: The plan is not but the dates are taken from the 10 registry office.

MR. TILLEY: We have shown on this plan, as I understand my friend, streets taken from plans that are registered, and the idea is to put on the dates of the plans that are registered. It will be quite a long operation. I do not think your Lordship will determine as to any one particular street.

HIS LORDSHIP: No. If they had the right in the annexed territory, I do not think it could either be increased or decreased by the fact that there were new streets put on afterwards.

MR. ROWELL: That is our view, my Lord, of the situation, that our 20 rights exist there, and when the streets are opened is not material, but lest the Court should take a different view, we have the dates on which each plan is registered.

HIS LORDSHIP: Well, supply the information if you can. That can be put in again at any time. I will give them the right to put it in if you can agree. Perhaps your engineer could check it over, Mr. Tilley. Mr. Tyrrell will be familiar with that.

MR. TILLEY: Yes.

ARGUMENT.

At the conclusion of the argument: 40

MR. ROWELL: I just want to clear up about those plans, exhibits 81 and 82.

MR. TILLEY: We have had exhibit 81 presented to us. We have been asked if we could check it. We cannot check it. There is this fact, that certain mains were laid down prior to 1922, but according to this plan, one would infer from it that the pipes were built in the specified streets that are mentioned in the by-law. We cannot agree to that. We do not believe they were built. And then there are others that we cannot tell about. My friend's clients have not their permits, if they got any for any of them, and we cannot help them. 30

MR. ROWELL: I have not asked my learned friend to agree. What I asked my learned friend was—I said the legend did not appear quite clear and I wanted an understanding there should be no misunderstanding as to the meaning of the legend on the plan, and if there was any misunderstanding, I wanted to clear that up. If there is any objection to

Defendant's
Evidence.
No. 25.
Discussion
after
Argument.
1st June,
1932.

it, I would like to have it cleared by the witness. The legend, "Map of gas mains laid by Dominion Natural Gas; lines laid 1914 to 1922 inclusive in black." My Lord, the black lines are of two sorts; one straight black line, and the other black and straight in checks or blocks. My instructions are that both classes of black are intended to be covered by this legend. It is not clear as I come to examine the map. That is the point I want. The one dotted is high pressure and the other is low pressure. They are all black. I do not want any question to be raised hereafter that because they are dotted black, that therefore they are not covered
 10 by the legend.

MR. TILLEY: My friends have put in a plan. I do not understand any witness has sworn to its accuracy.

MR. ROWELL: Mr. Sieger said the lines were shown in black and the date on which they were put in.

MR. TILLEY: I do not understand there is any evidence showing that map is accurate.

HIS LORDSHIP: I cannot understand why that is at all important. I do not think any part of the case turns on that at all. However, I may be wrong. The evidence is in as to the black line. Now it is stated that
 20 the black line and dotted black line are in the same category except that one represents the high pressure and the other the low pressure mains.

MR. ROWELL: That will appear on the notes.

MR. WALSH: It should appear also on the notes that in that map, the annexation to include Sherman Avenue, it does not agree with our maps.

MR. TILLEY: No person has said your map is accurate.

MR. WALSH: We say the annexation from Sherman to Depew Street is wrong.

Judgment reserved.

*In the
 Supreme Court
 of Ontario*
 —
 Defendant's
 Evidence.
 No. 25.
 Discussion
 after
 Argument.
 1st June,
 1932.

—continued

Certified,

H. O. TAYLOR,

Official Reporter, S.C.O.

In the
Supreme Court
of Ontario

No. 26.
Reasons for
Judgment of
Wright, J.,
8th July,
1932.

No. 26.
Reasons for Judgment of Wright, J.

<p>S. C. O. UNITED GAS AND FUEL COMPANY OF HAMILTON, LIMITED, AND THE CORPORATION OF THE CITY OF HAMILTON v. DOMINION NATURAL GAS COMPANY LIMITED.</p>	}	<p>Copy of Reasons for Judgment of Wright, J., delivered July 8th, 1932. W. N. TILLEY., K.C., AND J. A. MCNEVIN, K.C., <i>for Plaintiffs.</i> N. W. ROWELL, K.C., GEO. LYNCH-STAUNTON, K.C., AND 10 T. H. SIMPSON, K.C., <i>for Defendant.</i></p>
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Both the plaintiff and defendant companies are engaged in supplying gas to the inhabitants of the City of Hamilton and elsewhere and the controversy between them concerns the right of the defendant company to continue to supply gas in the said city or at least in certain portions thereof as defined hereafter.

The plaintiffs claim:

A. A declaration that the defendant company is wrongfully maintaining its mains in the streets, etc., in the City of Hamilton and wrongfully supplying gas to the inhabitants of the said city. 20

B. An injunction restraining the defendant from continuing to use the said streets and from continuing to supply gas to the inhabitants of that city.

C. A mandatory order requiring the defendant company to remove its mains and other property from the streets, etc., in the City of Hamilton.

D. Damages.

The plaintiffs base their claim on the franchise conferred on the plaintiff company by an agreement with the City of Hamilton dated March 24th, 1931, which was duly confirmed by the Legislature of the Province of Ontario by The City of Hamilton Act, 1931, 21 Geo. V., ch. 100, sec. 4. 30

This agreement by clause 1 thereof confers upon the said company an exclusive franchise over a period of ten years from the date thereof to conduct, distribute and supply and sell gas in the City of Hamilton and for such purposes to enter upon the streets, etc., to lay mains, etc.

It is important here to set out the exception to this clause. The clause so far as affects the defendant, reads as follows: "Except as to and to the extent of any existing rights and privileges that may now be held by the Dominion Natural Gas Co. Ltd. under By-law No. 533 of the Township of Barton and the agreement entered into pursuant to the said by-law, etc." 40

By clause 2 of the agreement it is provided that the City of Hamilton should not during the said period for ten years grant any rights,

licenses, privileges or franchises to any other company, to conduct, distribute, supply or sell gas within the said limits of the City Corporation as from time to time existing during the said period and further provides that in case any company who without due license invade or violate the rights granted to the plaintiff company, the said plaintiff company should have the right to take such action in any court of competent jurisdiction to prevent the other offending company from invading the rights of the plaintiff company and further provides that all the rights of the said corporation in the premises are assigned to the company.

10 Sub-section 2 of section 4 of the validating statute provides that the plaintiff company shall have and may exercise all the rights conferred by clause 2 of the agreement in the same manner and to the same extent as if such rights were specifically set forth in and granted by the Act and all such action may be taken by the said company in its own name or in the name of the said corporation.

The defendant contends that under the said By-law No. 533 of the Township of Barton it has franchise rights to construct and maintain all necessary and incidental works on the highways which were within the Township of Barton at the date of the passing of the said By-law on the
20 19th of November, 1904, and on all other streets and highways established in the districts subsequently annexed to the City of Hamilton, whether before or after annexation of same, and to supply gas to the inhabitants of such districts.

By-law 533 of the Township of Barton conferred upon the defendant company the rights to enter upon certain highways specifically set out in clause 1 thereof and to dig trenches and lay mains and operate the same for the transportation and supply of manufactured or natural gas in and through the said Township of Barton, etc.

30 Clause 2 further provided that from and after the construction and laying of the pipes on the main line and branches set out in clause 1, but not before the company should be at liberty to enter upon any and all other highways in the Township of Barton and to dig trenches, etc.

Clause 4 of the agreement provided that no excavation in any of the said highways should be made unless a permit therefor was first obtained from the township council and that all such work should be done under the supervision and to the satisfaction of the township council.

Clause 5 provided that the location of all pipes and works on the highways should be subject to the direction and approval of the township council.

40 Clause 6 contained a provision as to the commencement of the work by the defendant and a further provision that the whole of the lines and trenches mentioned in the first paragraph of the by-law should be constructed before the company should be at liberty to convey gas through or use any part thereof.

The by-law contained other provisions which fix the price to be charged by the defendant company for gas and also provided that the

*In the
Supreme Court
of Ontario*

No. 26.
Reasons for
Judgment of
Wright, J.,
8th July,
1932.

—continued

*In the
Supreme Court
of Ontario*

No. 26.
Reasons for
Judgment of
Wright, J.,
8th July,
1932.

—continued

defendant company should supply gas to residents of the Township of Barton.

Under the provisions of this by-law the defendant company constructed what extensive works for the distribution of gas. From time to time certain portions of the Township of Barton were annexed to the City of Hamilton by orders of the Ontario Railway and Municipal Board so that at the present time a very large area of what was included in the Township of Barton at the date of By-law 533 is now within the limits of the City of Hamilton.

By By-law No. 400 passed on the 26th day of September, 1904, the City of Hamilton granted a franchise to the Ontario Pipe Line Company Ltd., its successors and assigns, to enter upon the streets, etc., of the said city to maintain and operate and repair mains for the purposes of the transportation and supply of gas in the City of Hamilton. 10

The name of the Ontario Pipe Line Co. was afterwards changed to the United Gas & Fuel Co. of Hamilton, the present plaintiff company.

Matters remained in that position until the agreement of March 24th, 1931, and the validating statute which conferred the exclusive franchise upon the plaintiff company subject to the exceptions already noted.

An agreement was made between the defendant company and the Ontario Pipe Line Co., the predecessors in name of the plaintiff company under date of September 25th, 1905, whereby it was agreed that the former should supply the latter with natural gas to a point within the city limits of the City of Hamilton to be mutually agreed between the parties and the latter company on its part agreed to build and complete within the City of Hamilton a complete distributing plant throughout the city and this agreement continued in force for a period of 19 years from the date of same, according to its tenor. 20

By a tripartite agreement dated April 5th, 1921, to which the two companies and the corporation of the City of Hamilton were parties, it was recited that the defendant company was distributing natural gas in the eastern portion of the City of Hamilton under the provisions of By-law No. 533 of the Township of Barton and recited further the agreement of September 25th, 1905, and by it the city on its part agreed to allow an increase in the price of gas to be charged by the companies. 30

This agreement and the by-law confirming same is considered important as being a recognition by the plaintiffs of the rights of the defendant company to supply gas in the City of Hamilton.

An agreement along the same lines was executed between the same parties on May 10th, 1921, and on the 28th of June, 1921, and on the 25th of August, 1921. 40

The contract between the parties came to an end in 1924 and thereafter the defendant company from time to time applied to the authorities of the City of Hamilton for permits to lay mains on certain streets within the territory formerly in the Township of Barton, but annexed to the City of Hamilton, and these permits were duly issued by the City Engineer under the provisions of a by-law in that behalf.

The issue of these permits continued until the present controversy arose and is important in that the defendant company rely on it as being a recognition by the City of Hamilton of its rights under By-law 533 of the Township of Barton.

There were certain interruptions in the issue of the permits owing to doubts having been cast upon the extent of the defendant company's rights but the permits were issued up to and as late as the year 1931.

The controversy involves several difficult problems which are stated by counsel for the plaintiff to be as follows:

- 10 1. Has the defendant company any franchise at all under by-law 533 of the Township of Barton?
2. If it has does such franchise extend beyond the particular streets that are referred to in paragraph 1 of the by-law?
3. If it does extend beyond such streets does it extend only to highways in the township existing at the date of the by-law?
4. Is it limited to highways established in the districts of the township at the date of annexation of same to the City of Hamilton? and
5. Does the franchise extend to highways established after annexation in the area formerly within the limits of the Township of Barton but
- 20 annexed to the City of Hamilton?

The contention of the defendant is that it has a franchise in respect of all the highways within the Township of Barton at the date of By-law No. 533 and in respect of all highways in the areas from time to time annexed to the City of Hamilton whether the same were established before or after annexation.

The determination of these issues manifestly involves an inquiry into the rights acquired by the defendant company under By-law 533.

- 30 When this by-law was passed the enabling statute was The Consolidated Municipal Act, 1903, 3 Ed. VII., ch. 19, sec. 566; ss. 3 provided that by-laws may be passed by the councils of townships, cities, towns and villages:

(3) "For authorizing any gas, water or pneumatic transit company to lay down pipes or conduits for the conveyance of water, gas or merchandise and other things under streets or public squares subject to such regulations as the council sees fit."

It will be observed that this section contains no provision limiting the duration of such franchise and the council might therefore grant a perpetual franchise without exceeding its authority.

- 40 That the right to be so granted as a franchise is, I think clear, see Dillon on Municipal Corporations, 5th ed. p. 1905, where a franchise is defined as a particular privilege which does not belong to the individual or corporation as of right but is conferred by a sovereign or government upon and vested in individuals or a corporation.

There are numerous cases in the American Courts cited by the same author at page 1907 which hold that the right to construct and maintain gas pipes on the highway is a franchise.

That a franchise is a proprietary right or property is recognized in

*In the
Supreme Court
of Ontario*

—
No. 26.
Reasons for
Judgment of
Wright, J.,
8th July,
1932.

—continued

In the
Supreme Court
of Ontario
of Ontario
No. 26,
Reasons for
Judgment of
Wright, J.,
8th July,
1932.

the judgment of Chief Justice Anglin, then Mr. Justice Anglin, in *County of Wentworth v. Hamilton Radial R. R. Co.*, (1916), 54 S.C.R. 178, at p. 193.

The next step is to inquire into and determine the effect the annexation of a portion of the township has on the rights acquired under By-law 533.

The Consolidated Municipal Act, 1903, 3 Ed. VII., ch. 19, sec. 56, enacts that in case an addition is made to a municipality the by-laws of such municipality shall extend to the additional limits and the by-law of the municipality from which the same has been detached shall cease to apply except only by-laws relating to roads and streets and these shall remain in force until repealed by by-laws of the municipality to which the addition has been made. 10

Counsel for the plaintiffs contends that By-law 533 does not fall within the class of by-laws relating to roads and streets but that the class contemplated is that designated in sections 598 *et seq* and with that contention I would be inclined to agree, but the *dicta* of the present Chief Justice of the Supreme Court as reported in the *Wentworth* case at page 194, where he states a franchise to operate a street railway affected roads and so far as it authorized the conferring of property rights could not be repealed, altered or affected by the city to the prejudice of the company, is authority for the contrary proposition. 20

However, I do not accede to the argument that the first provision of section 56 applies and that in the present case By-law 533 would cease to apply and the rights acquired by the defendants thereunder lapse. I prefer to adopt the view expressed by Mr. Justice Hodgins in his judgment in the *Wentworth* case as reported in 35 O. L. R. 434 at page 441. where he states: "The shifting of municipal jurisdiction does not annul existing franchise agreements although it prevents additions or alterations without the consent of those who for the time being have power over the highways," and on the same page he states, "The continuance of these franchises is expressly recognized in 1913—by 3 & 4 Geo. V. ch. 43, sec. 33 but that only put in words what the law already was." 30

The principle that proprietary or vested rights are not to be taken away unless the intention to do so is clearly expressed, especially where there is no provision for compensation, might well be invoked to save the franchise rights of the defendant here. See *The Western Counties Railway Co. v. The Windsor & Annapolis Railway Co.* (1882), 7 App. Cas. 178; *London & North Western Ry. Co. v. Walker*, (1903), A. C. 289.

The foregoing would apply to the territory annexed prior to 1913 when The Consolidated Municipal Act, 1903, was still in force. 40

The next relevant legislation is found in The Municipal Act, 1913, 3-4 George V. ch. 43, sec. 33 which substantially re-enacts sec. 56 of the 1903 statute with this addition "except by-laws conferring rights, privileges, franchises, immunities or exemptions which could not have been lawfully repealed by the council which passed them." This section appears in The Municipal Act, R. S. O. 1914, ch. 192, sec. 33, and in The

Municipal Act, R. S. O. 1927, ch. 233, sec. 33, in practically the same language.

As some of the annexations in the present instance took place after the Act of 1913 was passed these will be subject to its provisions.

As to these the inquiry will be limited to the right of the council of the Township of Barton to repeal By-law 533.

There is no express provision in the by-law for its repeal and in that event such a by-law could not lawfully be repealed.

10 Re Re Alexander & Huntsville, (1894) 24 O. R. 665; Re Hamilton Powder Co. and Gloucester (1909) 13 O. W. R. 661; G. W. Railway Co. v. North Cayuga (1872) 23 U.C.C.P. 28; Dillon on Municipal Corporations, 5th ed. p. 920.

This reasoning leads to the conclusion that the rights acquired by the defendant under By-law 533 still exist, but there remains the important and difficult problem to solve as to the extent of those rights.

Are they limited, as contended for by the plaintiff, to the highways:

- (a) Existing at the date of By-law 533.
- (b) Or to those existing at the dates of annexation of the respective areas.
- 20 (c) Or as contended by the defendant do they extend to all highways in those districts which were within the Township of Barton at the date of By-law 533, whether established before or after annexation?

What construction ought to be placed on the wording of the by-law itself?

It clearly grants the franchise of the highways set out in section 1, of the by-law, but that carries the case a very short distance.

30 Had the districts afterwards annexed to Hamilton remained in the Township of Barton, could that township have restricted the defendant company to the use of any specific highways or is the franchise wide enough to include all the highways in the township whenever established?

As already stated there is no serious question as to the highways specifically mentioned in clause 1 of the by-law and that subject may be dismissed from further consideration.

40 Clause 2 of the by-law contains the provisions as to other highways and in this connection it is opportune to deal with the contention of the plaintiff's counsel that the rights conferred under this clause are conditional upon the construction of the mains and branches set forth in clause 1, and the words "and not before" are stressed as making this a condition precedent.

The evidence established that the mains or lines of pipe had not been laid on all the highways specified in clause 1 of the by-law and it appeared the defendant company had laid mains on other highways without objection from the Township of Barton, I am of opinion that even if the construction of the mains or pipes referred to in clause 1 were a condition precedent to acquiring the rights under clause 2 the conduct of the parties

*In the
Supreme Court
of Ontario*

—
No. 26.
Reasons for
Judgment of
Wright, J.,
8th July,
1932.

—continued

*In the
Supreme Court
of Ontario*

No. 26.
Reasons for
Judgment of
Wright, J.,
8th July,
1932.

—continued

had changed it into a condition subsequent even if the condition had not been entirely waived.

The next point to be considered is as to the scope or limitation of the term or expression "and all other highways in the Township of Barton."

Are these words to be construed as limited to highways established by the Township of Barton while the districts wherein they are located are in that township?

In deciding this question it is necessary to consider the scope of the by-law and agreement with a view to ascertaining the intention of the parties. 10

The township on its part was granting a franchise to the defendant upon certain terms and conditions. The defendant by the agreement of November 19th, 1904, accepted those conditions and agreed to carry out the terms imposed by the by-law.

There was in effect an agreement between the parties and the defendant company gave valuable consideration for the rights conferred on it. Among other terms there were stipulations as to the prices to be charged for gas, and also agreements on the part of the defendant to supply gas as set forth in clauses 9 and 19 of the agreement. To fulfil the latter obligation it would be necessary for the defendant company to construct 20
mains in different parts of the township, and it must have been in contemplation of all parties that it would be necessary to use the highways for that purpose. The rights and obligations should be commensurate.

It is, I think, a reasonable conclusion that when the defendant company agreed to the restrictions as to the price to be charged for gas, it was in contemplation of all parties it should have the entire area then within the township for its field of operations.

The consideration moving from the defendant company was given for the privilege to supply gas throughout the entire area and the rights it acquired were in my view impartible, and could not and cannot be limited, 30
restricted or varied as contended by the plaintiffs.

My conclusion is that the Township of Barton could not restrict the right of the defendant company to any specific highways, but that the latter's rights extended over all highways in the township whenever established, and were co-extensive with the limits of the township.

I have already expressed the view that the rights acquired by the defendant company under By-law 533 could not be abridged or curtailed by the various annexations of districts to the City of Hamilton and in order to carry these views to a logical conclusion it must be held that the defendant's rights extend to all highways whenever or wherever 40
established in the districts detached from the Township of Barton and annexed to the City of Hamilton after the passing of By-law 533.

It is contended that the provisions of clauses 4 and 5 of By-law 533 show an intention to restrict the rights of the defendant to highways from time to time under the jurisdiction of the Township of Barton. These provisions are, I think, merely regulatory and are such as fall within the scope of municipal control over highways. When the different

areas were annexed it would have the effect of shifting municipal jurisdiction. This point was dealt with to some extent by Mr. Justice Hodgins in the Wentworth case, 35 O. L. R. at p. 441.

For the defendant company it is contended that even if the provisions of By-law 533 are ambiguous or doubtful, the construction of it adopted and acted on by the parties should be accepted and recognized by the Court as the proper one.

10 In support of this contention counsel stresses the recitals in the different agreements to the effect that the defendant company was supplying gas in East Hamilton, the agreements between the plaintiff and defendant companies, the action of the city authorities in granting permits to cut pavements and open the streets for the purpose of laying pipes along highways, new and old, in the annexed areas, as indicating that all parties considered the defendant company was acting within its rights under the by-law.

20 If there were any doubt as to the scope or extent of the defendant company's rights under By-law 533, I am of opinion that the judgment of Chief Justice Anglin (then Mr. Justice Anglin) in *Calgary v. Canadian Western Natural Gas Co.*, (1917) 56 S.C.R. 117, at p. 138 directly applies to the situation here and the plaintiffs should not be permitted to question the defendant's rights under By-law 533 after having acquiesced in the construction of same upon which the defendant company acted for a long period.

30 It was contended by the defendant company that under the circumstances the City of Hamilton is estopped from disputing the rights of the defendant company as asserted by the latter. It would certainly appear to be inequitable for the city to question those rights at this date after entering into the agreements with the defendant and issuing permits, and allowing the mains to be laid without objection. This latter work involved heavy expenditures on the part of the defendant company, which were incurred with the knowledge of the city, or its officials.

Under clause 2 of the 1931 agreement, the rights of the city to restrain the defendant company from supplying gas or constructing mains have been assigned to the plaintiff company, and the latter is also empowered to take action to have the franchise rights of the defendant company determined, and thus this contest is virtually between the two rival companies, but the plaintiff company can stand in no higher position than the city.

40 Counsel for the defendant contend that the plaintiffs are estopped from questioning the rights of the defendant by reason of acquiescence as already detailed, but it is unnecessary to decide this point although it would strike me as anomalous if a franchise could be acquired by estoppel especially in the case of a municipal corporation where certain specific methods are prescribed for the granting of a franchise.

Summarizing the foregoing views, my opinion is that the defendant company has under its franchise the right to construct and maintain its pipe lines on any highways in the territory which was within the Town-

*In the
Supreme Court
of Ontario*

—
No. 26.
Reasons for
Judgment of
Wright, J.,
8th July,
1932.

—continued

*In the
Supreme Court
of Ontario*

No. 26.
Reasons for
Judgment of
Wright, J.,
8th July,
1932.

—continued

ship of Barton, on the 19th day of November, 1904, when By-law 533 became effective, whether such highways were established before or after the several areas or districts were annexed to the City of Hamilton, and to supply gas to the inhabitants of such districts.

In view of these findings, it follows that the plaintiffs' action fails and should be dismissed. The defendant company is entitled to its costs.

No. 27.

Judgment of Wright, J.

No. 27.
Judgment of
Wright, J.,
8th July,
1932.

IN THE SUPREME COURT OF ONTARIO

HON. MR. JUSTICE WRIGHT } Friday, the 8th day of July, 1932. 10

BETWEEN:

UNITED GAS AND FUEL COMPANY OF HAMILTON LIMITED AND THE
CORPORATION OF THE CITY OF HAMILTON,

Plaintiffs,

—AND—

DOMINION NATURAL GAS COMPANY LIMITED,

Defendant.

1. This action coming on for trial on the 30th and 31st days of May and the first day of June, 1932, at the Sittings holden at Hamilton for the trial of actions without a jury, in presence of counsel for all 20 parties, upon hearing read the pleadings and hearing the evidence adduced and what was alleged by counsel aforesaid THIS COURT WAS pleased to direct this action to stand over for judgment and the same coming on this day for judgment.

2. THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby dismissed with costs to be paid by the plaintiffs to the defendant forthwith after taxation thereof.

JUDGMENT signed this 23rd day of November, 1932.

“D. E. D.”

“D. E. DOUGLAS,”

L.R., S.C.O., Kent.

40

Entered this 23rd day of Nov., 1932.

J. B. 32 Fol. 311.

“D. E. DOUGLAS”

L.R., S.C.O., Kent.

“11. In answer to paragraph 1 of the Plaintiffs’ Reply the Defendant says that:—

(a) The Plaintiffs, and each of them, by reason of the matters alleged in paragraphs 4(a), 4(b), 4(c), 8 and 9 of the Statement of Defence, and by reason of the facts hereinafter set out, are estopped from denying that said By-law Number 533 was passed and was effective to give the Defendant the right to extend its lines, and to dig trenches and to lay pipes and mains on any streets, public squares, lanes and public places in those portions of the City of Hamilton which were annexed from the Township of Barton, or which came into existence subsequent to the passing of the said by-law. 10

(b) The Defendant, in pursuance of said By-law Number 533, entered into an agreement with the Township of Barton, dated the 19th day of November, 1904, and in and by the said agreement the Defendant formally accepted the power and privileges granted to it by the said by-law, and became bound to perform, observe and comply with all the agreements, obligations, terms and conditions in said by-law contained, and the said by-law thereupon came into full force and effect in accordance with the terms thereof. The franchise rights, powers and privileges granted by the said by-law thereupon vested in the Defendant, and have ever since been vested, and are now vested in the Defendant. 20

(c) On September 25th, 1905, the Defendant and the Plaintiff Company (which was then operating under the name of The Ontario Pipe Line Company) with the knowledge and approval of the Plaintiff Corporation, entered into an agreement under seal, whereby the Defendant agreed to construct a pipe line for conveying natural gas to points on the city limits of the City of Hamilton, and to supply gas to the said company for nineteen years, and in and by the said agreement the right of the Defendant to dig trenches and to lay mains on the streets within the limits of such parts of the Township of Barton as might subsequently be annexed by the City of Hamilton, and to supply gas to the inhabitants of such parts was expressly recognized. 30

(d) The agreement referred to in the preceding paragraph hereof was from time to time extended by agreements under seal between the Plaintiff Company and the Defendant, dated respectively September 22nd, 1924, October 22nd, 1924, November 22nd, 1924, and December 26th, 1924, and in and by each of such extending agreements, the right of the Defendant to distribute and supply gas within the limits of the said City of Hamilton was expressly recognized. 40

(e) The Plaintiff Corporation entered into agreements under seal with the Plaintiff Company and the Defendant bearing date respectively September 29th, 1920, April 5th, 1921, May 10th, 1921, June 28th, 1921, August 25th, 1921, and October 25th, 1921, for fix-

ing the price to be charged by the Defendant and by the Plaintiff Company to users of gas in the City of Hamilton, each of which agreements was duly approved and authorized by by-law of the Plaintiff Corporation; and in and by each of said agreements the existence of the said By-law Number 533, and of the right of the Defendant thereunder to dig trenches, and to lay pipes and mains on the streets and other places in those parts of the City of Hamilton which were annexed from the Township of Barton, and to supply gas to the inhabitants of those parts of the City of Hamilton was expressly recognized and approved.

10

(f) The Defendant relying on the construction placed upon the said By-law 533 by the Plaintiffs as aforesaid, and believing that the said by-law was effective to give the Defendant the right to do the acts complained of, entered on various streets and public places in those parts of the City of Hamilton which had been annexed from the Township of Barton, and expended large sums of money in so doing, and supplied gas to the Plaintiff Company, and to the inhabitants of such areas; and if the said by-law is not, on any construction thereof, effective to give the Defendant such rights (which the Defendant does not admit but denies) the Plaintiffs should not now be permitted to set up such a construction and are estopped as aforesaid.

20

12. In further answer to paragraph 1 of the Plaintiffs' Reply as amended, the Defendant says:—

(a) The rights and obligations of the Defendant in respect of the matters alleged in said paragraph 1 of the amended Reply are covered by the said agreement of the 19th day of November, 1904, between the Defendant and the Township of Barton, and the said By-law Number 533, and a substantial part of the area covered by the said agreement and by-law is still within the said Township of Barton, and under the exclusive jurisdiction of the said Township of Barton, and the said Township is directly interested in and would be affected by any adjudication by this Court on the matters alleged in said paragraph. The Defendant submits that the Township of Barton is a proper and necessary party to any proceedings involving the determination of the matters alleged in said paragraph.

30

(b) The Township of Barton is the only person entitled to question the observance of the provisions of the said agreement and by-law referred to in said paragraph 1 of the amended Reply, and the said Township has never questioned, and is not now questioning the observance of the said provisions.

40

(c) The Defendant denies that the provisions of paragraphs four, six and twenty-two of the said by-law were not observed, and denies that the rights conferred by the said by-law expired at the end of ten years or at any time, and alleges that the said rights are now in full force and effect.

(d) The Defendant further alleges that if the provisions of

*In the
Supreme Court
of Ontario*

—
No. 28.
Order of
Wright, J.,
8th July,
1932.

—continued

*In the
Supreme Court
of Ontario*

No. 28.
Order of
Wright, J.,
8th July,
1932.

—continued

paragraphs four, six and twenty-two of the said by-law, or any of them, were not observed (which the Defendant does not admit, but denies), that such non-observance was waived and acquiesced in by the Township of Barton, and that it is not now open to the Plaintiffs, or to the said Township to claim that said provisions were not observed.

(e) The Defendant further pleads, in answer to said paragraph 1 of the amended Reply, the provisions of section 353 of The Municipal Act, R.S.O. (1927) Ch. 233.

13. In answer to paragraph 4 of the Plaintiffs' Reply the Defendant says:— 10

“The Defendant denies the allegations contained in paragraph 4 of the Reply herein, and alleges, as the fact is, that for more than twenty years the Plaintiff Company never questioned the Defendant's rights and privileges to enter upon the streets and other public places in the annexed areas of the Township of Barton and supply gas to the inhabitants of such areas, but, on the contrary, repeatedly and continuously recognized such rights and privileges; in or about the year 1926 or 1927 the control of the Plaintiff Company changed hands, and ever since such change of control, the Plaintiff Company 20 has endeavoured to prevent the issue by the Plaintiff Corporation of permits to the Defendant for the laying of pipes and mains, and to obstruct and prevent the Defendant from carrying on its business in such annexed areas, and to secure legislation to extinguish or curtail the Defendant's rights and privileges therein, with a view of forcing the Defendant to purchase the Plaintiff Company at a price beyond its real value.”

5. IT IS FURTHER ORDERED that the time for making the above amendments be extended to December 1st, 1932.

Approved
as to form
“T. J. T. P.”

“D'ARCY HINDS,”
Asst. Reg.
S.C.O.

30

Entered O. B. 128
Page 564-5-6

November 14th, 1932.
“V. C.”

No. 29.
Notice of Appeal.

*In the
Supreme Court
of Ontario*

IN THE SUPREME COURT OF ONTARIO

BETWEEN :

UNITED GAS AND FUEL COMPANY OF HAMILTON LIMITED AND THE
CORPORATION OF THE CITY OF HAMILTON,

Plaintiffs,

—AND—

DOMINION NATURAL GAS COMPANY LIMITED,

Defendant.

10

TAKE NOTICE that the Plaintiffs' appeal to the Court of Appeal for Ontario from the judgment pronounced by the Honourable Mr. Justice Wright on the eighth day of July, 1932, on the following amongst other grounds:—

1. The judgment is against law, evidence and the weight of evidence.
2. The Defendants acquired no rights under the document known as By-law 533.

3. If any rights were acquired they were conditional and the condition was not complied with.

20

4. In any event the rights did not extend to streets, other than those particularly mentioned in clause 1 of the by-law; or to streets in annexed areas that were not in existence when the by-law was passed; or not occupied (or so far as not occupied) at the date of annexation; or to streets laid out by the City of Hamilton, or to streets, residents on which were not at the date of annexation being supplied with gas.

30

5. The Township of Barton was entitled to repeal By-law 533 or either wholly or so as to prevent further extensions or repeal it as to the streets above referred to, and the Township could have prevented the Defendants from making extensions and extending into streets supplying gas to customers not supplied at the date of annexation or to customers on the streets referred to.

6. The provisions of the by-law were not changed or waived by conduct of the parties, nor does any estoppel arise out of anything done or omitted to be done by the Plaintiffs or either of them.

DATED the 20th day of August, 1932.

KERR, McNEVIN & KERR,

Bank of Montreal Bldg.,

Chatham, Ontario.

Solicitors for the Plaintiffs.

40 To:

Messrs. Harley & Sweet,
Barristers, etc.,
Brantford, Ontario,
Solicitors for the Defendant.

In the
Supreme Court
of Ontario

No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
--Mulock,
C. J. O.,
24th April,
1933.

No. 30.

Reasons for Judgment of The Court of Appeal for Ontario.

MULOCK, C. J. O.
MAGEE, J. A.
MIDDLETON, J. A.

MASTEN, J. A.
FISHER, J. A.

UNITED GAS & FUEL COMPANY OF
HAMILTON, LIMITED, AND THE COR-
PORATION OF THE CITY OF HAMIL-
TON,

Plaintiffs,

vs.

DOMINION NATURAL GAS
COMPANY, LIMITED,

Defendants.

Copy of Reasons for Judgment of
Court of Appeal, Delivered April
24th, 1933.

W. N. TILLEY, K.C., and
J. A. MCNEVIN, K.C.,
for the Plaintiffs (Appellants).
N. W. ROWELL, K.C., and
GEO. LYNCH-STAUNTON, K.C.,
for the Defendant (Respondent).

10

MULOCK, C. J. O.: This is an appeal from the judgment of Wright, J., dismissing the action.

It was brought to restrain the Defendant Company from laying or maintaining mains and pipes under certain highways in the City of Hamilton, and through them, supplying gas throughout certain areas which formerly formed part of the Township of Barton, but which had been annexed to the City of Hamilton. 20

Under By-law No. 533 of the Council of the Township of Barton and an agreement between the Township and the Defendant Company, the latter acquired the right to lay mains and pipes under highways in the township and to supply gas to the inhabitants thereof and before any portion of the township was detached therefrom, laid mains and pipes and supplied gas in the township.

Subsequently, from time to time, portions of the township in which such mains and pipes had been laid, and in which gas was being supplied, were separated from the township and annexed to the City of Hamilton, but nevertheless without any objection by either of the plaintiffs, the defendant company throughout all the intervening years from 1905 until 1931, continued to supply gas throughout the areas which had been annexed to the city. 30

By-law 533 was passed by the Council of the Township of Barton on the 26th day of October, 1904, and the agreement giving effect thereto was executed by the township and the company on the 19th day of November, 1904. By that agreement each party agreed to observe and keep all the terms of the by-law. Its material provisions are as follows:—

Clause 1. "The consent, permission and authority of the Township of Barton are hereby given and granted to the Dominion Natural Gas Company Limited to enter upon the following highways of the Township of Barton." (Then follow descriptions of such highways) "and to dig trenches and lay and bury therein and to maintain, operate and repair mains, pipes for the transportation and supply of natural and manufactured gas in the said Township of Barton" 40

Clause 2. "From and after the construction and laying of the pipes on the main lines and trenches as hereinbefore expressed and duly connecting the said trench lines with the mains, but not before, the company shall be at liberty to enter upon any and all other highways in the Township of Barton and to dig trenches and lay and bury therein and to maintain and operate mains and pipes . . . for the transportation and supply of natural or manufactured gas in the said Township of Barton . . . together with the right to construct and maintain and repair under the surface of all other roads and highways in the Township of Barton all necessary regulators and valves . . . that may be necessary in the transportation and supply of natural or manufactured gas."

10

Clause 3. "The company shall . . . restore . . . to the satisfaction of the Township Council all highways which it may excavate" . . .

Clause 4. "No excavation . . . shall be made or done unless permission therefor has first been obtained from the Township Council, and all such work shall be done under the supervision and to the satisfaction of the Township Council"

20

Clause 5. "The location of all pipes and works on said highways shall be subject to the direction and approval of the Township Council"

Clause 6. "The company shall commence on or before the 1st day of May, 1905, to lay its pipes in said township and shall have at least the lines and trenches set forth in the first paragraph of this by-law completed by the 1st day of November, 1905, and the whole of said lines and trenches shall be constructed and completed before the company shall be at liberty to convey gas through or use any part thereof."

30

Clause 7. "The company shall use all . . . practical means . . . to prevent the escape . . . of gas through its mains and pipes and the causing of any damage . . . to any person or property, and the company shall make good to the Township Corporation all damage . . . caused by the works or operations of the company or by the escape or leakage of gas to any water pipes . . . or other property of the township"

Clause 8 provides that the rights of the township with respect to the construction of sewers, etc., are not to be affected by any privileges granted the company, and the Township Corporation reserves the right to lay down on the highways gas pipes, water pipes, etc., and to repair highways whenever the same is necessary in the opinion of the Council of the Township of Barton).

40

Clause 9. "The company shall, upon demand, furnish gas to all persons, firms and corporations along the lines of its mains and pipes in the Township of Barton, and to all other persons, firms and corporations who shall lay pipes to connect with the said mains and pipes of the company, or who shall offer to, and be ready and willing to pay the company the cost of laying such pipes for the same price and upon the same terms and conditions, including discounts and rebates as the said company shall from time to time supply gas to the Corporation of the City of Hamilton

*In the
Supreme Court
of Ontario*

No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
—Mulock,
C. J. O.,
24th April,
1933.

—continued

*In the
Supreme Court
of Ontario*

No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
—Mulock,
C. J. O.,
24th April,
1933.

—continued

or to consumers of gas in said City of Hamilton, but in no case to exceed the price hereinafter set forth.”

Clause 10. “The company shall render its accounts monthly and shall not charge the Corporation of the Township of Barton or the consumers of gas therein for natural gas more than fifty cents per thousand cubic feet for the first five years from the date hereof and for ten years thereafter not more than forty-five cents per thousand cubic feet, and thenceforth not more than forty-two and a half cents per thousand cubic feet; and meters shall be furnished by the company free of charge to all consumers of its gas, and no charge shall be made for any supply pipes from the main to the margin of the street.” 10

(Clause 11 limits the prices to be charged consumers of more than 200,000 cubic feet per month).

(Clauses 12, 13 and 14 limit the price the company may charge for manufactured gas supplied to the Corporation of the Township of Barton or consumers therein.)

(Clause 18 prohibits the company charging more than specified rates for mixed, natural and manufactured gas supplied “to the Township of Barton or consumers of gas therein.”)

Clause 21. “This by-law, and the powers and privileges hereby 20 granted, shall not take effect or be binding on the Township Corporation unless formally accepted by said company within one month from the passing hereof by an agreement which will legally bind the said company to perform, observe and comply with all the agreements, obligations, terms and conditions herein contained and which agreement shall be executed by said company and afterwards shall also be executed under the corporate seal of the township”

(Clause 22 requires the company shall, on or before the 1st day of May, 1905, complete certain gas lines).

The authority of the Council of the Township of Barton to enter into 30 this by-law is found in section 566, sub-section 3 of the Consolidated Municipal Act, 1903, which provides as follows:—

“By-laws may be passed by the councils of townships, cities, towns and villages for authorizing any gas, water or pneumatic transit company to lay down pipes or conduits for the conveyance of water, gas or merchandise and other things under streets or public squares, subject to such regulations as the council sees fit.”

The said agreement of the 19th November, 1904, between the Defendant Company and the Township of Barton, after reciting certain provisions of By-law No. 533, declares:—

“NOW THEREFORE THIS AGREEMENT WITNESSETH and the parties 40 hereto do respectively covenant and agree with each other as follows:

The company do hereby accept the said By-law No. 533, and for themselves, their successors and assigns, agree with the Township Corporation to pay the costs, charges and expenses of the Township of Barton and of their solicitor of and incidental to the preparation, passing, carrying out and enforcing the terms and conditions of said

by-law and of and incidental to the preparation and execution of this agreement and that the company will carry out, observe, perform and keep all the conditions, obligations, agreements on their part to be observed, performed and kept as set forth in the said By-law No. 533, and that the said company will on or before the first day of May, 1905, commence to lay its pipes in the said township, and will have the lines and branches set forth in the first paragraph and the 22nd paragraph of said by-law completed by the first day of November, 1905, and ready to deliver gas to consumers in said township according to the terms of said by-law, and that they will furnish gas to all parties in said township (who shall make demand therefor) in accordance with the terms and conditions of said by-law so soon as the said company shall have said line and branches set forth in the first paragraph of said by-law completed.

10

20

“AND WHEREAS this agreement has been approved by W. A. H. Duff, the township solicitor, and certified by his marking each page thereof ‘approved’ and appending his signature thereto, the Township Corporation hereby agree to, and do accept these presents and declare them to be the agreement required to be executed by the company under the provisions of said By-law No. 533, and the said by-law shall go into full force and effect on the execution of this agreement.”

The learned trial Judge, in his reasons for judgment, has set forth various matters respecting the relations between the Defendant Company, the Township and the Plaintiff, which it is not necessary to repeat.

30

The first question for determination is what rights did the Defendant Company acquire under By-law 533 and the agreement in pursuance thereof? The Defendant Company claims to have acquired a franchise entitling it to lay mains and pipes in all highways then, or at any time thereafter established within the limits of what at the date of the agreement, namely, the 19th day of November, 1904, constituted the Township of Barton, and to supply gas throughout said limits. What meaning is to be given to the words “Township of Barton” as used in the by-law? The by-law also contemplated the defendant extending its system into the City of Hamilton and also therein supplying gas.

40

Clause 9 entitles all persons, firms and corporations “in the Township of Barton” who shall lay pipes to connect with the company’s mains or who may be willing to pay the cost thereof to be furnished with gas at the same prices and on as favourable terms as for gas supplied by the company in Hamilton. To deprive those persons, firms and corporations in the areas subsequently annexed to the City of Hamilton of the benefit of clause 9 to which they became entitled when the agreement was entered into it would be necessary to read the by-law as if it provided that such benefit should cease whenever portions of the Township of Barton became annexed to the City of Hamilton. It contains no such provision. The like observation applies to other provisions in the by-law. For example, clause 10 fixes the maximum price of gas to be charged to the

*In the
Supreme Court
of Ontario*

—
No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
—Mulock,
C. J. O.,
24th April,
1933.

—continued

*In the
Supreme Court
of Ontario*

No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
—Mulock,
C. J. O.,
24th April,
1933.

—continued

Corporation of the Township of Barton or “to consumers therein” and obligates the company to furnish meters to all consumers of gas free of charge with pipes, leading from the mains to the margin of the street. In my opinion the by-law is not open to the construction that gas consumers in the Township of Barton lost the safe-guards provided in the by-law in respect of the price of gas and the right to free meters and free connecting pipes when the area concerned became annexed to the City of Hamilton. The same observations apply to clause 11, which fixes maximum prices charged against large consumers of gas, and to clause 12 which fixes the maximum prices chargeable against all consumers of 10
manufactured gas.

Clauses 13, 14, 15, 16, 17, 18 and 19 provide a careful method whereby to determine the reduction to be made and the price to be paid to the company from time to time for manufactured gas. Are all these benefits cancelled upon the annexation of the interested areas to Hamilton? Is the by-law to be interpreted as meaning that the inhabitants of the township were entitled to enjoy the benefits above referred to only so long as the areas wherein gas was being furnished remained part of the township?

There is no evidence that when the agreement was entered into the 20
dismemberment of the township was contemplated by either party, and the fair inference is that the parties did not contemplate any diminution in its area, and that wherever the by-law speaks of the Township of Barton it means the geographical limits of the township as if the same were described by metes and bounds, and I see no ground for qualifying its unambiguous words by implication.

The case of the Union Gas Company v. Chatham Gas Company Ltd., (1918), 56 S.C.R. 253, was discussed before us. The Union Gas Company contracted to supply to the Chatham Gas Company all the gas required by the latter for sale and distribution in the City of Chatham, and it was 30
held that the Union Gas Company was not obliged to supply gas for distribution and sale by the Chatham Company in territory subsequently annexed to the city. Idington, J., says:—

“If a contract is ambiguous the surrounding circumstances must be considered by way of illuminating that which must have been imperfectly expressed,”
and at page 272 adds:—

“The plain literal meaning of the words surely limits the contract to that which was then existent just as much as if the supply contracted for had been for a given factory or block of buildings. 40
What right would anyone so bound have to extend it beyond the then present limits? What right have we to extend it beyond?”

In *Tamplin SS. Company v. Anglo-Mexican Petroleum Products Company, Ltd.*, (1916) 2 App. Cas. at page 403, Lord Loreburn says:—

“ . . . a Court can and ought to examine the contract and the circumstances in which it was made, not, of course, to vary, but only to explain it, but in order to see whether or not from the nature of

it the parties must have made their bargain on the footing that a particular thing or set of things would continue to exist.”

In *Toronto Ry. Co. v. City of Toronto*, 37 S.C.R. at 434, Sedgewick, J., says:—

10 “In construing an instrument in writing, the Court is to consider what the facts were in respect to which the instrument was framed, and the object as appearing from the instrument, and taking all those together it is to see what is the intention appearing from the language when used with reference to such facts and with such an object, and the function of the Court is limited to construing the words employed; . . . Its duty is to interpret, not to enact.”

Let us suppose that effect were given to the plaintiff’s contention, some such questions as the following might arise: Suppose the whole Township of Barton were annexed to the City of Hamilton, the Defendant Company’s business of supplying what had been the township with gas would be destroyed, its money expended in laying mains and pipes would be lost, the agreement between the parties for all practical purposes would be ended, and the inhabitants of what had been the township, would lose all the benefits to which, by the express terms of the by-law, they had become entitled; the city would not be bound to carry out the contractual obligations of the Defendant Company to the Township of Barton and to the inhabitants thereof, and the Defendant Company would have no right to do so. The Plaintiff Company might refuse to supply the people of the annexed area with gas, or if willing to do so, then only at more unfavourable rates than those provided by the by-law and agreement. In an action by the township or any of its inhabitants against the Defendant Company for specific performance of the agreement or for damages because of breach thereof, it would be no answer that the annexation prevented the company performing its contract.

30 Suppose, as contended for by the plaintiffs, that the “Township of Barton” as expressed in the by-law, were an elastic term meaning whatever area greater or less than that embraced in the original township, and that such area was increased by annexations to the township, could it be reasonably contended that the parties to the agreement contemplated the Defendant Company being bound to extend its plant and to supply gas throughout what was at the time of the agreement an unknown territory?

40 Suppose, as probably will happen, that the supply of natural gas should fall off until it becomes insufficient to meet more than the needs of the township before its enlargement, then, all the consumers in the enlarged area having equal right to the supply of natural gas, those in the original township could not obtain the quantity contracted for. Could it reasonably be contended that the parties to the agreement contemplated such an unnatural interpretation of their language as would do injustice to both of them?

Suppose there existed in the area added to the township another company then supplying the people thereof with gas, could it be reasonably contended that the Defendant Company was bound to extend its supply

*In the
Supreme Court
of Ontario*

—
No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
—Mulock,
C. J. O.,
24th April,
1933.

—continued

*In the
Supreme Court
of Ontario*

No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
—Mulock,
C. J. O.,
24th April,
1933.

—continued

of gas into such added territory and engage in losing competition? In my opinion, under all changing circumstances the by-law continued to speak as it did when it was passed.

Counsel for both parties referred to many cases where the courts have construed agreements respecting services of gas, electricity, transportation, etc., to municipalities. I have studied all of those cases, and found them of doubtful use. The decision in each case must turn upon the language of the contract under review.

In my opinion "The Township of Barton" mentioned in By-law 533 means the area embraced within what were the actual boundaries of that township when the by-law was passed. 10

I will now deal with the provisions above set forth in the by-law which require certain of the operations of the Defendant Company upon the highways to be conducted with the approval or, only after the permission of the Council of the township is obtained.

The annexed areas having come under the municipal jurisdiction of the City of Hamilton, it was argued that those areas ceased to be subject to the terms of the by-law and agreement. In my opinion the only effect of such annexation is to transfer municipal control of the Defendant Company's operations on the city's highways, etc., from the Council of the Township of Barton to that of the City of Hamilton. 20

Plaintiff's counsel contended that By-law 533 was repealable by the Council of the Township of Barton under the provisions of section 326 of the Consolidated Municipal Act of 1903 and, though not repealed by that council, became practically repealed on annexation of portions thereof to the City of Hamilton when it came under the municipal jurisdiction of that city. Section 326 is as follows:—

"Every council . . . may repeal . . . alter . . . and amend its by-laws save as by this act restricted."

and it was argued that there being no such restriction the Council of the Township had the unqualified right to repeal By-law 533. 30

Section 56 of the Act of 1903 under which plaintiffs' counsel contended that annexation constituted a repeal is as follows:—

"In case an addition is made to the limits of any municipality, the by-laws of the municipality shall extend to the additional limits, and the by-laws of the municipality from which the same has been detached shall cease to apply to the addition, except only by-laws relating to roads and streets, and these shall remain in force until repealed by by-laws of the municipality to which the addition has been made." 40

Even if the City of Hamilton had power by by-law to repeal By-law 533 it has not done so, nor do I think it had that power.

Temiskaming Telephone Co. Limited vs. the Town of Cobalt (42 O.L.R. 385; 44 O.L.R. 366; and 59 S.C.R. 62) was cited to us in support of the contention that By-law 533 was repealed. That case decided merely that the telephone company having by agreement with the Town of Cobalt, acquired the right to maintain its poles on the streets for the

fixed period of five years, was not entitled to maintain them after the expiry of the five years. Whilst By-law 533 enabled the council of the township to enter into the agreement of the 19th of November, 1904, with the Defendant Company, it was by virtue of the agreement itself that the company, for valuable consideration, acquired the right to lay mains and pipes in the township and to supply the people thereof with gas, and upon its being entered into, it continued binding upon both parties just as would any such agreement between two natural persons.

10 The passage of a by-law by the Council of Barton purporting to repeal By-law 533 could not cancel the agreement, nor could annexation to Hamilton of a part of the Township of Barton. The Legislature has not conferred upon municipal councils the power to undo solemn agreements legally binding on the contracting parties when entered into. Short of such express power, the agreement could not be repealed by the Council of Barton and, in my opinion, section 56 of the Act of 1903 neither repeals By-law 533 nor empowers the Council of the City of Hamilton by any by-law it might pass, to repeal it or to impair the rights acquired under the agreement of the township or of its inhabitants or of the Defendant Company. Section 56 merely provides that on an addition to the
20 limits of a municipality its general by-laws shall extend to the added area and that those of the municipality from which the added area has been detached shall cease to apply thereto. In other words that the added area has simply come under the municipal jurisdiction of the municipality to which it has been added. This is far from saying that the annexation of a portion of one municipality to another has the effect *per se* of cancelling an agreement between the two municipalities which had vested rights in each of them.

In *Hamilton Powder Co. vs. Township of Gloucester*, 13 O.W.R. at page 661, Britton, J., speaking of an appealing by-law, says:—

30 “The general rule is, that it must not impair vested rights—that is, what are really vested rights. The rule as it appears in the *Am. and Eng. Encyc. of Law*, 2nd ed., vol. 5, p. 96, is: “A corporation has not the power, by laws of its own enactment, to disturb or divest rights which it has created, or to impair the obligation of its contracts, or to change its responsibilities to its members, or to draw them into new and distinct relations.”

Alexander vs. Village of Huntsville, 24 O.R. 665; *Great Western R.W. Co. v. North Cayuga*, 33 C.P., 31.

For these reasons I am of opinion that By-law 533 is in full force.

40 The next question for consideration is the duration of the Defendant Company's franchise, claimed by it to be perpetual.

Plaintiffs' counsel contended that the Council of the Township of Barton had no power to grant a perpetual franchise, and referred to sec. 568 in support of that view. Sec. 566(3), authorizing the by-law, does not limit the duration of a franchise granting the right to lay pipes on the streets and to supply gas. Section 568 enacts in effect that in the case of a contract for the supply of gas or electric light for street lighting

*In the
Supreme Court
of Ontario*

No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
—Mulock,
C. J. O.,
24th April,
1933.

—continued

*In the
Supreme Court
of Ontario*

No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
—Mulock,
C. J. O.,
24th April,
1933.

—continued

and other public uses, a municipal council shall not have power to contract in the first instance for a longer period than ten years, etc. The two sections deal with entirely different subject matters: 566(3) with the granting of a franchise; section 568 with the duration of a contract for the supply of gas for public purposes. If sec. 568 throws any light on the intention of the Legislature as expressed in 566 it is, I think, that while the duration of a contract within the meaning of section 568 is limited, the duration of a franchise granted under section 566(3) is perpetual or perhaps for such duration as the council in its discretion may determine. If the latter, then I think the grant in question was in 10
perpetuity.

The grants of powers to railway companies to construct and operate railways, made either by the Parliament of Canada or by any of our Provincial Legislatures, are silent as to their duration but, nevertheless, have always been regarded by Parliament, the Legislatures, the Courts and the investing public as perpetual, and the same interpretation should, I think, be placed on a municipal by-law which is the language of the legislature speaking through a municipal council.

Further, except as qualified by the provisions of clause 10 in the by-law, if here the grant was not in perpetuity, then it was at the will 20
of the council. Clause 10 fixes the price of gas during the first five years from the date of the by-law, then for the next ten years a lesser price, and "thenceforth" a still lesser rate. The word "thenceforth" as it appears in the by-law, suggests to me a definite period, namely perpetuity.

Further, the right to lay pipes in highways and there to maintain and use them is an interest in land, and a grant of such a right to a corporation whose corporate rights are, as are those of the Defendant Company, in perpetuity, is, without words of limitation, a grant in fee.

On another ground, also, I think the grant of the township to the 30
Defendant Company to lay its mains and pipes for the purpose of carrying on the business of supplying gas was irrevocable. It was in the nature of an easement. The defendant, at considerable cost, acted upon the leave conferred upon it by the grant and constructed works of a permanent character for the purpose of carrying on such business whereby what had been a license became, I think, an irrevocable right; *Devonshire vs. Eglin* (1851) 14 Bevan 530; *Dalton v. Angus* (1881) A.C. 765, 782.

In interpreting the language of the by-law, it is a circumstance to be considered by the Court that it contains no provision entitling the De- 40
fendant Company to remove its mains and pipes. Was it intended that the Municipality of Barton, at the end of ten years, could at any moment at will terminate the agreement and confiscate mains and pipes, and if not, is the Defendant Company to be entitled to remove them? No municipal council possessing common sense would make a contract whereby streets were to be broken up at the end of a fixed term of years in order that mains and pipes might be removed.

The very nature of a contract to lay in the ground mains and pipes

for the supply of gas or water, suggests perpetuity and, such I consider, was the meaning of the agreement in question. I would add that if there were any doubt as to whether the Defendant Company's franchise was perpetual, it would be for the plaintiff to satisfy the Court that it was not.

The Defendant Company, under authority of By-law No. 533 lawfully entered into possession of certain highways. The plaintiff asserts that by virtue of a subsequently acquired title they are entitled to dispossess the Defendant Company. It is for the plaintiff to establish its contention that the defendant's right to remain in possession of the streets
10 has come to an end.

I will now deal with the question whether there is any limitation as to the highways in the township in respect of which the Defendant Company has the right to exercise the franchise. Clause 2 of the by-law declares that after laying mains and pipes on certain highways "the company shall be at liberty to enter upon any and all other highways in the Township of Barton and to dig trenches and lay and bury therein and to maintain and operate and repair mains and pipes . . . as the said company may require for the transportation and supply of natural or manufactured gas in the said Township of Barton for fuel, heating and lighting purposes, together with the right to construct and maintain and repair under the surface of all other roads and highways in the Township of Barton all necessary regulators . . . that may be necessary in the transportation and supply of natural or manufactured gas."
20

In my opinion the by-law contemplated a scheme for the continuous supply of gas throughout the whole township to all who at any time might be inhabitants thereof and who desired it, and that, whether they were along the then existing highways or highways later established. It would be unreasonable to hold that the supply was to be limited either as to locality or time. This view is abundantly clear from the language of
30 clause 9 which obligates the company to supply gas to those "along the lines of its mains and pipes in the township and to all other persons . . . who shall lay pipes to connect with the said mains and pipes of the company, or who shall offer to and be ready and willing to pay the company the costs of laying such pipes . . ."

I agree with the learned trial Judge that the Defendant Company's rights extend over all highways in the township whenever established. The by-law is to be construed as always speaking (The Interpretation Act, R.S.O. 1927, cap. 1, sec. 4).

The next question to consider is the argument of the plaintiff's counsel that the Defendant Company did not construct all the lines of mains and pipes and branches mentioned in clause 1 of the by-law, and that because of the provisions of clauses 2 and 6 it has no right to maintain its gas pipes or to supply gas in those portions of the Township of Barton which, since the passage of the by-law, have been added to the City of Hamilton, in other words, that the Defendant Company did not perform the condition precedent to its being at liberty to supply gas. The onus was, I think, upon the plaintiff to show non-performance.
40

*In the
Supreme Court
of Ontario
No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
—Mulock,
C. J. O.,
24th April,
1933.*

—continued

*In the
Supreme Court
of Ontario*

No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
—Mulock,
C. J. O.,
24th April,
1933.

—continued

Neither in their statement of claim nor in their reply do the plaintiffs allege non-performance of such condition precedent. Rule 146 says: "Any condition precedent the performance or occurrence of which is intended to be contested shall be distinctly specified in his pleadings by the party relying thereon," etc. But plaintiff's counsel in their argument advanced such non-performance as a ground for defeating the rights claimed by the Defendant Company to retain its mains and pipes in the street in those portions of the city which formerly formed part of the Township of Barton, and to supply gas to the people.

If the conditions prescribed by clauses 2, 4 and 6 of the original 10 agreement between the defendant and the Township of Barton were not completely performed within the time prescribed by the agreement, yet nevertheless, the circumstances detailed above operate as an estoppel against the defendant, the City of Hamilton, with respect to all pipe lines theretofore laid down by the Defendant Company. Not only so, but these same circumstances operate, in my opinion, as an election both by the Township of Barton and by the City of Hamilton to waive the fulfillment of all conditions precedent to the right of the Defendant Company to operate throughout the area which constituted Barton in 1904. As was said by Lord Watson in the case of *Scarfe v. Jardine* (1882) 7 A.C. at 20 page 361: "Whether he intended it or not, if he has done an unequivocal act, I mean an act which would be justifiable if he has elected one way and would not be justifiable if he had elected the other way, the fact of his having done that unequivocal act to the knowledge of the persons concerned, is an election."

See also the case of *Crook v. The Corporation of Seaford* (1871) 6 Ch. App. 551, and *Alexander v. Corporation of the Village of Huntsville* (1894) 24 O.R. 665.

The attitude of defendants' counsel towards that question was uncertain, at one stage Mr. Staunton alleging performance and at another 30 that whilst there had been substantial performance there had not been a literal compliance with the requirements of the by-law, but that some unnecessary portions of the lines of mains and pipes required to be laid had not been, and I will assume that the Defendant Company did not lay all the lines of mains and pipes called for by the by-law.

The company, by virtue of an agreement between it and the City of Hamilton, dated the 24th day of March, 1931, ratified by 21 George V., cap. 100, claimed the exclusive right to distribute and sell gas throughout the City of Hamilton, but the franchise by that agreement granted by the city to the Plaintiff Company was made subject to "the extent of 40 any existing rights and privileges then held by the Dominion Natural Gas Company Limited under By-law 533 of the Township of Barton."

What is the extent of those existing rights and privileges? Before annexation of any part of the township to the city, the Defendant Company had constructed a substantial portion of the work mentioned in clause 1 of the by-law, and had begun to supply gas in the township. From time to time thereafter, with the permission of the Council of the

township, it extended its mains and pipes in other highways than those mentioned in clause 1 of the by-law, including highways in areas subsequently annexed to the city and supplied the inhabitants with gas and as, from time to time portions of the township became added to the city, the latter took the place of the township, granting permits to the Defendant Company, to extend its mains and pipes through the annexed areas including the laying of additional service pipes for new customers, and to excavate for repairing mains and pipes and of stopping leakage of gas, in fact for doing whatever was reasonably necessary in order to enable
 10 the company to meet the public convenience by a supply of gas.

The granting of such permits continued without interruption for some twenty years down to the year 1931, during which time the Defendant Company acted on such permits by extending its system, which must have been at considerable cost. In fact, during all those years, the Defendant Company distributed gas through its system, both in the portions of the township which had been added to the city, and also in the remainder thereof, and the fair inference is that in the granting of those permits and in permitting the Defendant Company to expend moneys in extending this system and supplying the public with gas, the city fully recog-
 20 nized the company's right to supply gas throughout the annexed areas.

When the city intended to lay permanent pavements on the streets, it was its custom to send to the Defendant Company's manager a communication like the following, of the 5th of May, 1914:—

“Dear Sir:—

I beg to enclose, herewith, copy of list with additions of streets upon which it is proposed to lay pavements, and I beg to advise you that if your company have any conduits or other works to do on these streets that the same be put in as soon as possible.”

On the 12th October, 1920, council of the city passed the following
 30 resolution:—

“Resolved, that the Dominion Natural Gas Company be requested by this council to put in the necessary gas connections to give a service to the new residence of George Ritchie, on the east side of Blake Street.”

The following agreements under seal, duly authorized by by-law of the council of the City of Hamilton, were entered into, namely, an agreement of the 29th day of September, 1920, between the plaintiff, the United Gas and Fuel Company Limited, the defendant, the Dominion Natural Gas Company Limited, there called the Dominion Company, and the Cor-
 40 poration of the City of Hamilton.

This agreement recites that by By-law 400, permission of the city had been given to the Ontario Pipe Line Company (predecessor of the Plaintiff Company) to lay pipes and to distribute gas throughout the city. It also contains the following recital:—

“Whereas, the said Dominion Company is also distributing natural gas in the eastern portion of the City of Hamilton under the provisions of a by-law of the Township of Barton in that behalf

*In the
 Supreme Court
 of Ontario*

—
 No. 30.
 Reasons for
 Judgment of
 The Court
 of Appeal
 for Ontario,
 —Mulock,
 C. J. O.,
 24th April,
 1933.

—continued

*In the
Supreme Court
of Ontario*

No. 30.
Reasons for
Judgment of
The Court
of Appeal
for Ontario,
—Mulock,
C. J. O.,
24th April,
1933.

—continued

passed the 26th day of October, 1904, and numbered 533.”
It further recites an agreement between the two companies whereby the Dominion Company agrees to deliver natural gas to the other company.

It also recites the falling off of the supply of natural gas, and a proposition by the Plaintiff and Defendant Companies that for a limited period they be permitted to charge an increased price for gas as an inducement to them to endeavour to procure an increased supply, and then it is agreed between the city and each of the two companies that until the 1st day of April, 1921, permission is given to each company to collect rates higher than those authorized by the respective by-laws, and that on and after that date gas shall be supplied by the companies “pursuant to the terms and conditions contained in said by-laws.” 10

On the 3rd day of April, 1921, the three parties entered into another agreement which again recited that “the Dominion Company is also distributing natural gas in the eastern portion of the City of Hamilton under the provisions of a by-law of the Township of Barton in that behalf, passed the 26th day of October, 1904, and numbered 533,” and the city, by that agreement, granted permission to each company until the 1st of May, 1921, to collect a higher rate than that provided in the respective by-law, after which date each company was to supply gas “pursuant to the terms and conditions contained in said by-laws.” 20

Then there followed similar agreements on the following dates, the 10th of May, 1921, the 28th day of June, 1921, the 25th of August, 1921, and the 25th October, 1921. Each of these agreements not only recognized the right of the Defendant Company to maintain its gas system in the areas added to Hamilton, but expressly declared that on the expiry of the time during which it was to be permitted to collect a higher rate, it should supply gas pursuant to the terms and conditions contained in the by-laws.

Throughout several years down to 1929, the Defendant Company thereto authorized by permits of the City Engineer, laid at a cost, in the opinion of the company’s manager, of about \$500,000, mains and pipes in Hamilton for serving its citizens with gas, the number of the company’s customers in 1930 being 8,187. 30

Throughout a period of about 20 years down to 1931, the city not only did not question the Defendant Company’s right to lay mains and pipes and to supply gas in the portions of what had been parts of Barton, but had become annexed to the city, but unqualifiedly recognized such right and expressly required the company on the various occasions above mentioned to supply gas in accordance with the terms and conditions of By-law 533. 40

In *Winnipeg Electric Railway v. City of Winnipeg*, 12 A.C., dealing with similar recognition of a contract, Lord Shaw at p. 372 says:—

“After these unequivocal acts recognizing the continued existence of the contract entailing a large expenditure by the defendant, the city is too late now to have it declared that the defendants have forfeited their privileges in the streets.”

The City of Hamilton, by its conduct during a long term of years in acquiescing in the construction put upon the Defendant Company's rights by the company, and further by its authorizing the Defendant Company to expend large sums of money in establishing its mains and pipes in Hamilton and in requiring the Defendant to supply gas pursuant to the terms and conditions of the by-law, should not now be permitted to question the Defendant Company's rights to maintain its plant and from time to time if deemed advisable to extend it, and thereby supply gas to the people of the annexed areas. (City of Calgary v. Canadian Western
 10 Natural Gas Co. 56 S.C.R. at p. 138).

In my opinion the City of Hamilton is estopped by its conduct from now questioning the rights claimed by the Defendant Company.

I think the evidence warrants the finding that the Defendant Company substantially complied with all the requirements of By-law 533 as a condition precedent to its being entitled to supply gas through its mains and pipes, but that it failed to lay mains and pipes in certain portions of the highways where they would be of little value. Nevertheless, the township was, because of such failure, entitled to repudiate the agreement, but neither during the many years that preceded the annexation of
 20 any portions of the township to the City of Hamilton, nor since up to the commencement of this action, has it repudiated the agreement, but on the contrary has permitted the Defendant Company to continue in occupation of the highways with its mains and pipes, to extend the same, and to distribute gas through them to the inhabitants and also on one or two occasions has requested the Defendant Company to supply some inhabitants with gas.

Thus the township, through the benefits accruing to its inhabitants, has received valuable consideration for the privileges granted the Defendant Company.

30 The conduct of the township, in my opinion, warrants the inference that it elected to treat the agreement as executed, whereby as against the township the condition precedent was waived. Carter v. Scargill, (1875) 10 Q.B.D. 564.

The conduct of the township is not impugned, and in my opinion, binds all parties interested in the terms of the agreement and the plaintiffs, not being parties to it, have no status entitling them to allege non-performance of the condition in question.

The appeal should be dismissed with costs.

MAGEE, J. A., I Agree.

40 MIDDLETON, J. A., I Agree.

MASTEN, J. A., I Agree.

FISHER, J. A. I Agree.

*In the
 Supreme Court
 of Ontario*

No. 30.
 Reasons for
 Judgment of
 The Court
 of Appeal
 for Ontario,
 —Mulock,
 C. J. O.,
 24th April,
 1933.

—continued

*In the
Supreme Court
of Ontario*

No. 31.
Order of
The Court
of Appeal
for Ontario,
24th April,
1933.

**No. 31.
Order of The Court of Appeal for Ontario.**

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE THE CHIEF JUSTICE
OF ONTARIO
THE HONOURABLE MR. JUSTICE MAGEE
THE HONOURABLE MR. JUSTICE MIDDLETON
THE HONOURABLE MR. JUSTICE MASTEN
THE HONOURABLE MR. JUSTICE FISHER

Monday, the 24th day of
April, 1933.

BETWEEN :

UNITED GAS AND FUEL COMPANY OF HAMILTON LIMITED AND THE
CORPORATION OF THE CITY OF HAMILTON,

Plaintiffs,

—AND—

DOMINION NATURAL GAS COMPANY LIMITED,

Defendant.

UPON motion made unto this Court on the 14th, 15th, 16th, 19th and 20th days of December, 1932, by counsel in behalf of the plaintiffs by way of appeal from the judgment pronounced in this action on the 8th day of July, 1932, by The Honourable Mr. Justice Wright, in presence of counsel for all parties, and upon hearing read the pleadings, the evidence adduced at the trial and the judgment aforesaid, and upon hearing what was alleged by counsel aforesaid, the Court was pleased to direct that the matter of the said motion should stand for judgment, and the same coming on this day for judgment, 20

1. THIS COURT DOETH ORDER that the said appeal be and the same is hereby dismissed with costs to be paid by the plaintiffs to the defendant forthwith after taxation thereof.

“D’ARCY HINDS,”
Registrar, S.C.O.

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Entered O.B. 132, page 514-5.

May 8, 1933. “H.F.”

No. 32.
Order of Middleton, J.A.

In the
Supreme Court
of Ontario

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE MIDDLETON } Wednesday, the 17th day
IN CHAMBERS } of May, 1933.

No. 32.
Order of
Middleton,
J.A., 17th
May, 1933.

BETWEEN:

UNITED GAS AND FUEL COMPANY OF HAMILTON LIMITED AND THE
CORPORATION OF THE CITY OF HAMILTON,

Plaintiffs,

10

—AND—

DOMINION NATURAL GAS COMPANY LIMITED,

Defendant.

1. UPON the application of counsel for the plaintiffs in the presence of counsel for the defendant, upon hearing read the pleadings and proceedings in the action, the judgment of the Court of Appeal for Ontario pronounced herein on the 24th day of April, 1933, and the bond of The General Accident Assurance Company of Canada dated the 11th day of May, 1933, filed and upon hearing what was alleged by counsel aforesaid and it appearing that the plaintiffs have under the provisions of The
20 Privy Council Appeals Act R. S. O. 1927, Chapter 86, a right to appeal to His Majesty in His Privy Council.

2. IT IS ORDERED that the said Bond be and the same is hereby approved as good and sufficient security that the plaintiffs herein will effectually prosecute their appeal to His Majesty in His Privy Council from the judgment of the Court of Appeal for Ontario and will pay such costs and damages as may be awarded in case the said judgment is affirmed.

3. AND IT IS FURTHER ORDERED that an appeal by the plaintiffs herein to His Majesty in His Privy Council from the said judgment of
30 the Court of Appeal for Ontario be and the same is hereby admitted.

4. AND IT IS FURTHER ORDERED that the costs of this application shall be costs in the said appeal.

“D’ARCY HINDS,”
Registrar, S.C.O.

“W.E.M.”

Entered O.B. 132, page 582.

May 17th, 1933. “V.C.”

RECORD OF PROCEEDINGS

PART II. — EXHIBITS

*In the
Supreme Court
of Ontario*

Exhibit 1.
(Plaintiffs' Exhibit)
Proclamation

—
Exhibits.

Ex. 1.
Proclam-
ation,
2nd July,
1891.

A. CAMPBELL

CANADA

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 10
to whom these Presents shall come, or whom the same may concern—
greeting:

PROCLAMATION

O. MOWAT, } WHEREAS, it has been made to appear to the
ATTORNEY-GENERAL } Lieutenant-Governor of our Province of
Ontario-in-Council that two-thirds of the members of the Municipal
Council of the Corporation of the City of Hamilton did, in Council, be-
fore the fifteenth day of July, 1891, and in pursuance of the Municipal
Act, pass a resolution affirming the desirability of adding to the limits of
the said city certain portions of the adjoining Township of Barton: 20

AND WHEREAS, the said Municipal Council has prayed that a procla-
mation be issued to give effect to the said resolution;

AND WHEREAS, our said Lieutenant-Governor-in-Council, upon cer-
tain terms and conditions, as to taxation, or otherwise, to which the said
City Council has consented, considers it desirable to attach to the said
City of Hamilton certain portions of the land mentioned in the above
resolution.

Now KNOW YE that having taken the premises into our royal con-
sideration, we, by and with the advice of our Executive Council of our
said Province of Ontario, and in the exercise of the power in us vested 30
in this behalf by the said in part recited Act, or otherwise howsoever, do,
by this our Royal Proclamation, hereby add to the said City of Hamilton

those certain portions of the said Township of Barton hereinafter mentioned, that is to say:

*In the
Supreme Court
of Ontario*

ALL AND SINGULAR that certain parcel or tract of land in the said Township of Barton lying to the west of the road allowance between lots numbers eight and nine, and extending from the brow of the mountain to the waters of Burlington Bay, and westward to the present city limits, and including the said road allowance between said lots numbers eight and nine, and also those parts of lots thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, and of the road allowance between lots numbers
10 eighteen and nineteen in the fourth concession of the said Township of Barton lying between the brow of the mountain and the present city limits.

Exhibits.
Ex. 1.

Proclamation,
2nd July,
1891.

—continued

AND WE DIRECT that the said annexation of territory to the said City of Hamilton shall, in addition to any others imposed by statute, where not inconsistent herewith, be and the same is hereby made upon the express terms and conditions as to taxation and otherwise hereinafter mentioned, that is to say:

(a) That no property in said portions of the Township of Barton so added shall be liable for any portion of the debenture debt of the City
20 of Hamilton now existing, except the following, and any debentures issued since the first day of January, 1890, or to be hereafter issued:

Waterworks debentures, 1864	\$ 759,184.69
Waterworks debentures, 1880, issued under By-law 182	165,000.00
Three-fifths of balance remaining to be levied under By-law 422, passed 11th June, 1888, for the issuing of \$110,000 of debentures for permanent improvements, including \$16,200 for east end sewer and \$48,300 for waterworks, such balance being about \$100,000	60,000.00
City Hall debentures under By-law 369	93,799.00
30 Public School debentures under By-laws 420 and 472	98,406.00
Public Library debentures under By-law 473	50,000.00
	<hr/>
	\$1,226,389.69

Paragraph (a) repealed by Statutes of Ontario, 1910, Chap. 116, Section 1, Sub-section 4.

(b) That the amounts to be levied annually for the several classes of debentures hereinbefore mentioned shall, subject as hereinafter mentioned, be levied upon the property assessed in said added portions of the Township of Barton *pro rata* with the property assessed in the other
40 portions of the City of Hamilton.

Paragraph (b) repealed by Statutes of Ontario, 1910, Chapter 116.

(c) That for the period of ten years after this our proclamation shall have taken effect, the taxes to be levied upon the properties assessed in said added portions of the said Township of Barton shall be based upon the assessment of such properties for the year 1891, or so much only of

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 1.

Proclam-
ation,
2nd July,
1891.

—continued

the assessment of the said properties from year to year as shall be equal to the assessment thereof for the year 1891, but that where any real estate shall be built upon or sub-divided into city lots after the date of this our said proclamation, the value of the buildings or the additional value, if any, arising from such sub-division into city lots shall for the purpose of taxation be added to the assessed value of such real estate for the year 1891, and that where any divisions or sub-divisions of any property assessed in 1891 as one parcel or property shall take place during the said ten years, the taxation of the various parts or parcels into which the same may be divided or sub-divided shall be upon the proportionate part of the assessment upon which the taxes to be levied would have been based for the whole of such property if such division or sub-division had not taken place, subject, nevertheless to any addition to be made to the value, as hereinbefore provided. But nothing herein contained shall be held to imply that mere sub-division into city lots shall give additional value to any real estate. 10

(d) That in the portions of the said Township of Barton so added, the opening, altering, macadamizing, grading and paving of the streets and alleys, the work of curbing and sodding and the construction of sidewalks and sewers, shall be done on the local improvement plan, and be paid for by a frontage tax except where such works consist merely of keeping the streets or sidewalks in a good and sufficient state of repair, and subject always to the liability of the City Corporation to contribute one-third of the cost of all common sewers having a sectional area of more than four feet, as provided for in the local improvement clauses of the Municipal Act, and to pay the cost of that part of every such work which is chargeable in respect of street intersections or opposite to real property exempt from local or special assessment, and also to pay the cost of all trunk sewers which the Council may deem it expedient to construct, the properties fronting on or draining into any such sewer to be liable to the same rental as in other portions of the city. 20 30

Paragraph (d) repealed by Statutes of Ontario, 1910, Chap. 116.

(e) That the City of Hamilton shall assume the payment of the balance of the debt, which may, when this Proclamation takes effect, be owing upon the school houses in school sections numbers seven and eight of the said Township of Barton.

(f) That the water rates to be charged under the Statutes and By-laws relating to the Hamilton Water Works in respect of the portions of the Township of Barton so added shall be the same as the rates charged in other portions of the City of Hamilton, and shall be imposed, levied and collected in the same manner, and extensions of the water service shall be made from time to time as required in the same manner and upon the same terms as they are made in other portions of the City, it being intended that the said portions so added shall be treated in the same manner with regard to such water rates and water service as if they had always formed part of the City of Hamilton. 40

AND WE DIVIDE the said City of Hamilton, as hereby constituted, into

seven wards, to be called and known as ward number one, ward number two, ward number three, ward number four, ward number five, ward number six and ward number seven, the said wards to be constituted and bounded as follows, that is to say:

WARD NUMBER ONE—To comprise all that part of the said city bounded on the north by King Street and the continuation thereof to the city limits, on the west by Ferguson Avenue, and on the south and east by the city limits.

10 WARD NUMBER TWO—To comprise all that part of the said city bounded on the north by King Street, on the west by Bay Street and the continuation thereof to the mountain brow, on the east by Ferguson Avenue, and on the south by the city limits.

WARD NUMBER THREE—To comprise all that part of the said city bounded on the north by King Street as continued to the Dundas Road, on the east by Bay Street and the continuation thereof to the mountain brow, and on the south and west by the city limits.

WARD NUMBER FOUR—To comprise all that part of the said city bounded on the south by King Street as continued to the Dundas Road, on the east by Bay Street, and on the north and west by the city limits.

20 WARD NUMBER FIVE—To comprise all that part of the said city bounded on the south by King Street, on the west by Bay Street, on the east by Hughson Street, and on the north by the city limits.

WARD NUMBER SIX—To comprise all that part of the said city bounded on the south by King Street, on the west by Hughson Street, on the east by Wellington Street, and on the north by the city limits.

WARD NUMBER SEVEN—To comprise all that part of the said city bounded on the south by King Street and the continuation thereof to the city limits, on the west by Wellington Street, and on the north and east by the city limits.

30 AND WE FURTHER DIRECT that the said additions of territory to the said City of Hamilton, and the said division of the city, including such added territory into seven wards, shall take effect in accordance with the provisions of the Municipal Act.

THE CITY OF HAMILTON was re-divided into eight wards by proclamation of the Lieutenant-Governor of the Province of Ontario, dated the 11th day of March, 1910.

OF ALL WHICH PREMISES, all our loving subjects, and all others whom it doth or may in any wise concern, are hereby required to take notice and govern themselves accordingly.

40 IN TESTIMONY WHEREOF, we have caused these our Letters to be made Patent, and the Great Seal of our said Province of Ontario

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 1.

Proclamation,
2nd July,
1891.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 1.
Proclam-
mation,
2nd July,
1891.

—continued

to be hereunto affixed: WITNESS, THE HONOURABLE SIR ALEXANDER CAMPBELL, Knight Commander of our Most Distinguished Order of St. Michael and St. George, Member of our Privy Council for Canada, etc., etc., Lieutenant-Governor of our Province of Ontario, at our Government House, in our City of Toronto, in our said Province, the second day of July, in the year of our Lord one thousand eight hundred and ninety-one, and in the fifty-fifth year of our reign.

By command,
J. M. GIBSON, *Secretary.*

Certified a true copy.
S. H. KENT, *City Clerk.*

10

Part Ex. 15.
By-law No.
400 of the
City of
Hamilton,
26th Sept-
ember, 1904.

Part Exhibit 15.
(Plaintiffs' Exhibit)
By-law No. 400 of the City of Hamilton.

BY-LAW No. 400.

Respecting the Ontario Pipe Line Company Limited.
Passed the 26th day of September, 1904

The Council of the Corporation of the City of Hamilton enacts as follows:

1. The consent, permission and authority of the Corporation of the City of Hamilton are hereby given and granted to the Ontario Pipe Line Company Limited, its successors and assigns to enter upon the streets, public alleys and public grounds of the City of Hamilton, to dig trenches and lay and bury therein, and to maintain, operate and repair mains and pipes of such sizes as the said company may require for the transportation and supply of natural or manufactured gas in the said City of Hamilton, for fuel, heating and lighting purposes, together with the right to construct and maintain and repair under the surface of such streets, alleys or public grounds all necessary regulators, valves, curb boxes, safety appliances and other appurtenances that may be necessary in connection with the transportation and supply of natural or manufactured gas. 20

2. The company shall well and sufficiently restore forthwith to as good a condition as they were in before and to the satisfaction of the City Engineer, all streets, alleys and public grounds which it may excavate or interfere with in the course of the construction or repairing of its gas mains, pipes, regulators, valves, curb boxes, safety appliances, and other appurtenances necessary for the transportation and supply of natural or manufactured gas and will make good any subsidence thereafter caused by any such excavation, and well and sufficiently indemnify the City Corporation against all expenses, damages and costs it may from time to time incur or be put to by reason of the construction, repair, maintenance 30 40

or operation of said gas mains, pipes, regulators, valves, curb boxes, safety appliances, and other appurtenances necessary for the transportation and supply of natural or manufactured gas or any of them, and in the event of the company failing at any time to do any work required by this section, the City Corporation may forthwith do such work and charge the cost thereof to the company who shall pay on demand any account therefor certified by the City Engineer.

10 3. In the event of the City Corporation deciding to pave any street or streets wherein the company has not laid any main, pipe or pipes, and in the opinion of the City Engineer such main, pipe or pipes should be laid under the proposed paved portion of such street or streets, then the said company upon notice from the City Engineer so to do, shall lay such main, pipe or pipes and all private supply pipes leading therefrom within such street or streets at such time and in such manner as the City Engineer shall direct, before such paving is done.

20 4. No excavation, or opening or work which may disturb or interfere with the surface or condition of any street, alley or public ground shall be made or done unless a permit therefor has been granted by the City Engineer, and all such work shall be done under his supervision and to his satisfaction, and in cases where an inspector on behalf of the City is considered necessary by him the wages of such inspector shall be paid by the company. The location of all pipes or works on streets, alleys and public grounds shall be subject to the direction and approval of the City Engineer, and such pipes and works shall, whenever it may in his opinion be practicable, be laid in or along the boulevards or the sides of the streets.

30 5. The company shall render its accounts monthly or quarterly at its option and shall not charge the Corporation of the City of Hamilton or consumers of gas therein for natural gas more than fifty cents per thousand cubic feet for the first five years from the date hereof, and for ten years thereafter not more than forty-five cents per thousand cubic feet, and thenceforth not more than forty-two and a half cents per thousand cubic feet, subject always to a discount of five cents per thousand cubic feet on all bills paid within fourteen days after presentation thereof; and meters shall be furnished by the company free of charge to all consumers of its gas, and no charge shall be made for any supply pipe from the main to the margin of the street.

40 6. The company shall not charge consumers of more than 200,000 cubic feet of natural gas per month more than forty-two cents per thousand cubic feet; nor consumers of more than 1,000,000 cubic feet of natural gas per month more than forty cents per thousand cubic feet; nor consumers of more than 2,000,000 cubic feet of natural gas per month more than thirty-seven and a half cents per thousand cubic feet; nor consumers of more than 6,000,000 cubic feet of natural gas per month more than thirty-five cents per thousand cubic feet; the amounts so charged being the net price after deducting all discounts.

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 15.
By-law No.
400 of the
City of
Hamilton,
26th Sept-
ember, 1904.

--continued

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 15.
By-law No.
400 of the
City of
Hamilton,
26th Sept-
ember, 1904.

—*continued*

7. In case the company furnishes manufactured gas it shall not charge the Corporation of the City of Hamilton or consumers therein more than ninety-five cents per thousand cubic feet, subject to a discount of five cents per thousand cubic feet on all bills, paid within fourteen days after presentation thereof, and such price shall be subject to be reduced in the manner hereinafter provided.

8. For the purpose of determining the reduction to be made in the price to be paid to the company from time to time for manufactured gas supplied to the City of Hamilton or its inhabitants, the gross revenues of the company shall from year to year be dealt with and applied in manner following: The proper and reasonable working expenses, interest and the cost of management and of all necessary repairs and renewals and the fees of the President, Vice-President, and directors which shall not exceed two per cent upon the paid up capital stock of the company, and all proper allowances for bad and doubtful debts or losses by accidents or otherwise shall first be deducted therefrom, and after payment out of the surplus of a dividend not exceeding ten per cent per annum, payable half yearly upon the paid up capital stock of the company: The balance shall be placed in equal shares to the credit of the reserve fund of the company and of a fund to be called the surplus profit fund; and as soon as such surplus profit fund shall amount to a sum equal to five cents per thousand feet of gas consumed by customers in the City of Hamilton during the immediately preceding year, a reduction of five cents per thousand feet shall be made to the consumers in said city in the price of gas supplied by the company for the then succeeding year; and such reduction shall continue to be made from time to time when the amount at the credit of the surplus profit fund shall be sufficient to warrant it upon the basis hereinbefore mentioned, and further reduction of five cents per thousand feet in the price of gas supplied to customers in the City of Hamilton shall be made from time to time when the amount at the credit of such fund shall so warrant upon the basis aforesaid.

Declaration as to clause 8—By-law No. 443.

9. The application of the revenue in the manner hereinbefore provided shall begin from and after the date of the commencement of the manufacturing of gas by the company, and the accounts of the funds in the next preceding section mentioned, shall be made up to the thirty-first day of January in each succeeding year, and the amounts to be from time to time placed to the credit of the surplus profit fund shall be so credited annually on the thirty-first day of January in each year.

10. It is hereby declared that the paid up capital stock of the company to be computed for the purpose of section 7 of this by-law shall be only the actual amount paid in cash to the company for such capital stock.

11. After the commencement of its manufacture of gas the company shall permit the Corporation of the City of Hamilton to make an annual audit of the receipts and expenditures of the company and of the paid up capital stock and the sums paid to the company thereon, and of the

accounts of or relating to the said reserve fund and the said surplus profit fund.

12. In the event of the company being unable to obtain a sufficient quantity of natural gas to supply the demands of the City Corporation and of the inhabitants of the city, and of its consequently establishing works for the manufacture and supply of artificial gas to supplement or take the place of natural gas, the price of mixed natural and manufactured gas so supplied shall be charged in proportion to the quantities of natural and manufactured gas respectively so supplied, at the prices
 10 thereof as fixed or settled under this by-law, and subject to the discount of five cents per thousand cubic feet thereby provided for, and in the event of the City Corporation and the company failing to agree as to the proportions and price of the mixed gas so supplied by the company, such proportions and price shall be determined by arbitration in the manner provided by the Municipal Act so far as the provisions of said Act can be made applicable, or in such other manner as the City Corporation and the company may agree upon.

13. The company shall not charge the Corporation of the City of Hamilton or consumers of gas therein a greater rate than fifty cents per
 20 thousand cubic feet, subject to the discount hereinbefore mentioned, for mixed or manufactured gas unless the company, has, before supplying such gas given to the consumers at least one month's notice in writing that the gas supplied by it to any such consumer will be mixed or manufactured gas and not natural gas, but no mixed or manufactured gas shall be supplied unless the company is unable to obtain natural gas in sufficient quantities to supply the demand thereof of the City Corporation and the inhabitants of the city requiring to be supplied therewith.

14. No breaking up of any portion of the streets of the City of Hamilton by or on behalf of the Company, nor any occupation thereof or
 30 work of construction therein by the company, shall be permitted, unless by special resolution of the City Council, until the company has laid its pipes to the City of Hamilton, and is prepared to supply natural gas to the inhabitants of the said city requiring the same in such quantities as they may need.

15. The company, shall, before beginning any work in the city under this by-law, file with the City Engineer a plan drawn to a scale showing the streets, avenues, alleys and other public places in which it proposes to lay pipes and construct works and the particular parts thereof it proposes to occupy for each of such purposes, and shall at the same time present
 40 and file with the City Engineer definite written specifications of the pipes and works proposed to be laid or constructed by it, specifying the materials and dimensions thereof and the depth at which such pipes and works are to be laid; and similar plans and specifications shall be filed with the City Engineer of all extensions of or additions to such pipes or works before such extensions or additions are begun.

16. The company shall commence not later than the first day of May, 1905, to lay mains and pipes within the said City of Hamilton, and

*In the
 Supreme Court
 of Ontario*

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 Exhibits.
 Part Ex. 15.
 By-law No.
 400 of the
 City of
 Hamilton,
 26th Sept-
 ember, 1904.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 15.
By-law No.
400 of the
City of
Hamilton,
26th Sept-
ember, 1904.

—continued

shall within six months thereafter have laid at least ten miles of mains in the streets, public alleys and public grounds of the City of Hamilton, and shall, from and after the expiration of such six months, supply gas, at the prices hereinbefore mentioned to the City Corporation, and to all inhabitants along such mains desiring to be supplied, upon such applicants tendering to the company a contract to pay the rates aforesaid, all such contracts to be subject to the company's general rules and regulations not inconsistent herewith, and the company to have the right to cease such supply during any time when the rates chargeable under this by-law shall be in arrear. If any such applicant shall not be the owner of the premises for which the supply of gas is desired, the company may require the applicant to furnish adequate security for the payment of the rates chargeable for the gas to be supplied to him, such security to be by guarantee bond or cash deposit, and the sufficiency of the security to be determined by the Assessment Commissioner if objected to by the company. 10

17. Whenever said company shall have received bona fide application for the supply of gas to the extent of 200,000 cubic feet per month, to be furnished within a radius of a quarter of a mile from any point in any part of the city where it has laid down a line of pipes, and the applicants shall have tendered such company contracts for the use of gas aggregating said amount for at least one year, accompanied by security from each applicant approved by the Assessment Commissioner of the city, which contracts shall conform to said company's general rules and regulations, not inconsistent herewith, then and in such case the City Council may order and direct that said company within three months thereafter, shall extend its line of pipes and furnish gas to such applicants in the manner and on the conditions hereinbefore provided, so far as the capacity of its plant and its facilities for increasing the same will permit. 20

18. All rights now or that may hereafter be vested in the said City Corporation, or in any other gas company, telephone, telegraph, electric light or other company with respect to the care and improvement of the streets, the construction of sewers, culverts or drains, and the laying of water or gas pipes therein, or the placing of poles or wires or conduits, are in no way to be affected or impaired by any privilege that may be granted to the said company; but the said mains, pipes, and works must be laid down and maintained, subject to the rights of the said City Corporation, and the said companies to take up, alter, repair or remove sewers, water and gas pipes and to place poles and wires and conduits, and subject to all other purposes within the province and privileges of the said Corporation of the City of Hamilton, or of the said companies, without claim for damages against the said Corporation or any of the said companies and the said City Council expressly reserves to itself the right hereafter to lay down or to permit to be laid down, in the said streets, gas or water pipes or sewers, and to place or permit the placing of poles and wires or conduits, and to alter, improve and repair said streets whenever the public or private convenience may require. 30 40

19. The company shall make good to the City Corporation all damage or loss which may be caused by the works or operations of the company, or by the escape or leakage of gas, to any water pipes, roadways, pavements, or other property of the city, and all expenses incurred by the city by reason of such works or operations, or by any escape or leakage of gas and shall indemnify and save harmless the City Corporation against all claims for damages or loss, and all damages, costs and expenses which may at any time be suffered, paid or incurred by the city by reason of the exercise by the company of the powers and privileges

10 hereby granted.

20. The company shall use all proper and practicable means from time to time to prevent the escape or leakage of gas from its mains and pipes or the causing of damage or injury therefrom to any person or property.

21. If the company shall not, within six months from the first day of May, 1905, have laid at least ten miles of mains within the City of Hamilton, and be ready and willing to supply therefrom with natural gas all inhabitants along the line of said mains requiring such supply, or if the company shall at any time for a period of three months, cease or fail

20 to supply gas to the City of Hamilton, or its inhabitants in accordance with the terms of this by-law, the council of the City of Hamilton may, by resolution or by-law terminate the rights and privileges granted by this by-law, and all mains, pipes, plant and works laid in the streets, public alleys and public grounds of the city by the company shall become the property of the City Corporation, unless the company removes the same within six months after receiving notice of the passing of such resolution or by-law in which case the company shall restore the streets, public alleys and public grounds from which its mains, pipes, plant and works have been removed to as good condition as they were in before and

30 to the satisfaction of the City Engineer.

22. The privileges granted by this by-law shall, subject to the provisions hereinafter mentioned, extend until the 26th day of September, 1924, but at the expiration thereof the Corporation of the City of Hamilton may, after giving six months' notice prior to the expiration of the said term of their intention, assume the ownership of the rights and franchises of the company, and all real and personal property, in connection with the working thereof, including or excluding, at the option of the City Corporation, that part outside the corporation limits on payment of their value, to be mutually agreed on or to be determined by arbitration in case the city and company do not agree upon such value; and in

40 case the corporation shall fail to exercise the right of assuming the ownership of said rights, franchises and property at the date aforesaid, the privileges granted by this by-law shall continue, but the said corporation may, at the expiration of every five years to elapse after the said date, exercise the same right of assuming the ownership of the said rights and franchises and of all real and personal property thereto appertaining including or excluding, at the option of the City Corporation, that part

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 15.
By-law No.
400 of the
City of
Hamilton,
26th Sept-
ember, 1904.

—continued

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 15.
By-law No.
400 of the
City of
Hamilton,
26th Sept-
ember, 1904.

—continued

outside the corporation limits after six months' notice to be given pre-
ceding the expiration of every fifth year, as aforesaid, and on payment
of their value, to be determined by arbitration if not mutually agreed on;
and any arbitration under this clause shall be subject to the provisions
of the Municipal Act and of the Acts respecting arbitrations and refer-
ences, and the arbitrators shall have all the powers of arbitrators ap-
pointed under the said Acts, and each party shall pay half the cost of the
arbitration. The Council may, within three months after the publication
of such award, or of the determination of any appeal therefrom, elect by
by-law not to assume the ownership of said rights and property of the 10
company or any portion thereof, in which case the city shall pay the cost
of the arbitration.

23. If the City Corporation shall not give notice under the last pre-
ceding section of this by-law of its intention to assume the ownership of
the company's rights, franchises and property, or that portion thereof
within the city limits, or if it shall not assume the ownership thereof or
of such portion thereof pursuant to such notice, the privileges hereby
granted to the company shall continue for further successive periods of
five years each, subject to the right of the City Corporation to assume the
ownership of the rights and property of the company as hereinbefore 20
provided at the expiration of any one of such periods of five years, but
the City Corporation may at any time or from time to time give notice
in writing to the company of their intention to refer to arbitration the
terms and conditions upon which such privileges should so continue after
the expiration of the then current period of five years, including amongst
such terms and conditions the prices to be charged for natural, mixed or
manufactured gas; and any arbitration under this section shall be sub-
ject to the provisions of the Municipal Act and of the Acts respecting
arbitrations and references, and the arbitrators shall have all the powers
of arbitrators appointed under the said acts, and each party shall pay 30
half the costs of the arbitration, and the rights hereby granted shall con-
tinue, subject to the award of the arbitrators or arbitrator, for the then
succeeding five year period, and such terms shall remain in force there-
after until changed by mutual agreement between the City Corporation
and the company or until other terms and conditions shall have been
settled by a subsequent arbitration under this by-law; but the City Cor-
poration may, after the arbitrators have made their award, elect to con-
tinue the privileges hereby granted upon the terms contained in this by-
law instead of under the terms contained in said award if the council of
the said city shall, within three months after the publication of such 40
award or of the determination of any appeal therefrom, pass a by-law
to that effect, in which case the city shall pay the cost of the arbitration.

Declaration as to clause No. 23, By-law No. 443.

24. The company shall not amalgamate or combine with any other
company or person or sell out or transfer to any other company or
person its rights or property or its gas supply in the City of Hamilton,
without the consent by by-law of the City Corporation, and in the event

of any such amalgamation, combine, sale or transfer by the company, or of the company pooling its receipts with or coming, directly or indirectly, under the same management or control as any other company, firm or person supplying gas to the City of Hamilton or its inhabitants without such consent, the rights and privileges hereby granted shall cease and determine, and all mains, pipes, plant and works of the company in the streets, public alleys, and public grounds of the city shall become the property of the City Corporation, unless the company within six months after being notified that the City Corporation desires said mains, pipes, plant and works to be removed from said streets, alleys and public grounds of the city, removes the same therefrom and restores said streets, alleys and public grounds to as good a condition as they were in before and to the satisfaction of the City Engineer.

25. The rate of wages paid by the company to its day laborers shall be the same rate of wages that is paid by the City Corporation of Hamilton to their day laborers, and the company shall employ citizens of Hamilton upon its various works in the City of Hamilton.

26. This by-law and the powers and privileges hereby granted shall not take effect or be binding on the said city unless formally accepted by said company within one month after the passing hereof by an agreement which shall legally bind the said company to perform, observe and comply with all the agreements, obligations, terms and conditions herein contained, and shall be approved by the City Solicitor, and such agreement when executed by the Company, to his satisfaction, shall also be executed under the city seal by the Mayor or the Chairman of the Finance Committee and the City Clerk.

Certified a true copy.

S. H. KENT, *City Clerk.*

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 15.
By-law No.
400 of the
City of
Hamilton,
26th Sept-
ember, 1904.

—*continued*

Exhibit 83.

(Filed by Consent of Both Parties on Hearing of Appeal.)

Letters Patent (Ontario) Incorporating the Dominion Natural Gas Company, Limited.

L.S.

CANADA

WM. MORTIMER CLARK. PROVINCE OF ONTARIO

EDWARD THE SEVENTH 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.

J. M. GIBSON, *Attorney-General.*

TO ALL TO WHOM THESE PRESENTS SHALL COME—

GREETING:

WHEREAS The Ontario Companies Act provides that with the exceptions therein mentioned the Lieutenant-Governor of Our Province of

Ex. 83.
Letters Pat-
ent (Ontario)
incorporating
the Dominion
Natural Gas
Company Lim-
ited, 12th
October,
1904.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 83.
Letters Patent (Ontario) incorporating the Dominion Natural Gas Company Limited, 12th October, 1904.

—continued

Ontario in Council may by Letters Patent under the Great Seal, create and constitute bodies corporate and politic for any of the purposes or objects to which the legislative authority of the Legislature of Ontario extends;

AND WHEREAS by their Petition in that behalf the persons herein mentioned have prayed for a Charter constituting them a body corporate and politic for the due carrying out of the undertaking hereinafter set forth:

AND WHEREAS it has been made to appear to the satisfaction of Our Lieutenant-Governor-in-Council that the said persons have complied with the conditions precedent to the grant of the desired Charter and that the said undertakings is within the scope of the said Act: 10

NOW THEREFORE KNOW YE that by and with the advice of the 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 ROYAL LETTERS PATENT HEREBY CREATE AND CONSTITUTE the persons hereinafter named that is to say: William John Aikens, Accountant, Henry Cockshutt, Edmund Lister Cockshutt, and Joshua Smith Hamilton, Manufacturers, and Edmund Sweet, Barrister-at-Law, all of the City of Brantford in the County of Brant and Province of Ontario and any others who have become Subscribers to the Memorandum of agreement of the Company and their Successors respectively a Corporation for the purposes and objects following that is to say (a) Subject to the provisions of the Act respecting Companies for supplying Steam, Heat, Electricity or Natural gas for Light, Heat or Power to construct, maintain, complete and operate works for the production, sale and distribution of electricity or natural gas for the purpose of Light, Heat and Power and (b) To produce, refine and sell petroleum oil and for the purposes aforesaid to acquire the business and the assets of the business now carried on by Peoples Natural Gas Limited and of any other person, firm or Corporation carrying on a similar business. 20 30

THE CORPORATE NAME of the Company to be The Dominion Natural Gas Company Limited.

THE SHARE CAPITAL of the Company to be five hundred thousand dollars divided into five thousand shares of one hundred dollars each.

THE HEAD OFFICE of the Company to be at the City of Hamilton in the County of Wentworth and Province aforesaid and

THE PROVISIONAL DIRECTORS of the Company to be William John Aikens, Henry Cockshutt, Edmund Lister Cockshutt, Joshua Smith Hamilton and Edmund Sweet hereinbefore mentioned. 40

IN TESTIMONY WHEREOF We have caused these OUR LETTERS to be

made PATENT and the GREAT SEAL OF OUR PROVINCE OF ONTARIO to be hereunto affixed.

WITNESS: HIS HONOUR WILLIAM MORTIMER CLARK, &c. &c. &c.
Lieutenant-Governor of Our Province of Ontario.

AT OUR GOVERNMENT HOUSE in OUR CITY OF TORONTO in Our said Province this twelfth day of October in the year of Our Lord one thousand nine hundred and four and in the fourth year of Our Reign.

BY COMMAND
 J. R. STRATTON, *Provincial Secretary.*

*In the
 Supreme Court
 of Ontario*

—
 Exhibits.
 Ex. 83.
 Letters Patent (Ontario) incorporating the Dominion Natural Gas Company Limited, 12th October, 1904.

10

Part Exhibit 15.

(Plaintiff's Exhibit)

Agreement Between The Ontario Pipe Line Company, Limited and The Corporation of the City of Hamilton.

THIS AGREEMENT MADE THE TWENTY-FOURTH DAY OF OCTOBER in the year of our LORD One thousand nine hundred and four.

BETWEEN:

THE ONTARIO PIPE LINE COMPANY, LIMITED,
 (hereinafter called the Company),
 Of the First Part,

20

— AND —

THE CORPORATION OF THE CITY OF HAMILTON
 (hereinafter called the City Corporation),
 Of the Second Part.

30

WHEREAS by By-law of the said City Corporation passed on the 26th day of September, 1904, entitled by-law number 400 respecting The Ontario Pipe Line Company, Limited, a copy whereof is hereto annexed, permission is granted by the City Corporation to the Company, its successors and assigns, upon certain conditions, provisoes and agreements therein set forth to enter upon the streets, public alleys, and public grounds of the City of Hamilton to dig trenches, and lay and bury therein and to maintain, operate and repair mains and pipes of such sizes as the said Company may require for the transportation and supply of natural or manufactured gas in the said City of Hamilton for fuel, heating and lighting purposes, together with the right to construct and maintain and repair under the surface of such streets, alleys or public grounds all necessary regulators, valves, curb boxes, safety appliances and other appurtenances that may be necessary in connection with the transportation and supply of natural or manufactured gas.

40

NOW THEREFORE THIS AGREEMENT WITNESSETH and the parties hereto do respectively covenant and agree to and with each other as follows:—

—continued

—
 Part Ex. 15.
 Agreement between The Ontario Pipe Line Company Limited and The Corporation of the City of Hamilton, 24th October, 1904.

Exhibits.
Part Ex. 15.
Agreement
between The
Ontario Pipe
Line Company
Limited and
The Corpor-
ation of the
City of
Hamilton,
24th Octo-
ber, 1904.

The Company does hereby accept the said by-law and the powers and privileges thereby granted and hereby agrees with the City Corporation to perform, observe and comply with all the agreements, obligations, terms and conditions contained in said by-law.

AND WHEREAS THIS agreement has been approved of by Francis MacKelcan, Esquire, K.C., Solicitor for the City Corporation testified by his marking each page thereof approved and adding his signature thereto, the City Corporation agrees to accept and hereby accepts these Presents and declares the same to be the agreement required to be executed by the Company under the provisions of the said by-law and that such by-law is therefore in full force and effect. 10

—continued

IN WITNESS WHEREOF the Company has caused its Corporate Seal to be hereto affixed under the hands of its President and Secretary and the City Corporation has caused its corporate seal to be hereto affixed under the hands of the Mayor and the City Clerk.

Signed, Sealed and Delivered
In the Presence of
W. J. MORDEN,
Mayor.
T. BEASLEY,
City Clerk.
(SEAL)

THE ONTARIO PIPE LINE
COMPANY, LIMITED.
By GEO. G. MULHEM,
Pres.
C. J. NEAL,
Secretary.
(SEAL)

20

Certified a true copy,
S. H. KENT, *City Clerk.*

Part Exhibit 41.

(Defendant's Exhibit)

By-law No. 533 of Township of Barton

BY-LAW No. 533.

Respecting The Dominion Natural Gas Company Limited.

1. The consent, permission and authority of the Township of Barton are hereby given and granted to the Dominion Natural Gas Company Limited, hereinafter called "The Company" and subject to their obtaining the consent and authority of the County of Wentworth when necessary to enter upon the following highways in the Township of Barton: Commencing at the southeast corner of the Township of Barton, thence westerly along the Town Line between the Townships of Barton and Glanford to the allowance for road between lots six and seven in the Township of Barton. Thence northerly along said allowance for road between said lots six and seven to the allowance for road between lots in the second and third concessions of said Township commonly called Main Street; thence westerly along said last mentioned road to the easterly 30 40

Exhibits.
Part Ex. 41.
By-law No.
533 of
Township
of Barton,
26th Octo-
ber, 1904.

limit of the City of Hamilton and with a branch from the said line at the intersection of said allowance for road between lots in the second and third concessions and the allowance for road between lots numbers six and seven easterly along said allowance for road between lots in the second and third concessions to what is known as "the Delta" and from thence easterly along the road known as the King Street Road, otherwise The Hamilton, Grimsby and Queenston Stone Road through the Village of Bartonville to the Town Line between the Townships of Barton and Saltfleet and with a further branch line from the said line at the intersection of the allowance for road between lots six and seven with the allowance for road between lots in the fourth and fifth concessions. Thence westerly along said last mentioned road to the westerly side of the given road between lots fifteen and sixteen with branches therefrom northerly along Seneca Street to Tecumseh Street in Brown & Duff's Survey of part of lot fifteen in the fourth concession. Thence easterly along Tecumseh Street to the Barton and Glanford Stone Road; thence northerly along said last mentioned road to the southerly limits of the City of Hamilton. Thence westerly along the road on the brow of the mountain to the given road between lots numbers fifteen and sixteen and with further branches from said line at the intersection of the allowance for road between lots in the fourth and fifth concessions with the allowance for road between lots ten and eleven. Thence northerly along said last mentioned allowance for road to the limits of the City of Hamilton and from the said line at the intersection of the allowance for road between lots in the fourth and fifth concessions with the allowance for road between lots twelve and thirteen. Thence northerly along said last mentioned allowance for road to the limits of the City of Hamilton, and to dig trenches and lay and bury therein and to maintain, operate and repair mains and pipes of such sizes as the said Company may require for the transportation and supply of natural or manufactured gas in and through the said Township of Barton for fuel, heating and lighting purposes together with the right to construct and maintain and repair under the surface of such roads and highways all necessary regulators, valves, curb boxes, safety appliances and other appurtenances that may be necessary in connection with the transportation and supply of natural and manufactured gas.

2. From and after the construction and laying of the pipes on the main line and branches as hereinbefore expressed and duly connecting the said branch lines with the mains but not before the Company shall be at liberty to enter upon any and all other highways in the Township of Barton and to dig trenches and lay and bury therein and to maintain and operate and repair mains and pipes of such sizes as the said Company may require for the transportation and supply of natural or manufactured gas in the said Township of Barton for fuel, heating and lighting purposes, together with the right to construct and maintain and repair under the surface of all other roads and highways in the Township of Barton all necessary regulators, valves, curb boxes, safety appliances and

*In the
Supreme Court
of Ontario*

—
Part Ex. 41.
By-law No.
533 of
Township
of Barton,
26th Octo-
ber, 1904.

—continued

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 41.
By-law No.
533 of
Township
of Barton,
26th Octo-
ber, 1904.

—continued

other appurtenances that may be necessary in the transportation and supply of natural or manufactured gas.

3. The Company shall well and sufficiently restore forthwith to as good a condition as they were in before to the satisfaction of the Township Council all highways which it may excavate or interfere with in the course of the construction or repairing of its gas mains, pipes, regulators, valves, curb boxes, safety appliances and other appurtenances necessary for the transportation and supply of natural or manufactured gas and shall make good any settling or subsidence thereafter caused by any such excavation and shall well and sufficiently indemnify and save harmless the said Township Corporation from all damages, costs, charges and expenses they may be put to or rendered liable for by reason of or through the construction, repair, maintenance or operation by said Company of any of its said works and further in the event of the Company failing at any time to do any work required by this section the Township Corporation may forthwith have such work done and charge to and collect from the Company the cost thereof and the Company shall pay on demand any account therefor certified by the Township Clerk. 10

4. No excavation, opening or work which shall disturb or interfere with the surface of any highway shall be made or done unless a permit therefor has first been obtained from the Township Council and all such work shall be done under the supervision and to the satisfaction of the Township Council and in cases where the said Council shall consider it necessary to and shall appoint an Inspector for such work the wages of said Inspector shall be paid by the Company. 20

5. The location of all pipes and works on said highway shall be subject to the direction and approval of the Township Council and all such pipes and works shall whenever it may in the opinion of said Council be practicable be laid in or along the sides of said highways.

6. The Company shall commence on or before the first day of May, 1905, to lay its pipes in said Township and shall have at least the line and branches set forth in the first paragraph of this by-law completed by the first day of November, 1905, and the whole of said lines and branches shall be constructed and completed before the Company shall be at liberty to convey gas through or use any part thereof. 30

7. The Company shall use all practical and proper means from time to time to prevent the escape and leakage of gas from its mains and pipes and the causing of any damage or injury thereby to any person or property and the Company shall make good to the Township Corporation all damage or loss which may be caused by the works or operations of the Company or by the escape or leakage of gas to any water pipes, roadways, pavements, sidewalks or other property of the Township and all damages, costs, charges and expenses which may be incurred by the Township or which they may be put to by reason of any such works or operations or by any escape or leakage of gas and the said Company shall indemnify and save harmless the said Township Corporation from all damages, costs, charges and expenses they may suffer, incur or be put to through 40

or by reason of the exercise by the Company of any of the powers and privileges hereby granted.

8. All rights that now are or may hereafter be vested in the said Township Corporation or in any other gas company, telephone, electric light, electric railway or other company with respect to the use, care or improvement of said highways, the construction of sewers, culverts and drains and the laying of water pipes, gas or any other pipes thereon and the placing on said highways of poles, wires and conduits are in no way to be effected or impaired by any privilege hereby granted to the said
 10 Company but the said mains, pipes and works shall be laid down and maintained by the Company subject to the rights of the said Township Corporation and the said companies to take up, repair, alter or remove sewers, culverts, water and gas pipes and to place poles and wires and conduits on said highways and to alter the grade of said highways and subject to all other rights, privileges and purposes within the Province of or belonging to the said Township Corporation without any right or claim of said Company for damages against the said Township Corporation or any of said companies and the said Township Corporation hereby expressly reserves the right to hereafter lay down or permit to be laid
 20 down in or upon said highways gas pipes, water pipes, sewers and ditches and to place or permit the placing of poles, wires and conduits on said highways and to alter, improve, and repair said highways whenever public or private convenience may render the same necessary in the opinion of the Council of the Township of Barton.

9. The Company shall upon demand furnish gas to all persons, firms and corporations along the lines of its mains and pipes in the Township of Barton and to all other persons, firms and corporations who shall lay pipes to connect with said mains and pipes of the Company or who shall offer to and be ready and willing to pay the Company the cost of
 30 laying such pipes for the same price and upon the same terms and conditions including discounts and rebates as the said Company shall from time to time supply gas to the Corporation of the City of Hamilton or to consumers of gas in said City of Hamilton but in no case to exceed the price hereinafter set forth.

10. The Company shall render its accounts monthly or quarterly at its option and shall not charge the Corporation of the Township of Barton or consumers of gas therein for natural gas more than fifty cents per thousand cubic feet for the first five years from the date hereof, and for
 40 ten years thereafter not more than forty-five cents per thousand cubic feet and thenceforth not more than forty-two and a half cents per thousand cubic feet subject always to a discount of five cents per thousand cubic feet on all bills paid within fourteen days after presentation thereof; and meters shall be furnished by the Company free of charge to all consumers of its gas and no charge shall be made for any supply pipe from the main to the margin of the street.

11. The Company shall not charge consumers of more than 200,000 cubic feet of natural gas per month more than forty-two cents per thou-

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 41.
By-law No.
533 of
Township
of Barton,
26th Octo-
ber, 1904.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 41.
By-law No.
533 of
Township
of Barton,
26th Octo-
ber, 1904.

—continued

sand cubic feet; nor consumers of more than 1,000,000 cubic feet of natural gas per month more than forty cents per thousand cubic feet; nor consumers of more than 2,000,000 cubic feet of natural gas per month more than thirty-seven and a half cents per thousand cubic feet; nor consumers of more than 6,000,000 cubic feet of natural gas per month more than thirty-five cents per thousand cubic feet; the amounts so charged being the net prices after deducting all discounts.

12. In case the Company furnishes manufactured gas it shall not charge the Corporation of the Township of Barton or consumers therein more than ninety-five cents per thousand cubic feet subject to a discount of five cents per thousand cubic feet on all bills paid within fourteen days after presentation thereof, and such price shall be subject to be reduced in the manner hereinafter provided. 10

13. For the purpose of determining the reduction to be made in the price to be paid to the Company from time to time for manufactured gas supplied to the Township of Barton or its inhabitants the gross revenues of the Company shall from year to year be dealt with and applied in manner following: The proper and reasonable working expenses, interest and the cost of management and of all necessary repairs and renewals and the fees of the President, Vice-President and Directors, which shall not exceed two per cent upon the paid up capital stock of the Company, and all proper allowances for bad and doubtful debts or losses by accidents and otherwise shall first be deducted therefrom, and after payment out of the surplus of a dividend not exceeding ten per cent per annum payable half yearly upon the paid up capital stock of the Company the balance shall be placed in equal shares to the credit of the reserve fund of the Company and of a fund to be called the surplus profit fund; and as soon as such surplus profit fund shall amount to a sum equal to five cents per thousand feet of gas consumed by customers in the City of Hamilton and the Township of Barton during the immediately preceding year, a reduction of five cents per thousand feet shall be made to consumers in said Township in the price of gas supplied by the Company for the then succeeding year and such reduction shall continue to be made from time to time when the amount at the credit of the surplus profit fund shall be sufficient to warrant it upon the basis hereinbefore mentioned, and further reductions of five cents per thousand feet in the price of gas supplied to customers in the Township of Barton shall be made from time to time when the amount at the credit of such fund shall so warrant upon the basis aforesaid. 30

14. The application of the revenue in the manner hereinbefore provided shall begin from and after the date of the commencement of the manufacturing of gas by the Company and the accounts of the funds in the next preceding section mentioned shall be made up to the thirty-first day of January in each succeeding year and the amounts to be from time to time placed to the credit of the surplus profit fund shall be so credited annually on the thirty-first day of January in each year. 40

15. It is hereby declared that the paid up capital stock of the Com-

pany to be computed for the purpose of Section 7 of this by-law shall be only the actual amount paid in cash to the Company for such capital stock.

16. After the commencement of its manufacture of gas the Company shall permit the Corporation of the Township of Barton to make an annual audit of the receipts and expenditures of the Company and of the paid up capital stock and the sums paid to the Company thereon, and of the accounts of or relating to the said reserve fund and the said surplus profit fund.

10 17. In the event of the Company being unable to obtain a sufficient quantity of natural gas to supply the demands of the City Corporation and of the inhabitants of the City and of the Township of Barton, and of its consequently establishing works for the manufacture and supply of artificial gas to supplement or take the place of natural gas the price of mixed natural and manufactured gas so supplied shall be charged in proportion to the quantities of natural and manufactured gas respectively so supplied at the prices thereof as fixed or settled under this by-law and subject to the discount of five cents per thousand cubic feet thereby provided for, and in the event of the Township Corporation and the
20 Company failing to agree as to the proportions and price of the mixed gas so supplied by the Company, such proportion and price shall be determined by arbitration in the manner provided by the Municipal Act so far as the provisions of said Act can be made applicable or, in such other manner as the Township Corporation and the Company may agree upon.

18. The Company shall not charge the Corporation of the Township of Barton, or consumers of gas therein, a greater rate than fifty cents per thousand cubic feet, subject to the discount hereinbefore mentioned for mixed or manufactured gas, unless the Company has, before supplying
30 such gas, given to the consumer at least one month's notice in writing that the gas supplied by it to such consumer will be mixed or manufactured gas, and not natural gas, but no mixed or manufactured gas shall be supplied unless the Company is unable to obtain natural gas in sufficient quantities to supply the demand thereof of the City Corporation and the inhabitants of the City and Township of Barton requiring to be supplied therewith.

19. In case six or more persons join together or a Corporation is formed for the purpose of supplying natural or manufactured gas to consumers in the Township of Barton, the Company shall supply natural
40 or artificial gas thereto at the rates hereinbefore expressed for manufacturers or other large takers or consumers of gas.

20. The Company shall pay the costs, charges and expenses of the Township of Barton and of their solicitor of and incidental to the preparation, passing, carrying out and enforcing the terms of this by-law.

21. This by-law and the powers and privileges hereby granted shall not take effect or be binding on the Township Corporation unless formally accepted by said Company within one month from the passing hereof

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 41.
By-law No.
533 of
Township
of Barton,
26th Octo-
ber, 1904.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 41.
By-law No.
533 of
Township
of Barton,
26th Octo-
ber, 1904.

—*continued*

by an agreement which will legally bind the said Company to perform, observe and comply with all the agreements, obligations, terms and conditions herein contained, and which agreement shall be approved of by W. A. H. Duff, Esquire, Township Solicitor, and certified by his marking each page thereof "Approved" and appending his signature thereto, and such agreement, when so approved, shall be executed by said Company and afterwards shall also be executed under the Corporate Seal of the Township by the Reeve and Clerk of the said Township who are hereby authorized and directed so to do by this Council, and the terms and conditions of this by-law shall extend to and be binding on the parties hereto, their successors and assigns. 10

22. The Company shall, on or before 1st May, 1905, commence, and before the first day of November, 1905, complete a line from the intersection of the allowance for road between lots six and seven with the allowance for road between lots in the seventh and eighth concessions in the said Township of Barton. Thence westerly along said last mentioned road to its intersection with the Barton and Glanford road and from thence northerly along said last mentioned road to the southerly limits of the City of Hamilton.

PASSED in Council, this 26th day of October, 1904. 20

(Seal)

(Sgd.) GEORGE AWREY, *Reeve.*

(Sgd.) HARRY BRYANT, *Clerk.*

(Seal) Accepted.

THE DOMINION NATURAL GAS CO., LTD.,

(Sgd.) F. M. LAWRY,

Vice-President and General Manager.

Attest.

(Sgd.) R. A. BROOMFIELD, *Secretary.*

Part Exhibit 41.

(Defendant's Exhibit)

30

Agreement Between Dominion Natural Gas Company Limited, and the Corporation of the Township of Barton.

THIS AGREEMENT, made this 19th day of November, in the year of our Lord, one thousand, nine hundred and four, By and Between the Dominion Natural Gas Company, Limited, hereinafter called "the Company" of the first part, and the Corporation of the Township of Barton, hereinafter called the "Township Corporation" of the second part.

WHEREAS by a by-law passed by the Municipal Council of the Township of Barton on the 26th day of October, 1904, respecting The Dominion Natural Gas Company, Limited, and numbered 533, certain rights and 40

Exhibits.
Part Ex. 41.
Agreement
between
Dominion
Natural Gas
Company
Limited and
The Corpor-
ation of the
Township of
Barton, 19th
November,
1904.

privileges were granted the said Company for the laying of mains and pipes and other appurtenances on certain highways in said Township for the transportation and supply of natural or manufactured gas in and through the said Township for fuel, heating and lighting purposes, upon, and subject to the terms and conditions expressed in said by-law, a duplicate of which by-law is hereto annexed.

10 AND WHEREAS amongst other conditions in said by-law No. 533 it is expressly provided that said by-law and the powers and privileges thereby granted should not take effect or be binding on the Township Corporation unless formally accepted by the said Company within one month from the passing of said by-law by an agreement which should legally bind the said Company to perform, observe and comply with all the agreements, obligations, terms and conditions therein contained which said agreement should be approved of by W. A. H. Duff, Esquire, the Township Solicitor, and certified by his marking each page thereof "Approved," and appending his signature thereto.

NOW THEREFORE THIS AGREEMENT WITNESSETH and the parties hereto do respectively covenant and agree with each other as follows:—

20 The Company do hereby accept the said By-law No. 533, and for themselves, their successors and assigns, agree with the Township Corporation to pay the costs, charges and expenses of the Township of Barton and of their solicitor of, and incidental to the preparation, passing, carrying out and enforcing the terms and conditions of said by-law and of and incidental to the preparation and execution of this agreement, and that the Company will carry out, observe, perform, and keep all the conditions, obligations and agreements on their part to be observed, performed and kept as set forth in said By-law No. 533, and that the said Company will, on or before the first day of May, 1905, commence to lay its pipes in said Township and will have the lines and branches set forth
30 in the first paragraph and the 22nd paragraph of said by-law completed by the first day of November, 1905, and ready to deliver gas to consumers in said Township according to the terms of said by-law and that they will furnish gas to all parties in said Township (who shall make demand therefor) in accordance with the terms and conditions of said by-law so soon as the said Company shall have said line and branches set for in the first paragraph of said by-law completed.

40 AND WHEREAS this agreement has been approved of by W. A. H. Duff, the Township Solicitor, and certified by his marking each page thereof "Approved" and appending his signature thereto, the Township Corporation hereby agree to, and do, accept these presents and declare them to be the agreement required to be executed by the Company under the provisions of said By-law No. 533, and that said by-law shall go into full force and effect on the execution of this agreement.

*In the
Supreme Court
of Ontario*

—
Part Ex. 41.
Agreement
between
Dominion
Natural Gas
Company
Limited and
The Corporation
of the
Township of
Barton, 19th
November,
1904.

—continued

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 41.
Agreement
between
Dominion
Natural Gas
Company
Limited and
The Corpor-
ation of the
Township of
Barton, 19th
November,
1904.

—continued

Ex. 16.
By-law
No. 443
of the
City of
Hamilton,
13th
March,
1905.

IN WITNESS WHEREOF the parties hereto have caused their corporate seals to be hereto annexed and duly attested the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of
"R. A. BROOMFIELD,"
Secy.

THE DOMINION NATURAL GAS CO.,
LIMITED,
"F. M. LOWRY,"
Vice-President.
(Seal)
"GEORGE AWREY,"
Reeve.

10

Exhibit 16.

(Plaintiffs' Exhibit)

By-law No. 443 of the City of Hamilton.

BY-LAW No. 443.

To Amend By-law Respecting the Ontario Pipe Line Company, Limited,
Passed the 13th Day of March, 1905.

WHEREAS doubts have been suggested as to the interpretation of certain clauses in By-law No. 400 of the Council respecting the Ontario Pipe Line Company, Limited, and the Company have requested that such doubts should be removed.

20

THEREFORE the Council of the Corporation of the City of Hamilton enacts as follows:—

1. The words "which shall not exceed two per cent. of the paid-up capital stock of the Company" contained in clause eight of the said by-law, are hereby declared to refer only to the fees of the President, Vice-President and Directors of the Company.

2. The words "The then current period of five years" contained in clause 23 of said by-law, are hereby declared to refer to a five year period current after the 26th day of September, 1924.

3. Nothing in the said by-law contained shall prevent the Ontario Pipe Line Company, Limited, from securing by mortgage on the property and assets of the Company, the payment of bonds which may be issued for the purpose of raising money to prosecute the undertaking mentioned in said by-law.

4. This by-law shall not take effect unless formally accepted by the Company within one month after the passing thereof, by an agreement duly executed by the Company under their corporate seal, and approved by the City Solicitor and delivered to the Mayor or City Clerk.

Certified a true copy.

S. H. KENT,
City Clerk.

40

(SEAL)

Part Exhibit 43.
(Defendant's Exhibit)

*In the
Supreme Court
of Ontario*

**Agreement Between Dominion Natural Gas Company, Limited, and the
Ontario Pipe Line Company, Limited.**

Exhibits.
Part Ex. 43.
Agreement
between
Dominion
Natural Gas
Company
Limited and
The Ontario
Pipe Line
Company
Limited,
25th Septem-
ber, 1905.

ARTICLES OF AGREEMENT made and entered into this twenty-fifth day of September, in the year of our Lord one thousand, nine hundred and five, by and between THE DOMINION NATURAL GAS COMPANY, LIMITED, hereinafter denominated the "Gas Company," party of the first part, and THE ONTARIO PIPE LINE COMPANY, LIMITED, hereinafter denominated the "Pipe Line Company," party of the second part, both companies being corporations duly created, organized and now existing under and by virtue of the laws of the Province of Ontario, Dominion of Canada.

WHEREAS, the Gas Company owns and controls an acreage of gas leases with a number of gas wells thereon in the gas belt of Haldimand and other counties, Ontario, Canada, and may hereafter have or acquire wells or gas territory in other counties in Canada, and desires a market for this product; and

WHEREAS, the Pipe Line Company is the owner of certain rights and franchises granted by the authorities of the City of Hamilton, Ontario, to furnish and to sell both natural and artificial gas to the inhabitants of said city, and propose to construct a full and complete distributing system of mains and pipes under said franchises in the said city through which to supply gas to the said city and to the inhabitants thereof, and desires to secure a supply of natural gas for the said city and the inhabitants thereof;

NOW THIS INDENTURE WITNESSETH: That the Gas Company, for and in consideration of the covenants and agreements hereinafter contained and recited on the part of the Pipe Line Company to be paid, kept and performed, agrees to construct an eight inch pipe line for conveying natural gas from the said gas belt to points in the city limits of the said City of Hamilton, which points are to be hereafter mutually agreed upon by the parties hereto, and there connect the same with a reducing and regulating station constructed by it for the delivery of natural gas into the lines and mains of the said distributing system of the Pipe Line Company in a volume sufficient to maintain a pressure of not less than six ounces per square inch on the principal main lines of such low pressure system, and to begin to deliver natural gas through such system to the said Pipe Line Company by November 1, 1905, unavoidable accidents accepted, and to continue to so deliver such gas according to the terms hereof for a period of nineteen years from the date hereof.

HOWEVER, as the production of natural gas from wells and the conveying of it over long distances is subject to accidents, interruptions and failures, the Gas Company does not by this contract undertake to furnish the Pipe Line Company with an uninterrupted supply of gas for the period named herein, but only to furnish such supply for such period of

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 43.
Agreement
between
Dominion
Natural Gas
Company
Limited and
The Ontario
Pipe Line
Company
Limited,
25th Septem-
ber, 1905.

—continued

time as its wells and pipe line conveying gas to the City of Hamilton are capable of supplying, it being expressly understood and agreed that the Gas Company reserves the right to furnish natural gas to consumers in other cities, towns, villages and places in Canada as hereinafter stated. But if at any time hereafter the Gas Company's supply of natural gas shall become insufficient to supply all domestic consumers in the several cities in Canada which it may now or hereafter be furnishing, the gas furnished under this contract shall at all times be a pro rata share of its production. It is also expressly understood and agreed that the Gas Company shall not be liable for any loss, damage or injury resulting directly or indirectly from any shortage or interruption in the supply of gas arising from any cause whatsoever, but the Gas Company agrees to use due diligence in supplying the Pipe Line Company with a constant and adequate supply of dry natural gas for all consumers it may secure in the corporate limits of the said City of Hamilton as the said limits now exist or may hereafter be established by law. 10

The Gas Company agrees that it will, if necessary to supply the gas consumption in the said City of Hamilton as provided for under this contract, use the eight inch pipe line provided for above only for transporting gas to the said city, excepting, however, that the Gas Company at all times during the life of this contract may also use the said line for transporting gas to supply the City of Dundas and the inhabitants thereof, and such domestic consumers along its pipe line which it may be compelled to supply with gas by the terms of the rights of way under which the said line is laid. It is understood, however, that the Gas Company may furnish natural gas at all times during the life of this contract to cities, towns, villages and places in Canada other than the said Cities of Hamilton and Dundas, provided such service be made through lines other than the above eight inch line. 20

IN CONSIDERATION OF THE PREMISES the Pipe Line Company covenants and agrees to and with the Gas Company to lay, build and complete within the said City of Hamilton at its own cost and expense, a complete distributing plant or system of pipe lines or mains, including all necessary appliances, attachments, connections and service pipes, through or along the streets, avenues, alleys, public grounds and places of the said city, sufficient in size and capacity to fully supply natural gas to the said city and to all of its inhabitants who may desire to purchase and use the same for any purpose for which natural gas may be used, and will actually begin to receive gas from the said Gas Company and distribute and sell the same to consumers within the said city on or before November 1, 1905. 30 40

The Pipe Line Company further agrees to construct the low pressure lines of its said system of a size sufficient to deliver an ample supply of the said gas to the said city and to all the inhabitants thereof at all times at a pressure not to exceed six ounces on the principal main lines of said low pressure system; to extend the said mains and pipes when weather permits, to supply new customers wherever and whenever such extension will secure profitable business; to make proper connections with and at-

tach to its said distributing system the said reducing and regulating station of the Gas Company; to lay, whenever weather permits, free service pipes from the curb to the meter for applicants for gas whenever a ninety days' notice so to do has been served upon it by the Gas Company; to make free of cost to consumers all connections between mains and curb, to furnish all meters to be used by consumers of a style and make satisfactory to the Gas Company, and to set the same free of cost to the consumers with the right to charge the consumer a meter rental therefor of not more than three dollars per annum for each meter of ten light capacity or less, and four dollars per annum for each meter of a twenty light capacity or less; and for larger meters a rental in proportion to the cost and capacity; to keep the said system of distributing mains and pipes, meters and all appliances connected therewith in such good repair and serviceable condition as to prevent all leakage, waste or escape of gas; to use first class material in the construction of its said system and all additions, extensions and repairs thereof; to register by meter of a style and make satisfactory to the Gas Company all gas sold by it; to cause such meters to be accurately read once a month and a full and complete record of such readings kept and preserved for the inspection, information and benefit of the Gas Company; to keep all its records of meter readings and gas sold so complete that all the requirements of this contract may be accurately and fully kept and complied with; and on the fifth day of each and every calendar month during the continuance of this contract to make and deliver to the Gas Company at its principal office, wherever the same may be located, a statement showing in detail the amount of gas sold and delivered to domestic consumers and to manufacturers and upon special rates during the preceding month; to sell no gas except upon a contract signed by the consumer upon a form which has been submitted to and approved by the Gas Company, and to require such contract to be executed by the consumer before gas is turned into the service pipes; to keep its meters in such good working order and such efficiency that each meter will register within two per cent. of the actual amount of gas passing through it; to permit the officers or authorized agents of the Gas Company to inspect its mains, pipes, regulators, meters, appliances and apparatus connected with the said system for the purpose of ascertaining the condition of the same and proving the reports herein provided for; to forward to the Gas Company at its principal office, wherever the same may be located, a monthly record of the number of meters set, connected and disconnected, together with the total number of consumers at the end of each month; to keep at its office hereinafter provided for, ready for the inspection of the Gas Company, its officers or authorized agents at all reasonable times, a copy of each contract made with its consumers, a complete record of the same and all gas sold thereunder, the meters used and also such books of account as will fully and accurately show all accounts of consumers and all matters relating to the sale of such gas herein; to permit the Gas Company, its officers or authorized agents, to examine and inspect the said contracts, books and records

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 43.
Agreement
between
Dominion
Natural Gas
Company
Limited and
The Ontario
Pipe Line
Company
Limited,
25th September,
1905.

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*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 43.
Agreement
between
Dominion
Natural Gas
Company
Limited and
The Ontario
Pipe Line
Company
Limited,
25th Septem-
ber, 1905.

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at all reasonable times, and to aid or assist the said officers or authorized agents in such execution or inspection when requested so to do; to use every endeavour to secure customers and consumers and to build up and extend the said business and the sale of the said gas by advertisement, solicitation or otherwise; to pay and discharge all taxes and assessments of whatsoever kind levied on the said distributing system within the said city; to locate and furnish an office at some convenient point within the said city to be mutually agreed upon by the parties hereto; to employ in the said office suitable and competent clerks and employees sufficient to conduct and carry on the business of distributing and selling the said gas therein, and perform all of its covenants, undertakings and agree- 10
ments herein contained; to pay the wages and salaries of such clerks and employees; to assume and fully discharge all and every expense, cost, labour and risk incurred in the construction, operation, extension and management of the said distributing system and the distribution and selling of such gas within the said city from the point where connections are made with the said reducing and regulating station of the Gas Com-
pany; it being the intent and purport hereof that all and every expense of whatsoever nature and kind incurred in the construction of the said distributing system, extending or repairing, operating or managing the same and transporting, distributing, marketing and selling the said gas 20
within the said city after the same leaves said reducing and regulating station, shall be borne and paid by the Pipe Line Company exclusively.

IT IS FURTHER UNDERSTOOD AND AGREED by the companies hereto that the price to be charged and collected by the Pipe Line Company for all natural gas furnished and sold to domestic consumers within the said city during the life of this contract shall be the maximum rate therefor as provided for in the said franchise from the said City of Hamilton; and the Pipe Line Company agrees not to sell any gas in the said city at less than the maximum rates so fixed by the said franchise. A penalty of 30
ten per cent. may be charged by the Pipe Line Company on all gas bills not paid on or before the tenth day of the month succeeding that in which the gas was consumed.

The Pipe Line Company may sell gas for manufacturing purposes and upon special rates for less than the prices named above, provided, however, that before such contracts are entered into or such sales be made that the Gas Company shall in every instance first agree in writing there-
to and to the price, at which the same is to be sold; but if, in the sole judgment of the Gas Company, it shall not at any time have an adequate supply of gas to supply all its domestic consumers through its system of 40
pipe lines throughout the Province of Ontario, all manufacturers' or special rate contracts, or such portion thereof as the Gas Company may specify, shall be at once discontinued upon written notice from the Gas Company to the Pipe Line Company, so to do; and all contracts made by the Pipe Line Company with consumers or manufacturers or on special rates shall be so worded as to permit of such cancellation at any time. If the Pipe Line Company shall fail to cancel the contracts specified in

such notice after demand made upon it by the Gas Company so to do, it shall settle its accounts thereafter with the Gas Company and pay for all gas so sold under violation of such notice upon the full contract price for domestic service herein provided for. It is provided further, however, that the Gas Company at the time of giving such notice to the Pipe Line Company to discontinue all or a portion of such manufacturers' or special rate contracts shall in like manner and proportionately discontinue all sales to manufacturers and at special rates outside of said County of Haldimand and cities of Port Dover and Simcoe and their immediate vicinity, and this proviso shall apply whether the gas is being sold by the Gas Company directly to such manufacturers or upon special contracts, or indirectly through local marketing companies.

The Pipe Line Company agrees to pay to the Gas Company at its general office, wherever the same may be located, on or before the twentieth day of each and every month during the continuance of this contract, a sum of money equal to sixty per cent. of the gross sales of natural gas made by the Pipe Line Company during the preceding month for domestic purposes computed at the price provided for herein, less the amount of uncollectable bills when the delinquent party has been shut off for default in payment thereof within twenty days after the maturity of such bill or bills and all reasonable efforts have been made to collect such delinquent bill or bills without success; and seventy-five per cent. of the gross sales of natural gas made by the Pipe Line Company during the preceding month for manufacturers' or special rate contracts computed at the price provided for herein, less the amount of uncollectable bills when the delinquent party has been shut off for default in payment within twenty days after the maturity of such bill or bills and all reasonable efforts have been made to collect such delinquent bill or bills without success. If at any subsequent time or times any bill or bills which are deemed uncollectable shall be paid in whole or in part said second party shall pay to the Gas Company a sum of money equal to sixty per cent. of such delinquent bill or bills so paid and collected when the same are for domestic purposes, and seventy-five per cent. of such delinquent bills so paid when the same are for manufacturers purposes or on special rate contracts.

While this contract shall remain in force the Pipe Line Company shall purchase of the Gas Company all the gas necessary to supply the said city and the inhabitants thereof in accordance with the terms hereof, excepting that in the event of the Gas Company failing to supply gas as herein provided for the Pipe Line Company may secure gas from other sources until the Gas Company shall supply gas as herein provided for. Provided further, however, that if the Gas Company shall fail for a period of sixty consecutive days to furnish a full and adequate supply of gas for domestic purposes this contract may at the option of the Pipe Line Company be at once terminated; but nothing in this contract shall prevent the Pipe Line Company from securing from sources other than the Gas Company gas sufficient for its needs and deliveries in the said

*In the
Supreme Court
of Ontario*

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Exhibits,
Part Ex. 43.
Agreement
between
Dominion
Natural Gas
Company
Limited and
The Ontario
Pipe Line
Company
Limited,
25th Septem-
ber, 1905.

—continued

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 43.
Agreement
between
Dominion
Natural Gas
Company
Limited and
The Ontario
Pipe Line
Company
Limited,
25th Septem-
ber, 1905.

—continued

City of Hamilton over and above that furnished it from time to time by the said Gas Company, if the Gas Company, after demand made upon it, shall fail to supply gas sufficient for the maximum needs and deliveries of the Pipe Line Company within the said city, but provided that if at any time thereafter the Gas Company's supply of gas shall increase so that it is able to supply the maximum needs and deliveries of the Pipe Line Company, then and in that event the Pipe Line Company shall cease acquiring gas from such other sources. And provided further, that in the event of the Pipe Line Company securing from other sources than the Gas Company either natural or manufactured gas sufficient to meet any such deficiency in the Gas Company's supply, it shall, before turning the same into its mains, measure the same by meter approved by both parties. And the Gas Company shall during the time of such deficiency likewise measure the quantity of gas which it turns into the said mains by meter approved by both parties, and the difference each month between the aggregate measurements of the two meters and the aggregate of consumers' meters shall be treated as leakage and borne by the parties hereto in proportion to the quantities of gas turned into the mains by each of them. And the percentage to be paid monthly to the Gas Company shall be computed on such proportion of the total receipts from the sale of gas for each month as the quantity shown by its meter bears to the aggregate of both meters for that month. 10

It is agreed that if at any time hereafter during the life of this contract any person, firm or corporation should begin the distribution and sale of gas within the said City of Hamilton in competition with the Pipe Line Company in domestic consumption, and should sell gas for private consumption at less than the prices provided for herein, then the Pipe Line Company may, in order to protect its contracts and retain its customers, meet the prices of such competition for domestic consumption, and in that event the payments to the Gas Company for the gas so sold at such reduced prices shall be equal to the same percentage thereof as is herein fixed and agreed upon in regular contract sales. 20 30

IN CONSIDERATION of the covenants and agreements hereinbefore contained on the part of the Pipe Line Company to be kept and performed the Gas Company gives and grants to the Pipe Line Company the sole and exclusive right to distribute and sell the Gas Company's gas within the said City of Hamilton during the life of this contract; but the Gas Company expressly declares that such grant to the Pipe Line Company is a personal one to it alone and shall not, either by voluntary act of the Pipe Line Company or by operation of law, be transferred to or devolve upon any successor or assign of the Pipe Line Company. 40

IT IS FURTHER UNDERSTOOD AND AGREED that the distributing plant or system of pipes and mains hereinbefore mentioned to be laid and built by the Pipe Line Company in the said City of Hamilton shall be begun and completed by the Pipe Line Company as follows: That portion in the district south of York and King Streets shall be prosecuted with due diligence and completed in the year 1905, so long as the weather permits;

and that portion in the district north of the said streets shall be prosecuted with due diligence and completed in the year 1906; provided, however, the Gas Company furnishes to the Pipe Line Company sufficient gas to supply the demand for gas for domestic purposes in the portion of the city theretofore piped, and if the Gas Company should at any time be able to furnish a supply of gas sufficient for the portions of the city not then piped the Pipe Line Company shall thereupon pipe a portion of the city sufficient to supply to the domestic consumers therein the additional quantity of gas furnished by the Gas Company.

10 The term "gas" whenever used herein shall be taken to mean what is termed "natural gas."

IT IS FURTHER COVENANTED AND AGREED that if the Pipe Line Company shall for a period of thirty days refuse or neglect to pay to the Gas Company any moneys due to it under this contract, or shall neglect or refuse to keep and perform, after thirty days' written demand made upon it by the Gas Company so to do, each and every covenant and agreement stipulated to be performed by it herein, then this contract may, at the option of the Gas Company, be annulled, and all rights of the Pipe Line Company hereunder forfeited, but the Gas Company shall in such case
20 have the right also to enforce by action or actions at law or in equity the payment of any money due to it under the terms hereof, and also all claim or claims for damages which the said Gas Company may have sustained by reason of the Pipe Line Company's failure to perform its covenants and agreements herein recited.

Time shall be of the essence of this contract.

These articles are executed in duplicate.

IN TESTIMONY WHEREOF each of the said companies has caused its corporate name to be hereunto subscribed by its President and its common and corporate seal to be hereunto affixed and the same attested by its
30 Secretary the day and year first above written.

THE DOMINION NATURAL GAS COMPANY, LIMITED,

By (sd.) J. C. McDOWELL,
Its President.

(Seal)

Attest:—

(sd.) R. A. BROOMFIELD,
Its Secretary.

THE ONTARIO PIPE LINE COMPANY, LIMITED

By (sd.) C. M. CONRAD,
Its President.

40 (Seal)

Attest:—

(sd.) J. B. JONES,
Its Secretary.

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 43.
Agreement
between
Dominion
Natural Gas
Company
Limited and
The Ontario
Pipe Line
Company
Limited,
25th Septem-
ber, 1905.

—continued

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 79.
Minutes of
Meeting of
Barton Town-
ship Council,
6th Novem-
ber, 1905.

Exhibit 79.

(Plaintiffs' Exhibit)

Minutes of Meeting of Barton Township Council

Barton, November 6, 1905.

Special meeting at seven o'clock p.m. at the call of the Reeve to consider request of Dominion Natural Gas Company. All the members were present. The Reeve in the chair. Mr. McGowan represented the Company and paid to the Clerk expenses of this meeting. He stated in brief terms what the Company required of the Council.

Moved by Mr. Hunt, seconded by Mr. Marshall, that the request of the Dominion Natural Gas Company, Limited, to extend the time for placing line or laying pipes on roads, 4th Con., Lots 10 and 11 and between Lots 12 and 13, until 15th July, 1906, be granted, and the seal of the Township be affixed to this resolution.—Carried. 10

GEORGE AWREY,
Reeve.

H. BRYANT,
Clerk.

I hereby certify that the above is a true copy of the Minutes of the Council of the Township of Barton, held on November 6th, 1905.

Township Clerk,
(A. W. BROUGHTON). 20
(SEAL)

Ex. 2.
Order of The
Ontario Rail-
way and
Municipal
Board,
3rd Septem-
ber, 1908.

Exhibit 2.

(Plaintiffs' Exhibit)

Order of The Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD

Thursday, the third day of September, A.D. 1908.

BEFORE:

JAMES LEITCH, ESQ., K.C., *Chairman,*
A. B. INGRAM, ESQ., *Vice-Chairman, and*
H. N. KITTSOON, ESQ., *Member.*

30

In the matter of the application of a majority of the ratepayers and property owners of the section of the Township of Barton on the Mountain, bounded by Wentworth Street on the west side, on the south by the Concession Road, on the east by Lake View Avenue extended to the brow of the mountain (the extension on the south to take in the whole of the highway to the south thereof, and on Lake View Avenue to the east side thereof), and on the north by the brow of the mountain.

Upon reading the petition of the majority of the ratepayers and property owners of that section of the Township of Barton above des-

cribed, and upon reading the resolution of the Municipal Council of the City of Hamilton, declaring that it is expedient that the said part of the Township of Barton, above described, be annexed to the City of Hamilton.

1. The Board orders that the said section of the Township of Barton, hereinabove described, shall be annexed to the said City of Hamilton.

2. That the City of Hamilton shall pay to the Township of Barton, on the fourteenth day of December, 1909, and thereafter annually for the period for which the debentures have to run, an amount equal to the sum which the property to be annexed would have been liable to contribute for payment of loans and debentures made to or issued on behalf of School Section Number Three of the Township of Barton for Public School purposes if the said property had remained as a part of said School Section, which amount, to be paid annually, shall be the amount that the rate to be struck for those purposes for the year 1908 would produce on the assessment for 1908 of said property to be annexed.

3. That the City of Hamilton shall pay to the Township of Barton, on the 14th day of December, 1909, and thereafter annually during the currency of the Good Roads Debentures issued by the County of Wentworth, the amount which would be levied upon the said property to be annexed in respect of such debentures if the said lands remained part of the Township of Barton and were assessed each year at the amount said lands are assessed for 1908 at the rate for 1908 when struck by the Township Council of Barton.

4. The Township of Barton to collect and retain for their own use all taxes, rates and assessments for 1908 on property to be annexed.

5. Cement sidewalk four feet wide along the south side of the Fourth Concession, from the head of Strongman Road to Lakeview Avenue, to be built by the Township of Barton during the year 1908, at a cost not to exceed fourteen cents per square foot. City and Township each to pay one-half the cost thereof and City to maintain said walk.

6. Cement sidewalk, four feet wide, on east side of Sherman Avenue, from Barton Street to Poplar Avenue, to be built by the Township during the year 1908, at a cost not to exceed fourteen cents per square foot. City and Township each to pay one-half the cost thereof and City to maintain said walk. The Engineer of the City of Hamilton to have the supervision of the construction of the said cement sidewalks.

7. And the said Board doth further order that until the City of Hamilton introduces and has in operation a water supply for said section annexed, the City shall not increase the amount of taxes above the rate fixed for the year 1908 on the properties in the above portion of the City hereby annexed, but after water is introduced and ready for supply the properties in said annexed section shall be assessed and taxes levied in the same manner and at the same rates as apply to property owners within the original City limits of the City of Hamilton in every way.

8. That all by-laws of the City of Hamilton respecting water rates and water works now passed, or that may hereafter be passed, shall apply to the said portion annexed, and the property owners shall pay the cost

*In the
Supreme Court
of Ontario*

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Exhibits.
Ex. 2.

Order of The
Ontario Rail-
way and
Municipal
Board,
3rd Septem-
ber, 1908.

—continued

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 2.
Order of The
Ontario Rail-
way and
Municipal
Board,
3rd Septem-
ber, 1908.

—continued

of installing the water pipes from the street line into the houses and other buildings.

9. And the Board further orders that this order shall take effect on and from the 3rd day of September, A.D. 1908.

(Seal)

(Sgd.) JAMES LEITCH,
Chairman of the Ontario Railway and Municipal Board.

Certified a true copy,

S. H. KENT,
City Clerk. 10
(SEAL)

Part Ex. 3.
Order of The
Ontario Rail-
way and
Municipal
Board,
27th Septem-
ber, 1909.

Part Exhibit 3.
(Plaintiffs' Exhibit)

Order of The Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD

Monday, the twenty-seventh day of September, 1909.

BEFORE:

JAMES LEITCH, Esq., K.C., *Chairman,*
A. B. INGRAM, Esq., *Vice-Chairman, and*
H. N. KITSON, Esq., *Member.*

20

In the matter of the application for annexation to the City of Hamilton of certain lands in the Township of Barton, more particularly described in the resolution passed by the Municipal Council of the Corporation of the City of Hamilton on the 30th day of August, 1909.

Upon the application of the said applicants, made on the 27th day of September, A.D. 1909, and upon reading the petition of the said applicants and the resolution of the Council of the Corporation of the City of Hamilton, passed on the 30th day of August, A.D. 1909, and upon hearing what was alleged by counsel on behalf of the said applicants and other ratepayers of the said Township, the Corporation of the City of Hamilton and the Corporation of the Township of Barton; 30

This Board doth order and proclaim that the portion of the Township of Barton, in the County of Wentworth, described as follows: Commencing at the intersection of the easterly limit of Sherman Avenue, being the original allowance for road between lots eight and nine in the Township of Barton with the brow of the mountain; thence easterly along the brow of the mountain to a point 150 feet east of the division line between lots four and five in the said Township; thence northerly along a line 150 feet east of and parallel to the said division line between said lots four and five to a point where such line would intersect the southerly side of the Waterworks Pipe Line; thence along the southerly side of the said Waterworks Pipe Line to the easterly limit of the allowance for 40

road between lots two and three of the said Township; thence along the easterly limit of the said allowance for road between lots two and three to the northerly limit of Barton Street, being the allowance for road between the first and second concession of said Township; thence along the northerly limit of Barton Street to the easterly limit of Ottawa Street, being the allowance for road between lots four and five in the said Township; thence along the easterly limit of Ottawa Street to the southerly limit of the right of way of the main line of the Grand Trunk Railway Company; thence along the said southerly limit of the said right of way
 10 to the division line between lots three and four in the said Township; thence northerly along the said division line between lots three and four to Burlington Bay; thence westerly along the margin of Burlington Bay across Ottawa Street, produced, northerly to the limits of the said City; thence southerly and westerly to the limits of the said City; thence southerly and westerly following the said city limits to the place of beginning; be and the same is hereby annexed to the said City of Hamilton; the said annexation shall take effect upon and subject to the following terms and conditions, namely;

1. (a) The City of Hamilton shall pay to the Township of Barton
 20 the amount of the debentures and loans issued and contracted in respect of Public School Section No. 8 of the Township of Barton, and interest thereon, as they respectively become due.

Note: This paragraph amended by order dated 21st March, 1910.

(b) The City of Hamilton shall pay to the Township of Barton the proportion which the part annexed bears to the whole of the territory respectively of Public School Sections 1 and 2 of the debentures and loans issued and contracted in respect of School Sections 1 and 2, and interest thereon, as they respectively become due.

Note: This paragraph amended by order dated 21st March, 1910.

30 (c) The City of Hamilton shall permit the children residing in that part of School Section No. 1, not annexed to the city, to attend the Ottawa Street School until the 1st day of July, 1910, free of charge, except books.

2. The Trolley Street and Ottawa Street Schools, and the school properties in the annexed territory, and the lands connected therewith, together with all furniture, school equipment and chattel property used in connection therewith, shall vest absolutely in the City of Hamilton, and the City of Hamilton shall pay to the Boards of said Schools the proportion of the value thereof, to which they may be entitled, if any, to
 40 be fixed by arbitration as provided by the Municipal Act in case the parties differ.

Note: This paragraph amended by order dated 21st March, 1910.

3. The Board of Education of the City of Hamilton shall retain the several teachers employed in the Trolley Street and Ottawa Street Schools until the expiration of their contracts with the trustees of the said respective school sections, and pay their salaries after the 1st day of January, 1910.

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 3.
Order of The
Ontario Rail-
way and
Municipal
Board,
27th Septem-
ber, 1909.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 3.
Order of The
Ontario Rail-
way and
Municipal
Board,
27th Septem-
ber, 1909.

—continued

4. The City of Hamilton shall, on the 14th day of December, 1909, pay to the Township of Barton the cost of construction of the cement sidewalk on Sherman Avenue during the year 1908, over and above the amount of the debenture issued in respect of said sidewalk, and shall pay said debenture, and interest thereon, as they respectively mature, and the City of Hamilton shall be entitled to levy and collect from the ratepayers the yearly amounts assessed against such ratepayers for such sidewalk.

5. The City of Hamilton shall pay to the Township of Barton, on the 14th day of December, 1910, and thereafter annually during the cur- 10
rency of the Good Roads Debentures issued by the County of Wentworth, the amount which would have been levied upon the said property to be annexed in respect of such debentures if the said lands had remained part of the Township of Barton and were assessed each year at the amount said lands were assessed for the year 1909, and a rate were struck each year at the same rate as fixed by the Township Council of Barton for the year 1909, and all former toll roads purchased by the said County in the annexed territory shall vest in the City of Hamilton.

6. The annexed territory shall be liable for its proportion of the debenture debt of the City of Hamilton now existing, and the taxes, 20
assessments, rents, water, local improvement, school and other rates to be levied and raised in respect of the said annexed territory shall, for the year 1910, and thereafter be the same, and payable at the same time and in the same manner as the taxes, assessments, rents, water, school and other rates levied and raised from time to time on the property within the old boundaries of the city, as such boundaries existed on the 1st day of January, 1891, and the assessment of the said annexed territory shall for the year 1910, and thereafter, be on the same basis and made at the same time and in the same manner as in the said old boundaries of the city, except that the assessment of the said annexed territory for the year 1910 may be taken by the City Assessors at any time prior to the passing 30
of a by-law striking the rate of taxation for the said year 1910, and the owners and occupiers shall be notified of such assessment as required by the Assessment Act and shall have the same right to appeal to the Court of Revision and County Judge as is provided therein, and the Council of the city may, by by-law, determine the dates for the returns of the assessment rolls, the time for closing the Court of Revision and the final returns by the Judge, and the Corporation of the Township of Barton shall, by the 15th day of November, 1909, furnish the City Clerk with certified copies of the Assessment Roll for the year 1909 of the portion 40
of the Township hereby annexed. For the purposes of municipal elections and voting in the year 1910, the City Clerk shall extract from the Certified Voters List of the Township, and place in the Voters List for the said city, in their respective wards, a supplementary list containing the names of the persons who would have been entitled to vote in the territory annexed if no such annexation had been made.

7. (a) That part of the annexed territory described as follows:
Commencing at a point where a line drawn parallel to, and one hundred

and fifty feet easterly of the easterly limit of Trolley Street (being the original allowance for road between lots six and seven of the Township of Barton) would intersect the brow or brink of the mountain; thence easterly along the brow or brink of the mountain to a point where a line drawn parallel to, and one hundred and fifty feet easterly of, the easterly limit of Ottawa Street (being the original allowance for road between lots four and five of the said Township of Barton) would intersect the brow or brink of the mountain; thence northerly along the said line drawn parallel to and one hundred and fifty feet easterly of the easterly limit of
 10 Ottawa Street to a point where said line would intersect a line drawn parallel to and one hundred and fifty feet southerly of the southerly limit of King Street; thence westerly along the said line drawn parallel to and one hundred and fifty feet southerly of the southerly limit of King Street, and following a line drawn one hundred and fifty feet southerly of the southerly limit of Main Street to a point where the last mentioned line would intersect the said line drawn parallel to, and one hundred and fifty feet easterly of the easterly limit of Trolley Street; thence southerly along the said line drawn parallel to and 150 feet easterly of the easterly limit of Trolley Street to the place of beginning, shall not be assessed
 20 for the years 1910 to 1921 inclusive, for any greater amount than they were assessed at by the Township Assessor for the year 1909, except that where any portion of the lands described in this sub-section shall be built upon or improved or has been or shall hereafter be sub-divided into parcels or lots, the Corporation of the City of Hamilton shall be at liberty, in its discretion, from time to time during the said years 1910 to 1921 inclusive, to assess the said lands, or any of them, in the same manner as property in the said old boundaries of the city.

(b) Those portions of the annexed territory described as follows: Those portions of lots four in the Broken Front and First Concessions of
 30 the Township of Barton lying northerly of the northerly limit of the right of way of the Grand Trunk Railway main line, and that portion of lot five in the first concession lying northerly of what is known as the Beach Road, shall not be assessed for the years 1910 to 1924 inclusive, for any greater amount than they were assessed at by the Township Assessor for the year 1909, except that where any portion of the lands described in this sub-section shall be built upon or improved or has been or shall hereafter be sub-divided into parcels or lots, the Corporation of the City of Hamilton shall be at liberty, in its discretion, from time to time during the years 1910 to 1924 inclusive, to assess the said lands, or any of them,
 40 in the same manner as property in the said old boundaries of the city.

(c) From the date of this Order until the year 1921 inclusive, in the territory mentioned in sub-section (a) of this paragraph, and from the date of this Order until the year 1924 inclusive, in the territory mentioned in sub-section (b) of this paragraph, the opening, altering, widening, extending, macadamizing, grading, paving, draining, lighting, cleaning and watering of streets and alleys, the work of curbing and sodding, the construction and alteration of sidewalks and sewers and all other improve-

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 3.
Order of The
Ontario Rail-
way and
Municipal
Board,
27th Septem-
ber, 1909.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 3.
Order of The
Ontario Rail-
way and
Municipal
Board,
27th Septem-
ber, 1909.

—continued

ments and services for which special rates may be imposed, pursuant to the provisions of the Municipal Act, including the collection of garbage, shall be done as local improvements, as provided for in the local improvement clauses of the said Act, and the whole cost thereof shall be paid by the property owners in manner therein provided and shall be assessed upon the real property benefited thereby.

(d) Should a sewer be constructed under the local improvement plan or in any other manner, whereby any property in the portion of the annexed territory described in sub-section (a) and (b) of this paragraph is or may be benefited, and water is not supplied to such property, the property benefited by the construction of such sewer shall (until such time as such property is assessed in the same manner as property in the said old boundaries of the city mentioned in paragraph 6 hereof) pay a reasonable rate for the cost of interception, purification and treatment of the sewage, such rate to be fixed by the Council of the City of Hamilton, subject to an appeal by the property owner to the County Judge. 10

(e) The City of Hamilton shall supply the owners of property in the portion of the said annexed territory described in sub-sections (a) and (b) of this paragraph with water when required at the same rates as property in the said old boundaries of the city, the applicants for such water supply to pay all costs and expenses of service pipes and of the introduction of water. 20

(f) When a water service main is hereafter laid along any street or highway in that portion of the annexed territory described in sub-sections (a) and (b) of this paragraph, the property fronting on such street or highway, or which is benefited thereby, and all premises in such portion of annexed territory that now or may hereafter have city water introduced therein, shall pay water rates based on assessments made by the Assessors of the City of Hamilton for water rates purposes.

(g) Notwithstanding anything in this paragraph contained, it is hereby declared that if, during any time before the said year 1921, the city shall supply water upon the request of any property owner in the portion of the annexed territory described in sub-section (a) of this paragraph, and if, during any time before the said year 1924 the city shall supply water upon the request of any property owner in the portions of the annexed territory described in sub-section (b) of this paragraph, and shall construct a sewer (as a local improvement or otherwise) whereby the property of such owner is or may be benefited, the city shall be at liberty, in its discretion, to assess the property benefited thereby of such owner in the same manner as property within the said old boundaries of the city mentioned in paragraph 6 hereof, and when such property is so assessed it shall be excluded from the terms of sub-section (c) of this paragraph, and any local improvement rates thereafter falling due in respect of such property shall be re-adjusted by the Council of the City of Hamilton, subject to an appeal by the property owners to the County Judge. 30 40

8. Sewers shall, upon due request therefor, be constructed in the

annexed territory, exclusive of those portions mentioned in paragraph seven hereof, under the provisions of the Municipal Act respecting local improvements, the cost of such sewers to be paid for by the property owners by a frontage tax and assessed upon the real property benefited thereby according to the provisions of the said Act.

Note: This paragraph amended by order dated 21st March, 1910.

9. The city shall assess the properties on the east side of Sherman Avenue, from opposite Wilson Street to Barton Street in the annexed territory (which have not already paid to the City of Hamilton their
10 share of the cost thereof) for the sum of sixty-four and four-tenths cents per foot frontage, payable in six annual instalments with interest, towards the cost of the sewer constructed on Sherman Avenue, and the properties on the said portion of Sherman Avenue shall be entitled to sewer connection in the same manner as other city property.

10. Where any person or corporation has heretofore paid any sum towards the cost of any local improvements (for which like improvements lands in the city are assessed) in the said annexed territory, and the properties benefited thereby have not been assessed for such local improvements, and any such person or corporation claims the right to be
20 compensated for such improvements, the city shall, provided other properties are benefited thereby and such improvements are in good condition, and are, in the opinion of the City Engineer, of sufficient capacity and suitable for the purposes of the City Corporation, assess the real property benefited by such improvements for the cost thereof, and pay such person or corporation who paid for or contributed towards such improvements, the value thereof, to be determined by the City Engineer, less any portion thereof that may be assessed against the property of such owner.

11. (1) Water mains shall be laid by the city in the annexed territory upon due request therefor, but the city shall not be bound to lay
30 such mains unless the additional revenue to be immediately derived therefrom shall be sufficient, in the opinion of the City Engineer (subject to an appeal to this Board), to meet the annual special rate required to pay the necessary debentures to be issued to pay the cost thereof and interest.

(2) Except as provided in paragraph 7 hereof, the expense of introducing service pipe into the houses, stores and other buildings in the said annexed territory, shall be borne by the City and the work performed by the city, where the wall of any such house, store or building is not more than fifteen feet from the limit of the street on which the service main is laid; and where the wall of any such house, store or building is more than
40 fifteen feet from the limit of said street, the water taker shall pay the cost of the service pipe beyond fifteen feet from the limit of said street.

(3) Lands used as farm or market garden lands in the said annexed territory fronting on Barton, King, Main and Ottawa Streets, in which force water mains are laid shall not be assessed for water rates unless or until a water service main is laid in said streets on which said lands abut or until the water is introduced into any such lands or portion thereof, when such lands or portion thereof shall immediately become

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 3.
Order of The
Ontario Rail-
way and
Municipal
Board,
27th Septem-
ber, 1909.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 3.
Order of The
Ontario Rail-
way and
Municipal
Board,
27th Septem-
ber, 1909.

—*continuu*

liable to assessment for water rates in the same manner as property in the old boundaries of the city; but the city may assess such lands for street watering when such service is performed.

12. The Township of Barton having, on the 23rd day of February, 1909, entered into a contract with Thomas Barnes for the construction of a number of cement sidewalks on various highways in the Township of Barton, a large portion of which are in said annexed territory, some of which sidewalks are constructed and some in course of construction, and all of which sidewalks are being built on the local improvement plan, part of the cost thereof being payable by and chargeable against the property benefited thereby and part by the said Township of Barton, and the property owners have been assessed for their proportion, payable in twenty equal annual payments, and debentures have been issued by said Township for payment for same, which debentures are a charge against the property benefited and are guaranteed by the Township at large. It is ordered that the Township complete the construction of said sidewalks in said annexed territory in accordance with the terms of said contract, and that the City of Hamilton do pay to the Township of Barton on the 14th day of December, 1910, and on each succeeding 14th day of December during the currency of said debentures, the proportion of the sinking fund and interest on said debentures which the cost of said sidewalks in said annexed territory bears to the whole of said debentures and interest, and the City of Hamilton will pay 40 per cent. of the amount necessary to pay the said debenture debt and interest incurred for the said sidewalks, the ratepayers paying the other 60 per cent., which Hamilton shall have power to assess for and collect from them. The City of Hamilton shall be subrogated for Barton in all the rights that Barton has under the contract of the 23rd of February, 1909, with Thomas Barnes as to the sidewalks within the said annexed territory.

13. That part of the annexed territory lying southerly of King Street shall form part of ward number one of the said City of Hamilton, and that part of the annexed territory lying northerly of King Street shall form part of ward number seven until a new ward is created or a re-division of wards is made.

14. The City of Hamilton, upon the application of any property owner, may, in its discretion, for any period not exceeding fifteen years from the first day of January, 1910, assess the lands of such owner in the annexed territory, at the same assessment as they were assessed at by the Township Assessor for the year 1909, and may levy a rate upon the assessment so made equal to the total rates levied by the Township of Barton for the year 1909, and may at any time, and from time to time in its discretion, raise such assessment and rates.

15. The taxes and rates imposed for the year 1909, or any previous year, upon any of the lands included in the territory hereby annexed, together with income, business and dog taxes of residents of said territory, shall, if not heretofore paid, be collected by the Township of Barton, and all right to collect the same, including distress for non-payment, or,

if necessary, the sale of the said lands or any of them, shall remain in the said Township as though this order had not been made.

16. This order shall come into force and effect from and after the 1st day of November, 1909.

(Sgd.) JAMES LEITCH,
*Chairman of the Ontario Railway
and Municipal Board.*

(Seal)

Certified a true copy.
S. H. KENT, *City Clerk.*

(Seal)

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 3.
Order of The
Ontario Rail-
way and
Municipal
Board,
27th Septem-
ber, 1909.

—continued

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Exhibit 14.

(Plaintiffs' Exhibit)

By-law No. 30 of the City of Hamilton.

BY-LAW No. 30.

Respecting Streets.

Ex. 14.
By-law No. 30
of the City of
Hamilton,
1910.

The Council of the Corporation of the City of Hamilton enacts as follows:

1. Foot passengers shall use due care so as not to obstruct or impede each other, and any person wilfully offending against this provision shall
20 be liable to the penalties of this by-law.

2. Three or more persons shall not stand in a group or near to each other on any street or sidewalk in such a manner as to obstruct or impede the free passage of pedestrians or vehicles or street cars along or across such street.

3. It shall not be lawful for any person to do any act or make use of any means whereby a crowd of people is collected in a public street so as to obstruct or impede the free passage of pedestrians or vehicles or street cars along or across such street, but this shall not apply to the play-
ing of bands or of musical instruments in any street, highway, park or
30 public place.

4. No person shall run or race in the streets or sidewalks, or crowd or jostle or stand in the way of other foot passengers, so as to create discomfort, disturbance or confusion.

5. No person shall drive any carriage, cart, wagon, sled, sleigh or other vehicle, or sit upon any horse or any beast harnessed thereto in order to ride or drive the same, nor shall any person ride or lead any horse, mare or gelding, unless he shall have strong reins or lines, fastened to the bridles of the beasts, and held in his hands, sufficient to guide them and to restrain them from running, galloping or going immoderately
40 through any of the streets.

6. The driver or other person in charge of any vehicle conveying goods, wares or merchandise through the streets, shall remain upon such vehicle while it is in motion, or walk beside the horse drawing the same.

7. No person driving any carriage, cart, wagon, sled, sleigh, motor or other vehicle, or riding upon any horse, mare or gelding, shall cause or permit the beast which he shall so ride or drive, to go at a gallop or other immoderate rate, and no person riding, running or operating a bicycle, tricycle or any other vehicle shall race or ride at an immoderate or dangerous rate, and every person driving or riding along any street shall slacken his speed in approaching any crossing for foot passengers 10 upon which any person is or may be crossing such street.

8. No person shall leave any horse or horses standing on any street, lane, alley or public ground, whether attached to a vehicle or not, unless such horse or horses shall be securely fastened, in order to prevent starting or running away, or the reins be in the persons hands or within his reach.

9. No person shall break in or train any horse, mare or gelding, or shall exhibit or let to mares any stud horse in any street or public place.

10. No person shall ride, drive, lead, push, draw or back any horse, carriage, cart, wagon, sled, sleigh, motor or other vehicle over or along 20 any sidewalk unless at a regular crossing provided thereon. Provided, however, that this prohibition shall not apply to prevent a person so crossing the sidewalk for a lawful purpose, if he shall have previously thereto covered such sidewalk with planking at least two inches in thickness, securely fastened and chamfered or bevelled off at the ends so as to be no obstruction to pedestrians, and has constructed across the drain, gutter or water course opposite the proposed crossing a good and sufficient bridge of planks or other proper and substantial material, so constructed as not to obstruct drain, gutter or water course.

11. No person shall permit his horse, carriage, cart, wagon, sled, 30 sleigh, motor or other vehicle to stand upon any street longer than is absolutely necessary for the owner, driver or person using the same to transact his business with the person opposite or near whose house the same shall stand, and no person shall permit any such carriage, cart, wagon, sled, sleigh, motor or other vehicle belonging to him or under his control, to stand upon any street upon which street car tracks are laid, unless such vehicle is parallel to the curbing of the said street, and the wheels or runners thereof nearest to the said curbing are not more than six inches therefrom; but this shall not apply to any vehicle from which 40 goods are actually being loaded or unloaded; and no person shall tie his horse to any post, hook or ring, or in any way across any pavement, sidewalk or crossing, so as to obstruct the ordinary traffic of the street, or shall leave any carriage, cart, wagon, sled, sleigh, motor or other vehicle standing opposite any other person's door than such as the owner, rider, driver or occupant may have business with, and no person shall in anywise obstruct the free use of the streets, or sidewalks, or the crossings across the streets, or any of the approaches to the wharves, by stopping any

horse, cart, carriage, wagon, sled, sleigh, motor or other vehicle across the same or by any other means.

12. No person shall side or drive any horse, or other animal, or any bicycle, auto-motor or other like vehicle on any public street in this city, in such manner as to endanger or unreasonably incommode any person.

13. No person shall run, draw or push any carriage, wagon, wheelbarrow, bicycle, cart, hand cart, hose, hose cart, truck, or any hand wagon, sled, sleigh, motor or other vehicles used for the conveyance of any article or property upon any sidewalk, except persons lawfully repairing
10 such sidewalks.

14. No person shall fasten any horse to any ornamental or shade tree in any of the streets in this city, or to any box or case around any such tree, or to any ornamental lamp post, patrol or fire alarm box.

15. No person shall drive any horse or carriage or vehicle of any kind through any civic or military procession.

16. No person shall cross any funeral procession with a wagon, carriage, motor or other vehicle, so as to interrupt such procession.

17. No person shall drive with a cutter or sleigh of any kind without having attached to the harness or vehicle at least two bells.

20 18. Every person driving or riding a horse or riding on a bicycle or other vehicle, or running a motor vehicle along any street in the city shall, as far as practicable, drive or ride along the right side of the centre line of the street, and when turning into another street, wherever practicable, shall proceed from the right side to the centre line of the street on which he is driving, to the right side of the centre line of the street into which he is turning.

30 19. No person driving or riding a horse or riding on a bicycle or other vehicle, or running a motor vehicle along any street in the city shall turn from the left side of such street into another street, but if on such left side he shall, if practicable, cross to the right side of the centre line of the street on which he is driving or riding before turning into another street.

20. Every person driving or riding a horse or other vehicle, or running a motor vehicle along any street in the city shall, in stopping or dismounting, drive close to the curb or gutter, so as to allow the free use of the street.

40 21. Nothing in the preceding sections shall prevent persons passing to the opposite side of the street for the purpose of stopping or dismounting or for any other necessary purpose, but in so doing they must use extra precaution so as not to get in the way or endanger other persons riding or driving in the opposite direction.

22. The following portions of King Street shall, for the purposes of this by-law, be deemed a street, namely:

(a) That part between James Street and John Street south of Gore Park and Gore Park extension;

(b) That part between James Street and John Street, north of Gore Park and Gore Park extension;

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 14.
By-law No. 30
of the City of
Hamilton,
1910.

—continued

In the
Supreme Court
of Ontario

Exhibits.
Ex. 14.
By-law No. 30
of the City of
Hamilton,
1910.

—continued

(c) That part between John Street and Catharine Street, south of the south rail of the Hamilton Street Railway; and;

(d) That part between John Street and Catharine Street, north of the south rail of the Hamilton Street Railway.

23. No person shall cross over or turn at the intersection of King and James Streets while driving or riding a horse or riding on a bicycle or other vehicle, or running a motor vehicle, at a higher rate of speed than four miles an hour, or shall turn at the intersection of any other street while driving at a higher rate of speed than four miles an hour.

24. No person shall drive a herd or drove of cattle, sheep or pigs through or upon any street paved with asphalt or wooden block or brick, or any street in the area bounded on the west by Bay Street, on the north by Cannon, on the east by Wellington, and on the south by Hunter Street, or upon any of the streets forming such boundary, nor shall any person drive a herd or drove of cattle, sheep or pigs through or upon any street whereon a boulevard is constructed, unless the cattle, sheep or pigs are led by halter, rope or otherwise, by persons having full power and control over the same; or unless a sufficient number of persons be in charge of the cattle, sheep or pigs to prevent them from going on the boulevards, or injuring the grass or trees.

25. No person shall dig or tear up any pavement, side or cross walk, or dig any hole, ditch, drain or sewer in any street, alley or public space, except such person or persons may be employed specially for the purpose by the Committee on Works, City Engineer, District Foreman or Manager of the Waterworks, or except when it shall be necessary for the purpose of building, and it shall be the duty of any person digging or tearing up any pavement, side or cross walk, or digging any hole, ditch, drain or sewer in any street, alley or public space, as speedily as practicable, to repair and put the same in as good order and condition as before, and in order to do this, such person shall pound down the earth so as to make it firm and solid, and if the earth shall settle, such person shall fill the same from time to time as may be necessary.

(1) It shall not be lawful for any person to dig or make a hole in any of the public streets, lanes, alleys or sidewalks of the City of Hamilton, or to construct a drain or sewer into any of the common sewers thereof, without having first obtained permission from the City Engineer.

(2) Every person who may obtain such permission shall pay the expense of an Inspector, who shall be appointed by said Engineer to superintend the work.

(3) Should any person desire that any such work be done by the City employees, it shall be lawful for the City Engineer to cause the same to be done upon receiving the cost thereof, or security that the same will be paid when the work shall have been completed.

(4) When the City Engineer grants permission as aforesaid, the person to whom the same is granted, and the owner of the property benefited by the work shall be held responsible for all accidents that may occur to any person or property by reason thereof, and the person to whom such

permission is granted shall keep and maintain lights and watchmen, and shall take such further care and precaution as may be necessary for the protection and safety of the public.

(5) No permission, as aforesaid, shall be granted by the City Engineer, where the proposed work necessitates the tearing up or excavating in or under any pavement upon any street or public place until the person applying for such permission shall have deposited with the City Treasurer such sum as the City Engineer shall consider sufficient to reimburse the City Corporation for the cost of any repairs that may thereafter be
 10 required to be made by reason of such tearing up or excavating. Such sum shall be retained by the City Treasurer for a period of six months unless the City Engineer shall sooner authorize the said Treasurer to repay to such person the sum so deposited, or any balance thereof. The cost of all repairs rendered necessary by such tearing up or excavating shall be paid to the City Corporation by the person to whom permission is granted, or the owner of the property benefited by the work, and such cost shall be deducted from the deposit. Should the deposit or any balance thereof have been returned, such person or owner shall pay to the
 20 City Corporation the cost of all repairs rendered necessary by reason of such tearing up or excavating.

26. The City Engineer shall be charged with the duty of enforcing the observation of section 25 of this by-law and of conducting all prosecutions for any breach thereof.

27. No person shall erect or place or procure or cause to be erected or placed, in any street or alley, lane or highway or other public square or park, or other public ground of this city, any building or part of a building of any description, or any fence or part of a fence or other structure except such as may be prescribed by by-law and allowed by law.

28. No person shall remove or cause or permit to be removed or
 30 assist in removing any building into, along or across any street or sidewalk without having first obtained leave from the City Engineer.

29. Every person who shall excavate, for the erection of walls or for any other purpose, in or near the sidewalk, or in or near any other place frequented by the public, shall take all necessary precautions to prevent harm, and shall complete said walls with all possible and reasonable despatch.

30. No person shall obstruct any portion of a public street by causing a peanut wagon or other vehicle or article to encumber the same.

31. No person shall place or deposit on any sidewalk, or in any
 40 street, or alley, or other public place in the said city, any cask, box, crate, stone, plank, boards, goods, wares, merchandise or other substances or materials whatsoever; but this section shall not be construed to prevent the moving of goods, wares or merchandise across any sidewalk in any way of trade, or for the use of families; nor be construed to prohibit the temporary deposit of firewood, coal or other fuel in front of any house, store or shop, for the use of which said wood or fuel is so deposited; but such wood or fuel shall not remain in such street for a longer period than

*In the
 Supreme Court
 of Ontario*

—
 Exhibits.
 Ex. 14.
 By-law No. 30
 of the City of
 Hamilton,
 1910.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 14.
By-law No. 30
of the City of
Hamilton,
1910.

—continued

twenty-four hours; nor to prevent the placing of barrels, boxes or other receptacles for ashes and garbage when ready to be removed by the public scavenger, or the deposit of building materials under and subject to the restrictions and regulations contained in the city by-laws.

32. No person shall be liable to a penalty under Section 31 for setting out temporarily, or from day to day, in the street immediately in front of his shop or place of business, goods, merchandise, or articles pertaining to such business for sale, provided he shall not occupy therewith a space extending more than two feet within the boundary line of the street.

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33. No person shall be liable to a penalty under Section 31 for placing a bicycle stand at the outer edge of the sidewalk or boulevard opposite his business premises, provided that the stand shall not be larger than is necessary for holding four bicycles, standing parallel with the sidewalk, and shall not be more than two feet six inches in width, and shall be used only for placing temporarily therein, for short periods, bicycles in actual use, by customers or others having business upon such premises, and shall not be used as a bicycle stand by the occupant of such premises or the persons employed therein.

34. No person shall be liable to a penalty under Section 31 for placing a barber's pole at the outer edge of the sidewalk or boulevard opposite his business premises, provided that such pole shall not occupy a space more than twenty inches square.

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35. No person shall scatter, leave or distribute in any street, lane or alley, or public space within the limits of the city, shavings, sawdust or dirt of any description, carted or hauled about in wagons, and any person using a wagon, cart or other vehicle to haul shavings, sawdust or dirt shall not load the same above the top of the side or end boards of the vehicle, and any such wagon, cart or vehicle used for the purpose aforesaid shall be constructed with tight board boxes, or in such a manner as to prevent the distribution or scattering of dirt on the streets.

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36. No person shall throw or deposit and leave, or permit to be thrown or deposited and left, any sweepings of any store, house, shop or office, or any dirt, paper, hand bills, or dodgers, or any animal or vegetable substance, ashes, shavings, filthy water, offal, straw, wood, stones, earth, manure, refuse matter or rubbish of any kind whatever, into or upon any street, lane, alley or public ground, or places used as streets, lanes or public grounds or into or upon any wagon or vehicle on any street or public square.

37. Every person who posts bills or paper upon any fence, building or other erection alongside of or near to any street or public place, or who permits any bills or paper to be posted on any such fence, building or other erection belonging to him or under his control shall be responsible for preventing such bills or paper from falling or being thrown upon such street or public place, or for permitting it to remain upon such street or public place, and no such person shall permit any bill or paper which has been posted by him or by any one under his authority or with his per-

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mission upon any fence, building or other erection alongside of or near to any street to fall or be left upon any street or public place, but shall cause any such bill or paper to be forthwith removed if it falls or is thrown upon any such street or public place.

38. No person shall permit any paper, hay, straw, shavings or other litter or rubbish liable to be carried by the wind into a street or public place, or into any lane or alley to be thrown or to remain upon any lot or premises not enclosed with a high wall or fence sufficiently close to prevent its escape unless such paper, hay, straw, shavings or other litter is
10 so covered or held as to prevent it from being carried by the wind.

39. No person shall deposit in the street or allow to be deposited in the street from his premises any garbage box, or barrel containing paper, hay, straw, shavings or other litter or rubbish liable to be carried by the wind after such box or barrel has been so deposited or liable to be so carried if the box or barrel is upset or is being emptied.

40. All carts, wagons, sleds, sleighs or other vehicles used for conveyance of manure, earth, ashes or other material which is loose and might drop upon the streets, shall have boxes of such size and construction, and shall be loaded in such manner that the contents thereof shall
20 not extend higher than the top of such boxes, and so as to prevent any manure, earth, ashes or other material from dropping upon the streets, and all carts, wagons, sleds, sleighs, or other vehicles used for hauling manure, earth, ashes or other material shall in all cases have tailboards the height of the sides of the box.

41. No person shall give away to any one in a street or public place any hand bill, dodger, card or other paper intended as an advertisement or employ any person to do so, or furnish any such hand bills, dodgers, cards or other paper for that purpose, or shall distribute or furnish for
30 distribution in a street or public place, or by delivering and leaving upon doorsteps or in porches or verandahs or upon lawns or other ground near a street or public place any such hand bills, dodgers, cards or other paper intended as an advertisement.

42. No person shall spit on the sidewalk of any public street, avenue, public square, or public place in the City of Hamilton, or on the floor of any passageway, stairway or entrance to any building used by the public within the City of Hamilton or of any room, hall, building or place within the City of Hamilton to which the public resort, or of any street car or public conveyance within the City of Hamilton.

43. No distiller, dyer or other person shall, either personally or by
40 another, discharge out of or from any dyehouse, workshop, factory, machine shop, dwelling house, kitchen, or other building, any foul or nauseous liquid, or other substance, into or upon any highway, street, lane or alley, public space or square.

44. No person shall throw or discharge dirty water or refuse into or upon any highway, street, lane, alley, public space or square, or into any of the gulley drains made by the City Corporation thereon.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 14.
By-law No. 30
of the City of
Hamilton,
1910.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 14.

By-law No. 30
of the City of
Hamilton,
1910.

—continued

45. All persons occupying premises in the City of Hamilton shall, as promptly and completely as practicable remove and clear away from the sidewalks adjoining such premises all snow and soft ice and slush which may be at any time on such sidewalks, the snow and ice to be so cleared away as to leave the surface of the sidewalk fairly level for the whole width thereof; and if any such occupant shall for twenty-four hours neglect to clean such sidewalks as hereinbefore required, the City Corporation may remove and clear away all snow and ice therefrom at the expense of such occupant, and in case of non-payment may charge such expense as a special assessment against such premises, to be recovered in like manner as other municipal rates. 10

46. All owners of vacant property in the City of Hamilton shall, as promptly and completely as practicable, remove and clear away from the sidewalks adjoining such property all snow and soft ice and slush which may be at any time on such sidewalks, the snow and ice to be so cleared away as to leave the surface of the sidewalk fairly level for the whole width thereof; and if any such owner shall neglect to clean such sidewalks as hereinbefore required, the City Corporation may remove and clear away all snow and ice therefrom at the expense of such owner, and in case of non-payment shall charge such expenses as a special assessment against such property, to be recovered in like manner as other municipal rates. 20

47. The District Foreman of the City Corporation shall forthwith cause any ridges, mounds or lumps, or rough pieces of ice or hardened snow on any sidewalk in his district, which are reported to him by the police or otherwise come to his notice, to be broken up and removed or leveled; and in case of non-payment by the owner or occupant of the adjoining property of the expenses of such removal, the City Corporation may charge the same against the owner or occupant of said adjoining property or premises, to be recovered in like manner as other municipal rates, unless the Committee on Works shall decide that such removal was not rendered necessary by any neglect of such owner or occupant to comply with the provisions of this by-law or By-law No. 41. 30

48. No removal of snow or ice by the City Corporation under the provisions of either of three next preceding sections shall relieve any owner or occupant of property or premises in the city from any penalty incurred under this by-law.

49. No one shall break or damage the surface of any sidewalk in removing and clearing away the snow and ice therefrom, or shall fill up or obstruct any drain or channel dug or made through the snow or ice along the side of the roadway. 40

50. In all streets where there is a railway or street railway, and a public boulevard intervenes between the sidewalk and the adjacent property, the snow and ice removed from the sidewalk shall be deposited on such boulevard as far as there is room for it, and shall not be placed upon the roadway; and in any such street, where there is a boulevard between

the sidewalk and the roadway the snow and ice removed from the sidewalk shall be deposited on the boulevards.

51. No person shall be permitted to remove, carry or transport any dead cow or horse, or other animal along, through or over any public street, lane, alley or public ground unless the same shall be covered with canvas or other suitable material.

52. No person shall erect, place, maintain or continue any pole, post or pillar, steps or other erection or obstruction upon or over any street or sidewalk, except as provided by the by-laws of the Corporation unless
10 authorized by resolution of the Council. Where such authority is given the same may at any time be revoked by the Council.

53. No sign or other post shall be erected or placed upon any sidewalk or street, or other public way within the city limits, or if heretofore erected or placed shall be permitted to remain upon any sidewalk or street or other public way, after notice to the owner or occupant of the premises from the Committee on Works to remove the same; but nothing herein contained shall prevent the erection of posts in front of each building for the purpose of hitching horses, or the erection of barber's poles, in accordance with Section 34 of this by-law.

54. No person shall, without having first obtained leave from the
20 Committee on Works, construct or place movable traps or doors, for the purpose of entrance to cellars or premises under any building or place, or make steps or porches or other entrances to buildings which shall in any-wise encroach upon the sidewalks or streets.

55. All awnings hereafter erected shall be elevated at least seven feet at the lowest part thereof above the sidewalk, and shall not project over the sidewalk to exceed three-fourths of the width thereof. They shall be supported without posts, by iron brackets, or by an iron framework attached firmly to the building, so as to leave the sidewalk wholly
30 unobstructed thereby. All awnings heretofore erected in a different manner shall, after notice from the Committee on Works, be immediately removed.

56. All telegraph, telephone and other poles and erections shall be erected on the outer side of the sidewalk in such a way as not to obstruct any passage or view, and said poles shall be at least twenty feet high, and straight, and be firmly and securely set so as not to injure or damage the sidewalk or obstruct the use of the same.

57. No person shall construct, maintain or continue within the city
40 any fence or other erection made wholly or in part of barbed wire or other dangerous material along or near any street or public place, unless such barbed wire or other dangerous material is set or strung at a height of not less than eight feet above the surface of the adjoining ground, roadway, pavement or sidewalk, or of any platform, floor or seat adjacent to such fence.

58. No person shall bring upon any street, lane, alley or other public place any animal, or any material substance or article that may be dangerous to the public using such streets, land, alley or other public place

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 14,
By-law No. 30
of the City of
Hamilton,
1910.

—continued

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 14.
By-law No. 30
of the City of
Hamilton,
1910.

—continued

unless proper precautions are taken to protect the public from danger or injury.

59. No person shall paint, mark, write, print, or impress or in any manner attach any notice or advertisement, or the name of any commodity or thing, or any trade mark, symbol or figure of any kind upon or to any sidewalk, step or stone, or any wall, fence or other property, not his own, upon or abutting on a street or public place, without first obtaining permission from the owner or owners of the property on which he desires to place such notice, advertisement, name, mark or figure.

60. No person shall light, or cause to be lighted or extinguished, any public electric light or gas light, without being duly authorized so to do, by the Council or by the person or company having the control of such light. 10

61. No person shall wilfully, maliciously or wantonly do any act that will deface or damage any article or fixture legally placed or being upon any street or sidewalk, or that will cause any sidewalk or pavement to be obstructed, defaced or damaged or in any manner rendered dangerous to the public travelling thereon.

62. No person shall hang any gate or allow any gate or door to remain hung so as to swing over any sidewalk, street or road within the city, except doors to public buildings. 20

63. No person shall, by himself or agent, sell or expose for sale at auction, any goods, wares or merchandise upon any sidewalk, or in any street, alley, or public space in the city, nor shall any person sell any such goods, wares or merchandise or other things by auction, to any person who, at the time of bidding, for the same, shall be on the carriage way or sidewalk of the streets.

64. No person shall encumber, injure or foul by animals, vehicles, vessels or other means, any street or other means of communication.

65. No person shall place any earth, stone, brick, lime, slag, lumber or other material or thing of any kind upon any street, either temporarily or for a longer period unless the same is permitted for building purposes as provided by by-law of this Corporation. 30

66. No person shall set fire to any shavings, chips, grass, leaves, straw or other combustible matter for the purpose of consuming the same, in any street or in any enclosure within one hundred feet of any building, and no person shall carry fire through the streets except in some covered vessel or metal fire pan.

67. No person shall throw stones, or balls of snow or ice, or other dangerous missiles, or use any bow and arrow or catapult in the streets. 40

68. No person shall fire any cannon, gun, rifle, pistol or firearms of any kind, or fire or explode any squib, rocket, cracker, roman candle or other combustible fireworks, or explosive material in any public street, lane, alley or sidewalk, or other public place within the city; but this section shall not apply to any military or volunteer company, or to the killing of any dog whose owner or possessor has not complied with the

provisions of any by-law relating to dogs running at large that may now or hereafter be passed.

69. All ornamental or shade trees hereafter placed or set out on any street shall be placed or set out within the outer line of the curbstone, but in no case less than eight feet from the line dividing the street from the lots abutting thereon, where there is no curbstone laid.

70. It shall not be lawful for any locomotive, passenger or baggage car, or other vehicle used by any railway company, or for any property whatever owned or carried by any such company, to be left standing or remaining upon any railway track or lands where the same may be intersected by any street in this city, nor shall any such locomotive, car, vehicle or property be left or permitted to remain in any street so as to in any-wise encumber the same for a longer time than five minutes.

71. No person shall use or cause or suffer to be used, upon those portions of the streets in this city which have been paved with asphalt, cement, wooden blocks, or brick, any engine, machine or implement conveyed on wheels, or any vehicle unless the tires upon the wheels of such engine, machine, implement or vehicle have a smooth surface and so constructed as not to injure the said pavements.

72. No person shall use on any of the public roads within the city a wagon brake which causes the tearing up of the surface of the roadway, nor shall any one use upon a public road within the city a wagon brake by which a wheel is prevented from revolving, without placing under such wheel an iron or steel shoe so made as not to tear up or injure the surface of the roadway, but nothing herein contained shall be construed as prohibiting the use of chain brakes or brakes without a shoe when the road is hard frozen and icy.

73. Coasting or tobogganing by any person in any of the public streets of the city is hereby prohibited.

74. No person shall climb on any of the lamp posts, telegraph or telephone poles or trees upon the streets or on or over the railings or fences along any of the streets.

75. No person shall pull down or deface any sign board or any printed or written notice lawfully affixed.

76. No person shall deface or disfigure any public or private building, wall, fence, railing, sign, monument, post or other property by cutting, breaking, daubing with paint or other substance, or shall in any other way injure or damage the same, or print, pencil, paint or chalk any indecent words or figures thereon.

77. During the operation of the construction, care, improvement, or repair of streets, sidewalks, sewers, culverts or drains, the laying of water and other pipes, the placing of poles and wires, and the construction or repair of all other works within the province and privilege of the Corporation of the City of Hamilton, the City Engineer shall have power to regulate the conveyance of traffic on the street or streets in the vicinity of such operations and works, and to close to public user any portion of such street or streets, and all persons shall conform to such regulations,

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 14.
By-law No. 30
of the City of
Hamilton,
1910.

—continued

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 14.
By-law No. 30
of the City of
Hamilton,
1910.

—continued

and no person shall enter upon or use any portion of such street or streets closed as aforesaid, or interfere with or injure any portion of such works.

78. No person shall push, draw, or back any horse, wagon, cart, bicycle, motor or other vehicle upon any portion of the street or streets closed by the City Engineer as in the last preceding section mentioned, or use, lead, ride or drive any horse, cattle, wagon, bicycle, motor or other vehicle, sled or sleigh thereon.

79. No person shall in a public street or in any open public place make use of indecent, profane or grossly insulting language to or concerning any other person or any body of persons, or language likely to create a breach of the peace. 10

80. No person shall sell any fruit, candies or peanuts from any basket or from any wagon, cart or other vehicle upon any intersections of King and James Streets in the City of Hamilton, or on said streets within one hundred feet of such intersections; and no person shall sell any fruit, candies or peanuts from any basket or from any wagon, cart or other vehicle upon the remaining portion of King Street, between Bay Street and Ferguson Avenue, or upon the remaining portion of James Street between Vine Street and Hunter Street, except after the hour of ten o'clock at night on Saturdays and after the hour of seven o'clock on other nights. 20

This section shall not apply to any farmer, market gardener or other person selling goods at or delivering the same to any place of business or residence upon the above mentioned portions of King and James Streets.

81. All work done, or caused to be done, by any person under this by-law shall be done under the supervision and to the satisfaction of the City Engineer, and all poles, lamp and other posts and erections on the said streets shall be maintained to the satisfaction of the said Engineer.

82. Any person convicted of a breach of any of the provisions of this by-law shall be liable to the penalty imposed of By-law 68 of this municipality, which may be enforced in the manner provided by said by-law. 30

Certified a true copy.

(Sgd.) S. H. KENT, *City Clerk.*

(SEAL)

Exhibit 4.

(Plaintiffs' Exhibit)

Order of The Ontario Railway and Municipal Board.**THE ONTARIO RAILWAY AND MUNICIPAL BOARD.**

Tuesday, the Eleventh Day of January, 1910.

BEFORE:

JAMES LEITCH, ESQ., K.C., *Chairman,*
 A. B. INGRAM, ESQ., *Vice-Chairman, and*
 H. N. KITTSOON, ESQ., *Member.*

*In the
 Supreme Court
 of Ontario*

Exhibits.
 Ex. 4.
 Order of The
 Ontario Rail-
 way and
 Municipal
 Board,
 11th Jan-
 uary, 1910.

10 In the matter of the application for annexation to the City of Hamilton of that portion of Lot Number 19 in the Fourth Concession of the Township of Barton, lying northerly of the brink or brow of the mountain.

Upon the application of the said applicants, made on the 11th day of January, A.D. 1910, and upon reading the petition of the said applicants dated the 3rd day of December, 1909, and the resolutions of the Council of the Corporation of the City of Hamilton, passed on the 13th day of December, A.D. 1909, and the 20th December, A.D. 1909, and upon hearing what was alleged by counsel on behalf of the said applicants, the
 20 Corporation of the City of Hamilton and the Corporation of the Township of Barton and the Inspector of Schools for the County of Wentworth.

This Board doth order and proclaim that the portion of the Township of Barton, in the County of Wentworth, described as follows: All and singular that portion of lot number nineteen in the Fourth Concession of the Township of Barton lying northerly of the brink or brow of the mountain, be and the same is hereby annexed to the said City of Hamilton; the said annexation shall take effect upon and subject to the following terms and conditions, namely:

30 1. The City of Hamilton shall pay to the Township of Barton, on the 14th day of December, 1910, and thereafter annually during the currency of the Good Roads Debentures issued by the County of Wentworth, the amount which would have been levied upon the said property to be annexed in respect of such debentures if the said lands had remained part of the Township of Barton and were assessed each year at the amount said lands were assessed for the year 1909, and a rate were struck each year at the same rate as fixed by the Township Council of Barton for the year 1909.

40 2. The taxes and rates imposed for the year 1909, or any previous year, upon any of the lands included in the territory hereby annexed, together with income, business and dog taxes of residents of said territory, shall, if not heretofore paid, be collected by the Township of Barton, and all right to collect the same, including distress for non-payment, or, if necessary the sale of the said lands or any of them, shall remain in the said Township as though this Order had not been made.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 4.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th Jan-
uary, 1910.

—*continue.*

3. The City of Hamilton shall pay to the Corporation of the Township of Ancaster the sum of two hundred dollars in full of the proportion of all debentures, loans, mortgages and liability for which the said annexed territory is now or may hereafter become liable, and the said annexed territory shall be entirely freed from all such debentures, loans, mortgages and liabilities.

4. The taxes, assessments, rents, water, local improvement, school and other rates to be levied and raised in respect of the said territory shall, for the year 1910 and thereafter, be the same, and payable at the same time and in the same manner as the taxes, assessments, rents, water, school and other rates levied and raised from time to time on the property within the old boundaries of the city, as such boundaries existed on the 1st day of January, 1891, and the assessment of the said territory shall, for the year 1910 and thereafter, be on the same basis and made at the same time and in the same manner as in the said old boundaries of the city, except that the assessment of the said territory for the year 1910 may be taken by the City Assessors at any time prior to the passing of a by-law striking the rate of taxation for the said territory for the said year 1910. 10

5. That cement walks shall, upon due request therefor, be constructed in the said territory under the provisions of the Municipal Act respecting local improvements. The city shall pay 40 per centum of the cost of such sidewalks as are constructed during the year 1910 and thereafter such percentage as applies from time to time within the said old boundaries of the city. 20

6. The sewers shall, upon due request therefor, be constructed in the said territory, under the provisions of the Municipal Act respecting local improvements, the cost of such sewers to be paid for by the property owners by a frontage tax, and assessed upon the real property benefited thereby according to the provisions of the said Act. 30

7. That the rental of \$5.00 per year now being paid for privilege of sewer connections by those residing on the west side of Garth Street in said territory shall be discontinued when said territory is so annexed, and the city may assess the properties on the west side of Garth Street in said territory which have not already contributed towards the cost of the construction of the sewer on said street, for one-half the cost of such sewer according to the frontage of the said properties, payable in six annual instalments with interest.

8. Water mains shall be laid by the city in the annexed territory upon due request therefor, but the city shall not be bound to lay such mains unless the additional revenue to be immediately derived therefrom shall be sufficient, in the opinion of the City Engineer, to meet the annual special rate required to pay the necessary debentures to be issued to pay the cost thereof and interest. 40

9. Provided Wm. D. Flatt shall assign to the City Corporation all his interest in the sewer constructed on Garth Street south of Aberdeen Avenue, together with all his right and interest under a certain agree-

ment made between him and the City Corporation dated the 1st day of June, 1906, and shall release the City Corporation from all agreements, covenants and conditions therein contained, the City Corporation shall pay to the said W. D. Flatt the amounts that may hereafter be received by the city from the assessments of the properties on the west side of Gaith Street in the said territory for the construction of the sewer on said street, referred to in paragraph 7 hereof, and the city shall also pay to the said W. D. Flatt on or before the 1st day of April, 1910, 40 per centum of the value of the cement walks constructed by him on the south side of Aberdeen Avenue, on the west side of Chedoke Avenue, and on the south side of Hillcrest Avenue, in the said territory, provided such cement walks have been properly constructed to the satisfaction of the City Engineer, the value of such cement walks to be determined by the said Engineer.

10. The said annexed territory shall form part of Ward Three of the said city until a new ward is created or a re-division of wards is made.

11. This order shall come into force and effect from and after the twenty-first day of January, 1910.

(Sgd.) JAMES LEITCH, *Chairman*.

20 (Seal)

Certified a true copy.

S. H. KENT, *City Clerk*.

(Seal)

Part Exhibit 3.

(Plaintiffs' Exhibit)

Order of The Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

Monday, the 21st day of March, 1910.

BEFORE:

30 JAMES LEITCH, ESQ., K.C., *Chairman*, AND
A. B. INGRAM, ESQ., *Vice-Chairman*.

In the matter of the application for annexation to the City of Hamilton of certain lands in the Township of Barton, more particularly described in the resolution passed by the Municipal Council of the Corporation of the City of Hamilton on the 30th day of August, 1909.

Upon the application of the Trustees of School Section No. 1 of the Township of Barton, and the Council of the Corporation of the City of Hamilton and the said parties consenting thereto,

40 This Board doth order and declare that the order of this Board made in the above matter, dated the 27th day of September, 1909, be and the same is hereby amended as follows:

1. Paragraph 1 (a) of the said order is amended by adding thereto the following:

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 4.

Order of The
Ontario Rail-
way and
Municipal
Board,
11th Jan-
uary, 1910.

—continued

Part Ex. 3.
Order of The
Ontario Rail-
way and
Municipal
Board,
21st March,
1910.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 3.
Order of The
Ontario Rail-
way and
Municipal
Board,
21st March,
1910.

—continued

“And the City of Hamilton shall pay to the Township of Barton
“the principal and interest on the loans contracted by the said Town-
“ship in respect of School Section No. 1, under By-laws Nos. 429, 557
“and 579 of the Council of the said Township as they respectively
“become due, amounting to the sum of \$7,700, less the sum of \$185.03,
“amount of sinking fund to the credit of By-law No. 579, on 31st
“day of December, 1909, and the City of Hamilton shall assume the
“liability of the Trustees of the said School Section in respect of the
“said loans, and the portion of such School Section remaining in the
“said Township shall be released from all liability in respect of said 10
“loans under said by-laws, and the City of Hamilton shall, on or
“before the first day of May, 1910, pay to the Trustees of School
“Section No. 1 the value of the interest of the said Trustees in the
“Ottawa Street School, and its equipment, amounting to the sum of
“\$978.46.”

2. Paragraph 1 (b) of the said Order is hereby amended by striking
out the words and figures “Sections 1 and 2” where they occur in the
third, fourth and fifth lines of said paragraph and inserting in lieu
thereof the words and figure “Section No. 2”.

3. Paragraph 2 of the said Order is hereby amended by striking 20
out all the words in said paragraph after the word “Hamilton,” where it
first appears in the fifth line of said section.

4. That the following be added to paragraph 8 of the said Order:

“The City of Hamilton shall construct sewers on the following
“streets, namely:

“On Barton Street, from Lottridge Street to Robins Street.

“On Trolley Street, from Schwenger Avenue to Poplar Avenue.

“On Main Street, from Trolley Street to Albert Street.

“On Melrose Avenue, from Main Street to King Street.

“On King Street, from Melrose Avenue to Lottridge Street. 30

“On Lottridge Street, from King Street to Barton Street,

“and the city shall assess the real property benefited thereby for the
“estimated cost of a pipe sewer fifteen inches in diameter, such esti-
“mated cost to be paid by the property owners by a frontage tax,
“payable in six annual instalments with interest, and the city shall
“pay the difference between the actual cost of such sewers, and the
“said estimated cost of a pipe sewer of 15 inches in diameter, and the
“Council of the Corporation of the City of Hamilton may, without
“submitting the same to the ratepayers qualified to vote on money
“by-laws, pass a by-law or by-laws to authorize the issue of debentures 40
“to an amount not exceeding \$45,000 to defray the city’s share
“of the cost of the construction of such sewers, and for such purpose
“may issue debentures of the said Corporation in sums of not less
“than \$100 each, the principal to be payable at the end of twenty
“years from the time such debentures are issued, and the interest to

“be payable half-yearly during the currency of such debentures at a rate not exceeding four per centum per annum, and to raise and levy annually by special rate on all the ratable property in the said municipality such sum or sums as may be necessary for payment of the said debt and interest.”

5. And it is ordered that the Municipal Corporation of the City of Hamilton shall pay the sum of ten dollars for law stamps on this Order.

JAMES LEITCH,
*Chairman of the Ontario Railway
and Municipal Board.*

Certified a true copy.

S. H. KENT, *City Clerk.*

(Seal)

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 3.
Order of The
Ontario Rail-
way and
Municipal
Board,
21st March,
1910.

—continued

10

Exhibit 5.

(Plaintiffs' Exhibit)

Order of The Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

Thursday, the Eighteenth day of January, 1912.

BEFORE:

20

JAMES LEITCH, ESQ., K.C.
Chairman,

A. B. INGRAM, ESQ.,
Vice-Chairman,

AND

H. N. KITSON, ESQ.,
Member.

30

IN THE MATTER of the Application of the Industrial Development Company, Limited, and others, for annexation to the City of Hamilton of Lot 3, in the broken front concession of the Township of Barton, and that part of Lot 3, in the First Concession of said Township lying northerly of the southerly limit of the right-of-way of the Grand Trunk Railway Main Line.

UPON THE APPLICATION of the said applicants, made on the Tenth day of January, 1912, and upon reading the petition of the said Applicants, dated the 9th day of October, 1911, and the resolution of the Council of the Corporation of the City of Hamilton, passed on the 26th day of December, 1911, and upon hearing what was alleged by Counsel on behalf of the Applicants, the Corporation of the City of Hamilton and the Corporation of the Township of Barton.

40

THIS BOARD DOETH ORDER AND PROCLAIM that the portion of the Township of Barton, in the County of Wentworth, adjacent to the City of Hamilton, described as follows:

Ex. 5.
Order of The
Ontario Rail-
way and
Municipal
Board,
18th Janu-
ary, 1912.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 5.
Order of The
Ontario Rail-
way and
Municipal
Board,
18th Jan-
uary, 1912.

BEING COMPOSED of Lot Number Three in the Broken Front Concession of the Township of Barton, in the County of Wentworth, and that part of Lot Number Three in the First Concession of said Township lying northerly of the southerly limit of the right of way of the Grand Trunk Railway main line, and the allowance for road between lot number three in the Broken Front Concession and lot number three in the First Concession of the said Township, be and the same is hereby annexed to the said City of Hamilton; the said annexation shall take effect upon and subject to the following terms and conditions, namely:

—continued

1. Those portions of the said lands lying south of the northerly limit 10 of the right of way of the Hamilton Radial Electric Railway Company, shall be assessed for the year 1912, and thereafter in the same manner as lands in the old portion of the city, and the same rate of taxation shall be levied against the said lands for the year 1912, and thereafter as shall be levied against the property in the old portion of the city.

2. Those portions of the said lands lying northerly of the right of way of the Hamilton Radial Electric Railway Company shall not be assessed for the years 1912, to 1924, inclusive, for any greater amount than they were assessed at by the Township Assessor for the year 1911, except that where any portion of the lands described in this sub-section 20 shall be built upon or improved or has been or shall hereafter be subdivided into parcels or lots, the Corporation of the City of Hamilton shall be at liberty, in its discretion, from time to time during the years 1912 to 1924, inclusive, to assess the said lands, or any of them, in the same manner as property in the said old boundaries of the city.

3. The assessment of the said territory for the year 1912 may be taken by the City Assessors at any time prior to the passing of a by-law striking the rate of taxation for the year 1912 for the said territory.

4. The said annexed territory shall form part of Ward Number 30 Eight of the said city.

5. This Order shall come into force on the Eighteenth day of January, 1912.

(Signed) JAMES LEITCH,
*Chairman of the Ontario Railway
and Municipal Board.*

(SEAL)

Certified a true copy.

S. H. KENT, *City Clerk.*

(Seal)

Exhibit 6.

(Plaintiffs' Exhibit)

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 6.
Order of The
Ontario Rail-
way and
Municipal
Board,
17th Novem-
ber, 1913.

Order of The Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

Monday, the Seventeenth day of November, A.D. 1913.

BEFORE:

- D. M. McINTYRE, Esq., K.C.,
Chairman.
- 10 A. B. INGRAM, Esq.,
Vice-Chairman, and
- H. N. KITTSON, Esq.,
Commissioner.

IN THE MATTER of the Applica-
tion of the Corporation of the City
of Hamilton, for an Order for the
annexation to the City of Hamil-
ton of that part of Lot Number
Nine, in the Third Concession of
the Township of Barton, in the
County of Wentworth, lying
within the said Township.

UPON THE APPLICATION of the Corporation of the City of Hamilton
and upon reading the Petition herein, and the Resolution of the Council
of the said Corporation, and upon hearing what was alleged by Counsel
on behalf of the City Corporation and the said Township.

20 1. This Board doth order and proclaim that that portion of Lot
Number Nine in the Third Concession of the Township of Barton, in the
County of Wentworth, lying within the said Township, be and the same
is hereby annexed to the City of Hamilton the said annexation to take
effect from the 1st of January, 1914.

2. The said annexed territory shall form part of Ward 1 of the said
city.

(Signed) D. M. McINTYRE, *Chairman.*

Certified a true copy.

S. H. KENT, *City Clerk.*

30 (SEAL)

Exhibit 7.

(Plaintiffs' Exhibit)

Ex. 7.
Order of The
Ontario Rail-
way and
Municipal
Board,
26th Jan-
uary, 1914.

Order of The Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

Monday, the 26th day of January, 1914.

BEFORE:

- D. M. McINTYRE, Esq., K.C., *Chairman,*
- A. B. INGRAM, Esq., *Vice-Chairman, AND*
- H. N. KITTSON, Esq., *Commissioner.*

40 IN THE MATTER of the application of W. H. Cooper and others for
annexation to the City of Hamilton of parts of lots numbers nineteen,

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 7.
Order of The
Ontario Rail-
way and
Municipal
Board,
26th Jan-
uary, 1914.

—continued

twenty and twenty-one, in the First and Second Concessions, and part of lot number twenty-one in the Third Concession of the Township of Barton, in the County of Wentworth, and part of lot number fifty-seven in the First Concession of the Township of Ancaster, in said County, and commonly known as "The Gore of Ancaster" which said parcels are hereinafter more particularly described and known as "McKittrick Property."

Upon the application of the petitioners herein, and upon reading the petition of the said applicants and the resolution of the Council of the Corporation of the City of Hamilton, passed on the 9th day of December, 1913, and upon hearing what was alleged by counsel on behalf of the applicants, the Corporation of the City of Hamilton and the Corporation of the Township of Barton, and the Reeve of the Township of Ancaster.

This Board doth order and proclaim that those portions of the Township of Barton and Ancaster, in the County of Wentworth, described as follows:

All and singular those portions of the Township of Barton and the Township of Ancaster, in the County of Wentworth, described as follows:

Firstly:—All and singular that certain parcel or tract of land and premises situate, lying and being in the Township of Barton, in the County of Wentworth and Province of Ontario, and being composed of parts of lots numbers nineteen, twenty and twenty-one, in the first and second concessions and part of lot number twenty-one in the third concession of the said township, and which said parcel may be more particularly described as follows: Commencing at the point where the northerly limit of the Hamilton and Ancaster Toll Road is intersected by the westerly limit of the side road between lots numbers twenty and twenty-one in the said township, now known as "Paradise Road"; thence northerly along the western limit of the said road to the water's edge of Coote's Paradise; thence southerly, easterly and northerly following the said water's edge in all its windings to the southerly limit of the Desjardines Canal; thence westerly following the southerly limit of the said canal to the point where the said limit is intersected by the westerly limit of the Township of Barton; thence southerly along the said township limit to the point where the said limit is intersected by the northerly limit of the Hamilton and Ancaster toll road; thence easterly along the northerly limit of the said toll road to the place of beginning.

The above described parcel of land, and land covered by water, being shown colored red on the plan hereunto annexed.

Secondly:—All and singular that certain parcel or tract of land and premises situate, lying and being in the Township of Ancaster, in the County of Wentworth and Province of Ontario, and being composed of a part of lot number fifty-seven in the first concession of the said Township and commonly known as "The Gore of Ancaster", and which may be more particularly described as follows: Commencing at the point where the northerly limit of the Hamilton and Ancaster toll road is intersected by the limit between the Townships of Barton and Ancaster; thence

westerly along the northerly limit of the said road to the point where the said limit is intersected by the easterly limit of the right-of-way lands of the Hamilton and Dundas Electric Railway; thence northerly along the easterly limit of the said right-of-way lands and the said limit produced to the point where the production of the said limit is intersected by the limit between the Townships of Ancaster and West Flamboro; thence easterly along the limit between the said Townships of Ancaster and West Flamboro to the northeasterly angle of the said Township of Ancaster; thence southerly along the limit between the Townships of Ancaster and
 10 Barton to the place of beginning.

The above described parcel of land, and land covered by water, being shown colored yellow on the plan hereunto annexed, be and the same is hereby annexed to the City of Hamilton, the said annexation to take effect upon and be subject to the following conditions, namely:

1. The same rate of taxation shall be levied against the said lands in the annexed territory for the year 1914 and thereafter, as shall be levied against the property within the old boundaries of the city as they existed prior to the 1st day of January, 1891.

2. The said lands shall not be assessed for the years 1914 to 1919
 20 inclusive, for any greater amount than they were assessed at by the Township Assessors for the year 1913, except that where any portion of the lands hereby annexed shall be built upon, the Corporation of the City of Hamilton, shall, from time to time during the said years 1914 to 1919 inclusive, assess the said lands built upon and the lands used in connection therewith or any of them in the same manner as property in the said old boundaries of the city.

3. In the portions so added to the city all water mains, hydrants, and the opening, widening, extending, grading, altering the grade of, diverting, macadamizing, paving and improving of streets and alleys, the
 30 construction, enlarging or extending sewers, construction of curbing and sidewalks, in, upon or along any street or alley, shall be constructed at the cost of the property owners and the whole cost, without any reductions, paid for by them, and the city shall not be called upon to levy such cost against the said property, but all such works shall, when constructed, become the property of the city without compensation being made therefor, and the McKittrick Properties Limited, shall expend at least \$250,000 for local improvements in or upon highways within the annexed territory during the years 1914 to 1919 inclusive.

4. (a) Where houses have been erected upon any of the lands in
 40 said territory abutting upon any highway in which water mains have been laid by the property owners, the City Corporation shall install water service pipes from such water mains to the houses in the same manner as in the older portion of the city and subject to the by-laws of the City Council.

(b) Before any street is paved the property owners shall construct all necessary water mains including hydrants and sewers.

*In the
 Supreme Court
 of Ontario*

—
 Exhibits.
 Ex. 7.
 Order of The
 Ontario Rail-
 way and
 Municipal
 Board,
 26th Jan-
 uary, 1914.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 7.

Order of The
Ontario Rail-
way and
Municipal
Board,
26th Jan-
uary, 1914.

—continued

(c) The City Corporation shall extend a water main, not less than 20 inches in diameter, westerly to some point on Paradise Road, selected by the City Corporation.

(d) Where water mains have been laid by and at the expense of the property owners, the lands in the annexed territory abutting upon the highways in which such mains are laid, shall not for the said years 1914 to 1919 inclusive, be chargeable with water rates except where supplied with water and water rates shall then be charged subject to the by-laws of the City Council only against the particular parcels of land so supplied and those parcels that may be built upon, and the land in connection therewith. 10

(e) The approval of the Committee on Works and the Council of the Corporation of the City of Hamilton shall be first obtained before any water main or pipe connections to be used for distributing water from the City Water Works is laid in the said territory, and no water shall be taken for other than domestic purposes except with permission first obtained from the said Committee on Works and said City Council.

5. A sewer shall be constructed by the petitioners, "McKittrick Properties Limited," from Paradise Road to the West End Sewage Disposal Works, and connected with the said Disposal Works. The size of said sewer and all works in connection therewith shall be subject to the approval of the City Engineer, and performed subject to his direction and to his satisfaction. Such sewer shall, upon completion, become the property of the city and the above named company shall convey to the city free of cost any private property upon which such sewer is constructed, or transfer to the city any grant or easement acquired by the company for the right-of-way of said sewer, and the City Corporation shall pay to the company one-half of the cost of the construction of said sewer, and the City Corporation shall be entitled to assess the lands in the city and the territory to be annexed, other than the lands of the petitioners, "McKittrick Properties Limited," benefited by such sewer, with such one-half cost to be paid by the City Corporation. 20 30

6. The "McKittrick Properties Limited" shall acquire at its own expense all necessary lands required for the right-of-way for the highway and bridge and its approaches shown on the plan hereto annexed and signed by A. F. Macallum, City Engineer, dated the 25th day of November, 1913, and pay all damages (if any) for lands injuriously affected, except where the right-of-way runs through or over lands owned by the city and city streets, and shall convey such right-of-way to the City Corporation. 40

After the sale of the debentures to be issued for raising the money necessary for the purchase of the right-of-way and the construction of such highway, bridge and approaches the city shall construct the said highway, bridge and approaches through or over such lands or streets according to the said plan, and shall pay 25 per centum of the cost of such right-of-way, and construction, such 25 per centum not in any event to exceed the sum of \$25,000.00, and the said Company shall pay the re-

mainder of the cost of such right-of-way and construction, and the city shall be entitled to assess the following lands owned by the said company as local improvements, for the total cost of such right-of-way and construction of said highway, bridge and approaches, without any reduction whatsoever, save the said 25 per centum of the cost of right-of-way and construction hereinbefore mentioned which shall in no event exceed the sum of \$25,000.00, namely:—

All and singular that certain parcel or tract of land and premises situate, lying and being in the Townships of Barton and Ancaster, in the
 10 County of Wentworth, and Province of Ontario, and being composed of part of lot number twenty-one in the first, second and third concessions of the said Township of Barton, and a part of lot number fifty-seven in the first concession of the Township of Ancaster, commonly called "The Gore of Ancaster," which said parcel or tract of land may be more particularly described as follows:

Commencing at the point where the northerly limit of the Hamilton and Ancaster Toll Road is intersected by the limit between the Townships of Barton and Ancaster; thence south eighty-two degrees and eleven minutes west (S. 82°11'W.) along the northerly limit of the said road two
 20 hundred and twenty feet (220') to a stone monument; thence north eighteen degrees and fifty-six minutes east (N. 18°56'E.) nineteen hundred and sixty feet and two inches (1960'2") along a fence to a point situate on the westerly production of the southerly limit of the concession road between Concessions two and three, in the Township of Barton; thence south seventy-three degrees and fifteen minutes east (S. 73°15'E.) along the said production eighty-nine feet and six inches (89'6"); thence north eighteen degrees and fifty-six minutes east (N. 18° 56'E.) parallel with the limit between the Townships of Barton and Ancaster, and distant
 30 westerly therefrom one hundred feet (100') at right angles, thirteen hundred and seventy-five feet and eight inches (1375'8"); thence north seventy-one degrees and fourteen minutes west (N. 71°14'W.) sixty-six feet (66') to the easterly limit of a brick yard; thence north eighteen degrees and fifty-six minutes east (N. 18°56'E.) along the easterly limit of the said brick yard fifty-four feet and two inches (54'2") to the north-easterly angle of the said brick yard; thence north seventy-one degrees and two minutes west (N. 71°2'W.) along the northerly limit of the said brickyard four hundred and forty-five feet (445') to the northwesterly angle thereof; thence south eighteen degrees and fifty-four minutes west (S. 18°54'W.) along the westerly limit of the said brickyard fourteen
 40 hundred and ninety-three feet and eight inches (1493'8") to the south-westerly angle of the said brick yard; thence north seventy-two degrees and twenty-seven minutes west (N. 72°27'W.) one hundred and eighty feet (180') more or less to the easterly limit of a sub-division known as "Hamilton Gardens"; thence south nineteen degrees and three minutes west (S. 19°3'W.) along the easterly limit of the said subdivision twenty-two hundred feet (2200') more or less to a stone monument planted in the northerly limit of the Hamilton and Ancaster Toll Road; thence south

*In the
 Supreme Court
 of Ontario*

—
 Exhibits.
 Ex. 7.

Order of The
 Ontario Rail-
 way and
 Municipal
 Board,
 26th Jan-
 uary, 1914.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 7.
Order of The
Ontario Rail-
way and
Municipal
Board,
26th Jan-
uary, 1914.

—continued

eighty-one degrees and forty-one minutes west (S. 81°41'W.) along the northerly limit of the said road four hundred and sixty-two feet and one inch (462'1") to a stone monument planted at the south-westerly angle of the said subdivision; then north nineteen degrees and four minutes east (N. 19°4'E.) along the westerly limit of the said subdivision five hundred feet (500') to an iron bar planted at the northeasterly angle of the said lands of one Cochran; then north seventy degrees and fifty-six minutes west (N. 70°56'W.) along the northerly limit of the lands of the said Cochran two hundred and twenty feet (220') to an iron bar planted at the northwesterly angle thereof; thence south nineteen degrees and four minutes west (S. 19°4'W.) along the westerly limit of the lands of the said Cochran six hundred and eleven feet and ten inches (611'10") to an iron bar planted in the northerly limit of the Hamilton and Ancaster Toll Road; thence westerly following the northerly limit of the said road twenty-one hundred and seventy feet (2170') more or less to a post planted in the easterly limit of a fifty-foot right-of-way leading northerly from the said toll road; thence north one degree west (N.1°W.) along the easterly limit of the said right-of-way sixteen hundred and sixty-three feet and eight inches (1663'8") to a jog in the said limit; thence south eighty-seven degrees and forty-seven minutes west (S.87° 47'W.) along a fence nine hundred and eighty-five feet (985') to the easterly limit of the right-of-way lands of the Hamilton and Dundas Electric Railway; thence north five degrees and thirty-four minutes west (N.5°34'W.) along the easterly limit of the said right-of-way lands and the said limit produced sixteen hundred feet (1600') more or less to the water's edge of Coote's Paradise; thence easterly following the water's edge of Coote's Paradise in all its windings to the point where the said water's edge is intersected by the westerly limit of the side road between lots twenty and twenty-one in the Township of Barton, commonly known as "Paradise Road"; thence south eighteen degrees west (S.18°W.) along the westerly limit of the said Paradise Road three thousand nine hundred and ninety-four feet (3394') more or less to the northerly limit of the concession road between Concessions two and three in the said Township of Barton; thence north seventy-two degrees and fifty minutes west (N.72°50'W.) along the northerly limit of said Concession road eight hundred and thirty-one feet and five inches (831'5") to the easterly limit of a brick yard; thence north eighteen degrees and twenty-three minutes east (N.18°23'E.) along the easterly limit of the said brick yard eight hundred and sixty-six feet and two inches (866'2") to a jog in the said limit; thence south seventy-one degrees and thirty-seven minutes east (S. 71°37'E.) along the easterly twenty feet (20'); thence north nineteen degrees and thirteen minutes east (N. 19°13' E.) still following the easterly limit of the said brick yard seven hundred and eighty-eight feet and ten inches (788'10") to the northeasterly angle of the said brick yard; thence north seventy-one degrees and forty-three minutes west (N. 71°43'W.) along the northerly limit of the said brick yard five hundred and thirty-four feet (534') to the northwesterly angle thereof; thence

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south eighteen degrees and forty-three minutes west (S. 18°43'W.) along the limit between the Townships of Barton and Ancaster, one thousand seven hundred and fifteen feet (1715') more or less to a stone monument marking the southerly limit of the said road allowance between Concessions Two and Three in the said Township of Barton; thence south seventy-three degrees and fifteen minutes east (S. 73°15'E.) along the southerly limit of said road allowance between Concessions Two and Three, four hundred and four feet and five inches (404'5") to the north-westerly angle of the lands of the Hand Fireworks Company; thence
 10 south eighteen degrees and fifty minutes west (S. 18°50'W.) along the westerly limit of the lands of the Hand Fireworks Company one thousand and six hundred and fifty-nine feet (1659') to the northerly limit of the Hamilton and Ancaster Toll Road; thence south seventy-nine degrees and forty-two minutes west (S. 79°42'W.) along the northerly limit of the said road four hundred and fifty-nine feet and four inches (459'4") to the place of beginning.

Saving and excepting a parcel of land in the Gore of Ancaster described as follows:—

Commencing at a stone monument planted in the westerly limit of
 20 sub-division known as "Hamilton Gardens" and distant northerly along the westerly limit of the said sub-division eighteen hundred and seventeen feet (1817') from the northerly limit of the Hamilton and Ancaster Toll Road: thence north nineteen degrees and four minutes east (N. 19°4'E.) along the westerly limit of the said sub-division two hundred and twenty-nine feet and two inches (229'2") to a stake planted at an angle in the westerly limit of the said sub-division; thence north seventy-two degrees and thirteen minutes west (N. 72°13'W.) still following the limit of the said sub-division, five hundred and sixty-nine feet and three inches (569'3") to an iron bar planted at an angle in the westerly limit of the
 30 said sub-division; thence south nineteen degrees and six minutes west (S. 19°6'W.) two hundred and twenty-nine feet and two inches (229'2") to a stone monument; thence south seventy-two degrees and thirteen minutes east (S. 72°13'E.) five hundred and sixty-nine feet and four inches (569'4") to the place of beginning; saving and excepting also all that land included in the above description adjacent to Coote's Paradise not lying within the limits of the Townships of Barton or Ancaster.

The above described parcel of land being more fully shown enclosed in yellow on the plan hereunto annexed, and containing by admeasurement five hundred and ninety-six (596) acres more or less, which said
 40 area is exclusive of the exception above described.

7. The location, size, material and manner of construction of all sewers, water mains and pipes shall be first approved by the City Engineer, and a permit granted before the same are laid, and all works in, through or upon the highways in said annexed territory shall be first approved by the City Engineer before permission is granted to perform such works, and the same shall be constructed under his discretion and to his satisfaction, but the Company shall not be called upon to construct

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 7.
Order of The
Ontario Rail-
way and
Municipal
Board,
26th Jan-
uary, 1914.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 7.

Order of The
Ontario Rail-
way and
Municipal
Board,
26th Jan-
uary, 1914.

—continued

any water main or sewer of greater size than would be required for the purposes of the territory annexed, together with the new cemetery property. Before any such permit shall be granted the person applying for such permit shall agree to restore the portion of the highway interfered with and keep same in repair for a period of six months from the time the street was restored.

8. The said annexed territory shall form part of Ward Four of the said City.

9. The assessment of the said territory for the year 1914 may be taken at any time prior to the 1st day of August, 1914. 10

10. The taxes and rates imposed for the year 1913 or any previous year upon any of the lands included in the territory hereby annexed together with income, business and dog taxes of residents of said territory, shall, if not heretofore paid, be collected by the respective Townships, and all right to collect the same, including distress for non-payment, or, if necessary, the sale of the said lands or any of them, shall remain in the said respective Townships as though this order had not been made.

11. If the City of Hamilton and the Townships of Barton and Ancaster are unable to agree as to the adjustment of the assets and liabilities the same shall be adjusted pursuant to section 38 of the Municipal Act, 1913. 20

12. And the Board makes no order as to costs except that the Corporation of the City of Hamilton shall pay the sum of \$10.00 for law stamps on this order.

13. This order shall come into force and effect from and after the 1st day of January, 1914.

(Sgd.) D. M. McINTYRE, *Chairman.*

(Seal)

Certified a true copy,
S. H. KENT, *City Clerk.*

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Part Exhibit 29.

(Defendant's Exhibit)

Letter from City Engineer.

CITY ENGINEER'S OFFICE

Hamilton, Ont., May 5th, 1914.

Dear Sir:—

I beg to enclose herewith copy of list, with addition, of streets upon which it is proposed to lay permanent pavements, and I beg to advise that if your Company have any conduits or other work to do on these streets, that same be put in hand as soon as possible. 40

Faithfully yours,

WB-S.
Enc.

A. F. MACALLUM,
City Engineer.

Part Ex. 29.
Letter from
City
Engineer,
5th May,
1914.

Part Exhibit 29.

(Defendant's Exhibit)

List Enclosed with Letter.

	STREET	FROM	TO	DESCRIPTION
	Stanley Ave.	Queen	Locke	Asphalt
	Depew St.	Beach Rd.	G. T. R.	" Mac.
	Glendale Ave.	Barton	Primrose	" "
	Dunsmure Road	Barnesdale	Sherman	Asphalt
	Prospect St.	King	Main	"
10	Leinster St.	King	Main	"
	Balmoral Ave.	King	Main	"
	Connaught Ave.	King	Main	"
	Tuckett St.	Pearl	Locke	"
	Macnab St.	Vine	Cannon	"
	Herkimer St.	Queen	Locke	" Wood Block
	Main St.	Locke	Margaret	" " "
	Margaret St.	King	Main	" " "
	Norway Ave.	Maple	Cumberland	Asphalt
	Main St.	Hess	Ray	" Mac.
20	Avalon Place	Arthur	Burris	Asphalt
	Barnesdale	Edward	Barton	"
	Barnesdale Blvd.	Dunsmure	Main	"

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 29.
List enclosed
with letter,
5th May,
1914.

Part Exhibit 29.

(Defendant's Exhibit)

Letter from City Engineer.

CITY ENGINEER'S OFFICE

Hamilton, Ont., June 11th, 1914.

Dear Sirs:—

I beg to notify you that it is the intention of this Department to construct permanent pavements on the following portions of streets, this season, commencing without delay, and you are now notified that if your Company has any construction work in any way, of laying mains, building conduits, connections, etc., that same be proceeded with at once, before the pavements are laid, as after their construction no openings will be allowed.

Faithfully yours,

A. F. MACALLUM,
City Engineer.

WB-S.

Spadina Ave., King-Main.
Proctor Blvd., King-Main.
Eastbourne Ave., Delaware-Cumberland.
Barnesdale Ave., King-Dunsmure.
Rosemount Ave., Scott-westerly to end of pres. pavement.
Balsam Ave., Main-Maple.

Part Ex. 29.
Letter from
City
Engineer,
1914.
11th June,

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 29.
Letter from
City
Engineer,
11th June,
1914.

—continued

Ex. 30.
Letter, City
Engineer to
Dominion
Natural Gas
Company,
30th Novem-
ber, 1914.

Blake St., Maple-Cumberland.
Blake St., Main-Maple.

Note: This exhibit also contains three further letters of a similar nature (all dated in 1914).

Exhibit 30.

(Defendant's Exhibit)

Letter, City Engineer to Dominion Natural Gas Company.

CITY ENGINEER'S OFFICE

Hamilton, Ont., Nov. 30th, 1914.

Dominion Natural Gas Co.,
City.

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Dear Sirs:—

Permission is granted to open the street at the corner of Prospect and Maple Ave., to introduce service for gas, provided the roadway is left in as good shape as it was before the work was commenced.

Faithfully yours,

A. F. MACALLUM,
City Engineer.

PS.

(Ink notation)

Installed Dec. 4-14.

F. E. P.

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Exhibit 32.

(Defendant's Exhibit)

Three Letters from City Engineer.

Note: This exhibit contains 3 letters (all dated in 1915) from City Engineer of City of Hamilton, giving notice of intention to pave—in form similar to Ex. 29. (See Record, p. 236.)

Exhibit 31.

(Defendant's Exhibit)

Letter, City Engineer to Dominion Natural Gas Company.

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CITY ENGINEER'S OFFICE

Hamilton, Ont., May 21, 1915.

Dominion Natural Gas Co.,
Bank of Hamilton Building,
City.

Dear Sir:—

Permission is granted to open the street in front of 33 Albert Street

Ex. 32.
3 Letters
from City
Engineer,
1915.

Ex. 31.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
21st May,
1915.

and at the corner of Central and Lorne Avenues to install services for natural gas.

P. S.
June 1, 1915.
F. E. P.

Faithfully yours,
A. F. MACALLUM,
City Engineer.

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 31.
Letter City
Engineer to
Dominion
Natural Gas
Company
Limited, 21st
May, 1915.
—continued

Part Exhibit 33.

(Defendant's Exhibit)

Letter, City Engineer to Dominion Natural Gas Company, Limited

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CITY ENGINEER'S OFFICE

Hamilton, Ont., September 5th, 1917.

The Dominion Natural Gas Co., Ltd.,
Bank of Hamilton Building,
City.

Gentlemen:—

I beg to enclose herewith permit to make cut in pavement in road-way in front of No. 78 Chedoke Avenue in order that you may make the necessary repairs to your pipe line.

Respectfully yours,

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E. R. GRAY,
City Engineer.

RSH.

Part Exhibit 33.

(Defendant's Exhibit)

Letter, City Engineer to Dominion Natural Gas Company, Limited

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CITY ENGINEER'S OFFICE

Hamilton, Ont., October 19th, 1917.

The Dominion Natural Gas Co., Ltd.,
Bank of Hamilton Bldg.,
City.

Gentlemen:—

I beg to advise that permission has been granted you to open pavement for gas repairs at Nos. 73, 75 & 77 Lorne Avenue.

Yours very truly,
E. R. GRAY,
City Engineer.

RSH.

Part Ex. 33.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
5th Septem-
ber, 1917.

Part Ex. 33.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
19th Octo-
ber, 1917.

Exhibit 8.

(Plaintiffs' Exhibit)

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 8.
Order of The
Ontario Rail-
way and
Municipal
Board,
18th March,
1920.

Order of The Ontario Railway and Municipal Board.**THE ONTARIO RAILWAY AND MUNICIPAL BOARD**

Thursday, the Eighteenth day of March, A.D. 1920.

BEFORE:

D. M. McINTYRE, ESQ., K.C.,
Chairman.
A. B. INGRAM, ESQ.,
Vice-Chairman, and
J. A. ELLIS, ESQ.,
Commissioner.

IN THE MATTER of the Petition of
J. A. Millen, et al, under Section
21 of "The Municipal Act" for
Annexation to the City of Hamil- 10
ton of that part of the Township
of Barton hereinafter mentioned
and described.

UPON the application of the above mentioned Petitioners, and upon reading the Petition of the Applicants herein filed with the Board, and the Resolution of the Council of the Corporation of the City of Hamilton, passed on the 9th day of December, 1919, declaring the expediency of such annexation upon the terms mentioned in said resolution, and upon hearing representatives of the said Petitioners and what was alleged by counsel on behalf of the Corporation of the City of Hamilton, the Town- 20
ship of Barton and the County of Wentworth, the Firestone Tire and Rubber Company of Hamilton, Limited, and the Board of Education of the City of Hamilton.

THIS BOARD doth order and proclaim that the portion of the Town-
ship of Barton, in the County of Wentworth, described as follows:—All
and singular that certain parcel or tract of land and premises situate,
lying and being in the Township of Barton in the County of Wentworth,
in the Province of Ontario, being composed of the whole of lots one and
two in the Broken Front and First Concessions and the southerly parts
of lots three and four in the First Concession. The whole of lots one and 30
two and the southerly parts of lots three and four in the Second Con-
cession, and the northerly parts of lots one, two, three and four in the
Third Concession of the said Township of Barton, and which may be more
particularly described as follows, that is to say:—

COMMENCING on the boundary line between the said Townships of
Barton and Saltfleet at a point one hundred feet (100') south of the
northerly limit of the Third Concession, or the southerly limit of Main
Street; thence westerly along a line one hundred feet (100') south of
the southerly limit of Main Street, where parts of the township lots are
unsubdivided, and along the southerly limits of lots fronting on Main 40
Street, where sub-divisions occur, to a point one hundred and fifty feet
(150') east of Ottawa Street; thence northerly parallel with the easterly
limit of Ottawa Street, to the southerly limit of the Hamilton Water-
works pipe line right-of-way. Thence north-easterly along the southern
limit of the Hamilton Waterworks pipe line right-of-way to the eastern

limit of Kenilworth Avenue. Thence northerly along the eastern limit of Kenilworth Avenue, to the northern limit of Barton Street. Thence westerly along the northern limit of Barton Street to the eastern limit of Ottawa Street. Thence northerly along the eastern limit of Ottawa Street to the southern limit of the right-of-way of the Grand Trunk Railway Company (Main Line). Thence easterly along said southerly limit of the railway right-of-way to the western limit of Kenilworth Avenue. Thence northerly along the western limit of Kenilworth Avenue, to Hamilton Harbor (formerly Burlington Bay). Thence easterly along the margin of Hamilton Harbor to the boundary line between the Townships of Barton and Saltfleet. Thence southerly along the said line between the Townships of Barton and Saltfleet to the place of beginning, all of which is more particularly shown on the accompanying plan, be and the same is hereby annexed to the City of Hamilton; the said annexation shall take effect upon and subject to the following terms and conditions, namely:—

1. (a) That the taxes, assessments, rents, water, school and other rates (with the exception of local improvement rates, hereinafter mentioned), to be levied by the City of Hamilton in respect of the said territory, shall for the year 1920 and thereafter, be the same, and payable at the same time and in the same manner as taxes, assessments, rents, water, school and other rates, levied and raised from time to time on the property within the old boundaries of the City as they existed on the 1st day of January, 1891, and the assessment of the said territory by the said City, shall for the year 1920 and thereafter, be on the same basis and made at the same time and in the same manner as in the said old boundaries of the City, except that the assessment by the Corporation of the City of Hamilton of the said territory for the year 1920 may be taken by the City Assessors at any time during such year. The Township of Barton shall at all reasonable times allow the Corporation of the City of Hamilton, its servants and agents, access to the assessment rolls of the said portion of the said Township of Barton, and to all local improvement by-laws and local improvement assessment rolls, and also all plans, surveys and maps applicable to the said portion of the said Township for the purpose of making copies of the same.

(b) The City of Hamilton shall pay to the Township of Barton on the 31st day of December, 1920, an amount equal to twenty-five per centum of the amount of the general taxes levied and collected by the City of Hamilton in respect of the annexed area, and the Township shall pay out of the said amount the sums which the County of Wentworth and the several school sections affected shall be entitled to be paid respectively in respect of the first three months of the year 1920, and in any arbitration between the City, the Township of Barton and the County of Wentworth, the arbitrator or arbitrators may take into consideration the payment made or to be made under this paragraph.

(c) That the Corporation of the Township of Barton shall forthwith prepare and furnish to the Corporation of the City of Hamilton

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 8.

Order of The
Ontario Rail-
way and
Municipal
Board,
18th March,
1920.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 8.

Order of The
Ontario Rail-
way and
Municipal
Board,
18th March,
1920.

—continued

a special roll showing all arrears of taxes or special rates assessed against the lands above described up to the thirty-first day of December, 1919, and the persons assessed therefor.

(d) That the Corporation of the City of Hamilton shall have the right to collect all said arrears of taxes according to said special roll including the right to distrain for non-payment of said arrears, or if necessary the right to sell the said lands, if any, for non-payment of such arrears, as fully as if the said taxes had been assessed and levied by such corporation, but the proceeds of the collection of such arrears or any part of the same, after deducting therefrom the proper costs and expenses in connection with the collection of same shall be repaid by the Corporation of the City of Hamilton to the said Corporation of the Township of Barton within six months from the date of collection, PROVIDED that the said Corporation of the City of Hamilton shall proceed to collect the said arrears of taxes shown on said special roll, in the same way as if it had assessed and levied the same, but shall not be responsible to the Corporation of the Township of Barton for any of such arrears of taxes which it may be unable to collect. 10

(e) That the Corporation of the Township of Barton shall indemnify and save harmless the Corporation of the City of Hamilton from all loss, costs, charges and expenses arising from any act or omission of the Township of Barton or their officials or servants in connection with the said Special Roll. 20

2. (a) In the district so added to the City the opening, widening, extending, grading, altering the grade of, diverting, macadamizing, paving, and improving of streets and alleys, the opening of new streets, the construction, enlarging and extending sewers, the construction of curbing and sidewalks upon or along any street or alley, shall be constructed as local improvements and the entire cost of all such works undertaken shall be borne by the property owners and specially assessed upon their lots pursuant to the terms of The Local Improvement Act, with the exception of the reductions and the corporation's portion of the cost which the said Act provides shall be paid by the Corporation. 30

(b) In the district so added the cost of the reductions and the Corporation's portion of the cost which the said Act provides shall be paid by the Corporation, mentioned in the preceding sub-section, and also the cost of gully drains shall be borne at large by the said annexed district and the City shall annually or otherwise, levy and raise by a special rate on the whole ratable property in the said district, over and above all other rates and taxes, an amount sufficient to pay the cost of such reductions and the Corporation's portion of the cost and the cost of gully drains herein mentioned. 40

3. (a) The City shall construct a system of sewers in the said district at such time and times as may be deemed expedient by the City Council and the lands in the said district shall be assessed for the total cost of all main and trunk sewers constructed in such district, provided, however, should any of such main or trunk sewers be constructed of suf-

ficient capacity and for the purpose of draining other territory than the district annexed, the lands hereby annexed shall be charged only with their proper share of such cost which shall be determined by the said Council, subject to an appeal to this Board.

10 (b) The Council of the Corporation of the City of Hamilton may from time to time pass by-laws without submitting the same to the electors qualified to vote on a money by-law for raising the amounts required to pay the cost of the said main and trunk sewers, over and above the amounts that may be assessed against the lands abutting thereon for the owners' portion of the cost of the said main and trunk sewers, and may issue debentures of the City Corporation from time to time for such required amounts payable at the end of ten years from the time such debentures are issued.

(c) During the currency of any such debentures the City shall annually levy and raise by a special rate on the whole ratable property in the said district, over and above all other rates and taxes, an amount sufficient to pay the proportionate amounts of the said debenture debts and interest chargeable to the said districts.

20 4. Where any work has heretofore been constructed in the said district and such work is defective or insufficient, the Corporation of the City of Hamilton may proceed with the construction of required works under the provisions of The Local Improvement Act notwithstanding the lifetime of the first mentioned work has not expired.

5. The residents of the district to be annexed shall be entitled to water from the Hamilton Water Works upon the same terms and conditions as the residents of Hamilton.

30 6. AND THIS BOARD DOETH FURTHER ORDER AND DECLARE that the application of the Council of the Corporation of the Township of Barton to the Legislative Assembly of the Province of Ontario for confirmation and validation by a Special Act of By-law No. 1192 of the Council of the Corporation of the Township of Barton shall not be prejudiced or affected by this Order, and leave is reserved to the Council of the Corporation of the Township of Barton to proceed with its application for such Special Act and this Order is made upon and subject to the condition that the application of the Council of the Corporation of the Township of Barton for a Special Act confirming and validating the said By-law No. 1192 shall not be opposed by the Municipal Corporation of the City of Hamilton and if said By-law No. 1192 shall be confirmed and validated by the Legislative Assembly of the Province of Ontario then all
40 rights, privileges and exceptions and the fixed assessment provided for by said By-law No. 1192 of the Council of the Corporation of the Township of Barton respecting the assessment of parts of Lots One and Two in the First and Broken Front Concession of the Township of Barton for a period of twenty years and the Agreement annexed to the said by-law as approved and confirmed by the Legislative Assembly of the Province of Ontario shall be and continue in force in accordance with the terms and conditions therein contained; provided that such by-law shall not

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 8.

Order of The
Ontario Rail-
way and
Municipal
Board,
18th March,
1920.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.

Ex. 8.

Order of The
Ontario Rail-
way and
Municipal
Board,
18th March,
1920.

—continued

exempt the lands affected thereby from assessment and taxation for school purposes and local improvements.

7. The said annexed territory shall form part of Ward No. 8 of the said City.

8. The provisions of Section 38 of "The Municipal Act" shall apply as between the municipalities affected by this order.

9. The order shall come into force on the 1st day of April, 1920.

D. M. McINTYRE, *Chairman.*

(SEAL)

Certified a true copy,
S. H. KENT, *City Clerk.*

10

Part Exhibit 22.

(Defendant's Exhibit)

By-law No. 2416 of the City of Hamilton.

BY-LAW 2416.

- FOR Entering Into an Agreement with the United Gas and Fuel Company, Limited, and the Dominion Natural Gas Company, Limited, Respecting Supply of Gas.

WHEREAS, it is expedient to enter into an Agreement with The United Gas and Fuel Company, Limited, and The Dominion Natural Gas Company, Limited, respecting the supply of gas until the 1st day of April, 1921, in the terms of the draft agreement hereunto annexed. Therefore the Council of the Corporation of the City of Hamilton enacts as follows: 20

1. That the entering into of the proposed agreement is hereby approved and authorized.

2. That the Mayor and the City Clerk be, and they are hereby authorized and directed to sign the engrossment of the said proposed Agreement and to affix to it the corporate seal of the municipality.

Passed this 29th day of September, A.D. 1920.

S. H. KENT,
City Clerk.

CHARLES G. BOOKER, 30
Mayor.

Part Ex. 22.
By-law No.
2416 of the
City of
Hamilton,
29th Septem-
ber, 1920.

Part Exhibit 22.

(Defendant's Exhibit)

Agreement Between United Gas and Fuel Company, Limited, Dominion Natural Gas Company, Limited, and The Corporation of the City of Hamilton.**PROPOSED AGREEMENT REFERRED TO IN FOREGOING BY-LAW**

AGREEMENT made this 29th day of September, A.D. 1920

BETWEEN :

10 THE UNITED GAS AND FUEL COMPANY, LIMITED,
Formerly "The Ontario Pipe Line Company, Limited," Hereinafter
Called the "United Company,"

of the First Part,

THE DOMINION NATURAL GAS COMPANY, LIMITED,
Hereinafter Called the "Dominion Company,"

of the Second Part,

—AND—

20 THE CORPORATION OF THE CITY OF HAMILTON,
Hereinafter Called the "City,"

of the Third Part.

WHEREAS by By-law No. 400 respecting The Ontario Pipe Line Company, Limited, passed on the 26th day of September, 1904, as amended by By-law No. 443, passed on the 13th day of March, 1905, the consent, permission and authority of the Corporation of the City of Hamilton were thereby given and granted to the Ontario Pipe Line Company, Limited, its successors and assigns, to enter upon the streets, public alleys and public grounds of the City of Hamilton to dig trenches and lay and bury therein, and to maintain, operate and repair mains and pipes of such sizes as the said company might require for the transportation and supply
30 of natural or manufactured gas in the said City of Hamilton, for fuel, heating and lighting purposes, together with the right to construct and maintain and repair under the surface of such streets, alleys or public grounds all necessary regulators, valves, curb boxes, safety appliances and other appurtenances that might be necessary in connection with the transportation and supply of natural or manufactured gas; and the said by-laws provided that the Company should supply gas to the City Corporation and the inhabitants thereof at the prices and upon the terms and conditions contained in said by-laws:

40 AND WHEREAS, the said by-laws were duly accepted by the said Company by an agreement which duly bound the said Company to perform, observe and comply with all terms and conditions contained in said by-laws.

In the Supreme Court of Ontario

Exhibits.
Part Ex. 22.
Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited, and The Corporation of the City of Hamilton, 29th September, 1920.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 22.
Agreement be-
tween United
Gas and Fuel
Company Lim-
ited, Dominion
Natural Gas
Company Lim-
ited, and The
Corporation
of the City of
Hamilton,
29th Septem-
ber, 1920.

—continued

AND WHEREAS, the said Dominion Company is also distributing natural gas in the eastern portion of the City of Hamilton, under the provisions of a by-law of the Township of Barton in that behalf passed the 26th day of October, 1904, and numbered 533.

AND WHEREAS, by Articles of Agreement made the 25th day of September, 1905, between the "Dominion Company" and the Ontario Pipe Line Company, Limited, the Dominion Company agreed to deliver natural gas to the "United Company" upon the terms and conditions in said Agreement contained.

AND WHEREAS, the said Companies, parties hereto, have represented 10 that owing to conditions that exist at present, and to the limit the prices of gas mentioned in said by-laws, natural and manufactured gas cannot be obtained to supply the requirements of the City, and the inhabitants thereof, except at financial loss to the Companies.

AND WHEREAS, the United Company and the Dominion Company have promised and agreed that they will endeavour to obtain an increased supply of natural gas to meet the requirements of the inhabitants of the City of Hamilton and the Council of the Corporation of the City of Hamilton considers it advisable to allow the said Companies to increase, 20 during the period only hereinafter mentioned, the prices to be charged for gas in order that inducements may be made to producers and others to develop more natural gas wells, in an effort to obtain additional supply of such gas for the City of Hamilton.

Now therefore this agreement witnesseth that in consideration of the covenants and agreements hereinafter contained the parties hereto hereby agree to and with each other as follows:—

1. The United Company agrees that it will have installed and ready for operation on or before the 15th day of October, 1920, its new water gas unit and equipment capable of producing at least 2,000,000 cubic feet 30 of manufactured gas per day, and will, from and after such date, during the currency of this agreement, produce from the said unit and equipment and supply to the gas owners in Hamilton, if required, at least 2,000,000 cubic feet of manufactured gas per day; the above quantities of gas to be in addition to gas manufactured by the United Company at its present plants, and the said United Company covenants and agrees to operate all its said plants to their utmost capacity, if necessary to supply the City and its inhabitants with gas, but all the provisions of this paragraph shall be subject to the condition that the United Company shall be relieved from its obligations hereunder if it is hindered, delayed or pre- 40 vented from fulfilling same by the Act of God, the King's enemies, strikes, embargoes, or any other matter or thing whatsoever beyond its control.

2. The City consents that for a period commencing on October 1st, 1920, and ending on the 1st day of April, 1921, the said Companies may charge to their users of gas, in the City of Hamilton, the following prices for gas, namely:—

(a) For Natural Gas, not more than seventy-five cents per 1000 cubic feet, net.

(b) For Manufactured Gas, not more than one dollar and twenty-five cents per 1,000 cubic feet net.

(c) For Mixed Natural and Manufactured Gas, in proportion to the quantities of natural and manufactured gas supplied at the above prices, to be determined pursuant to the provisions of Section 12 of said By-law No. 400.

10 (d) And the said Companies shall have the right in all cases to charge and collect an additional five cents per 1,000 cubic feet of gas from all users whose bills remain unpaid after fourteen days from dates of rendering accounts.

3. Should the City of Hamilton, during the said term mentioned in paragraph two hereof, complain that the said Companies or either of them, are failing to carry out the terms of this Agreement, it may apply to The Ontario Railway and Municipal Board for an order rescinding the privilege of the said Companies to charge greater rates than those mentioned in said by-laws and the said Board may at any time before the said 1st day of April, 1921, after hearing the parties, and upon
20 reasonable and adequate grounds, order the Company to discontinue the increased rates as set forth in said by-laws.

4. On and after the 1st day of April, 1921, the provisions of said by-laws shall apply to the said Companies as fully and completely as if this Agreement had not been entered into, and from such date gas shall be supplied by the said Companies pursuant to terms and conditions contained in said by-laws, and it is hereby declared and agreed that nothing herein contained shall be to the prejudice of the said City.

5. The Dominion Company agrees that for gas produced from wells in the Townships of Binbrook, Glanford, Oneida and North Cayuga and delivered into its main lines conveying gas to Hamilton, it will pay 25c
30 per 1,000 cubic feet and the Company also agrees that it will accept all gas offered and delivered into the Company's main line and that it will on or before the expiration of two weeks from the date hereof, commence drilling in the Townships aforesaid at least five new wells, and complete the same before the 15th January, 1921, and will turn into said Hamilton line all gas from such wells as produce gas in paying quantities, and that said gas so delivered and produced will be available for distribution in Hamilton subject to the said agreement of September, 1905.

40 7. The United Company also agrees that it will during the term of this agreement, engage a staff of employees sufficient to properly adjust and keep adjusted, all gas burners of customers to the quality of gas supplied by the Company free of cost to the gas consumers.

8. It is understood and agreed that except as the same are suspended or modified by this Agreement and for the purposes thereof the rights of all parties hereto under said contracts and by-laws or otherwise howsoever are not prejudiced or affected.

*In the
Supreme Court
of Ontario*

—
Exhibits,
Part Ex. 22,
Agreement between United
Gas and Fuel
Company Limited, Dominion
Natural Gas
Company Limited, and The
Corporation
of the City of
Hamilton,
29th September,
1920.

—continued

In the
Supreme Court
of Ontario

Exhibits.
Part Ex. 22.
Agreement be-
tween United
Gas and Fuel
Company Lim-
ited, Dominion
Natural Gas
Company Lim-
ited, and The
Corporation
of the City of
Hamilton,
29th Septem-
ber, 1920.

—continued

9. It is hereby agreed that no Tilbury or sulphur gas shall be supplied to the City without the consent of the Council of the said City.

10. The United Company also agrees that it will, during the term of this agreement furnish each user of gas with a copy of the meter reading at the time of such reading.

IN WITNESS WHEREOF the parties hereto have hereunto set their seals under the hands of the proper officers.

Signed, Sealed and Executed
in the presence of

Signed:

THE UNITED GAS AND FUEL COMPANY OF HAMILTON, LIMITED,
Per

J. F. RICHTER, *Asst. Secretary.*
(SEAL)

P. V. BYRNES, *President.*

Signed:

THE DOMINION NATURAL GAS COMPANY, LIMITED,
Per

Attest.
J. A. RICHIE, *Secretary.*
(SEAL)

H. R. DAVIS, *Vice-President.*

CHAS. G. BOOKER, *Mayor.*
(SEAL)

S. H. KENT, *City Clerk.* 20

Exhibit 28.

(Defendant's Exhibit)

Resolution of Hamilton City Council.

**COPY OF RESOLUTION PASSED AT A MEETING OF THE
MUNICIPAL COUNCIL OF THE CORPORATION OF THE
CITY OF HAMILTON**

At Meeting Held on October Twelfth, 1920.

(See 1920 Council Minutes, Page 948).

Moved by Ald. Treleaven, seconded by Ald. Fearnside,
Resolved, That The Dominion Natural Gas Company be requested
by this Council to put in the necessary gas connections to give a service
to the new residence of George Ritchie on the east side of Blake Street,
south of Maple Avenue.—Carried.

30

Ex. 28.
Resolution of
Hamilton City
Council,
12th Octo-
ber, 1920.

Part Exhibit 80.

(Plaintiffs' Exhibit)

Letter, T. H. Simpson to Alfred G. E. Bryant.

LEE, SIMPSON & McCALLUM
Barristers, Solicitors, Etc.

Hamilton, Ont., 20th November, 1920.

Alfred G. E. Bryant, Esq.,
Clerk, Township of Barton,
Court House, Hamilton, Ont.

10 Dear Sir:—

RE GAS MATTERS

I beg to advise you that I have received the necessary consents from Mr. Estlin, the Gas Commissioner, with regard to gas connections to the parties at the addresses mentioned in the enclosed list. I have sent these consents to the Dominion Natural Gas Company at Brantford by registered mail and have asked them to have the services installed.

I shall keep you advised in the matter.

Yours truly,
T. H. SIMPSON.

20 encls. 1.

NAMES AND ADDRESSES OF PERSONS REQUIRING NEW GAS CONNECTIONS

Mr. Thompson, East 9th Street.
Mr. Manning, East 9th Street.
Mr. R. Jones, East 22nd Street.
Mr. Harvey, East 22nd Street.
Mr. R. Yates, East 22nd Street.
Mr. W. Eaton, 14 East 22nd Street.
Mr. Tomlinson, East 9th Street.
Mr. F. Wooden, East 9th Street.
30 Mr. F. King, Brucedale Avenue.
Mr. S. Robinson, 600 Concession Street.
Mr. W. Hodge, 605 Fennel Avenue.
Mr. H. Cooper, 25 East 23rd Street.
Mr. L. Nunn, 18 East 23rd Street.
Mr. E. McEntee, 82 East 23rd Street.
Mr. J. King, 209 East 24th Street.
Mr. L. Blatz, East 24th Street.
Mr. G. Hollowell, 185 East 23rd Street.
Mr. Scott, 189 East 23rd Street.
40 Mr. R. Cook, 196 East 23rd Street.
Mr. W. J. Gentle, 149 Fennell Avenue.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 80.
Letter, T. H.
Simpson to
Alfred G. E.
Bryant,
20th Novem-
ber, 1920.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 80.
Letter, T. H.
Simpson to
Alfred G. E.
Bryant,
20th Novem-
ber, 1920.

—continued

Mr. W. Halstead, 9 East 24th Street.
Mr. H. Arnold, 5 East 23rd Street.
Mr. W. Chaloner, East 8th Street.
German Findlay, Jackson's Corners, Ontario.
Mr. Hewieson, 484 Wentworth Street South.
Mrs. Powell, East 7th Street.
Mrs. Woods, East 7th Street.
Mrs. Warton, East 6th Street.
Mr. Gleave, Brucedale Avenue.

Part Exhibit 80.

(Plaintiffs' Exhibit)

10

Part Ex. 80.
Letter, T. H.
Simpson to
Alfred G. E.
Bryant,
3rd Decem-
ber, 1920.

Letter, T. H. Simpson to Alfred G. E. Bryant.

LEE, SIMPSON & McCALLUM
Barristers, Solicitors, Etc.

Hamilton, Ont., December 3rd, 1920.

Alfred G. E. Bryant, Esq.,
Clerk, Township of Barton,
Court House, Hamilton, Ont.

Dear Sir:—

GAS QUESTION

20

In this matter I received a short time ago from the Ontario Gas Commissioner's Office notice that the Commission had no objection to the granting of gas to the different people whose names appeared on the list which we sent him. As soon as I received these notices I forwarded the same to the Dominion Company at Brantford by registered letter and asked them to arrange to have the connections installed. I have not yet heard from them, but shall advise you as soon as I do.

Yours truly,
T. H. SIMPSON.

Part Exhibit 80.

(Plaintiffs' Exhibit)

Letter, R. H. Davies to Lee, Simpson & McCallum.**OFFICE OF GENERAL MANAGER**

638 Ellicott Square

Buffalo, N.Y., December 11, 1920.

Lee, Simpson & McCallum,
Solicitors for Township of Barton,
Merchants Bank Chambers,
Hamilton, Ont.

10

Gentlemen:—

Your favor of November 20th addressed our Brantford office has just been referred to us. Please accept our apologies for the delay in replying.

We note that you enclosed a number of cards issued by the Natural Gas Commissioner of Ontario authorizing us to install gas services to the premises of the persons in whose names these cards are issued. Although these cards authorize the installation of services, they give us no help in procuring the gas to supply the consumers.

20 The discussion of the natural gas situation in Ontario has been so public, violent and prolonged, that all persons interested must now be fully aware that there has been, and is a continually increasing shortage of natural gas. This Company now finds itself in such a position that not only can it take no new consumers, but it must commence to reduce the number of consumers to whom it supplies gas in order that it may be able to give at least a partially satisfactory service to the remainder.

In order to accomplish this, we propose to remove from Barton Township all our pipes and mains, except those pipes, the laying of which was made mandatory by the by-law under which we operate. We will
30 start this work as early in the spring as weather conditions permit.

You can readily see that under these circumstances it would be very unprofitable both for the consumers and ourselves to install these services. In addition to this, it has been the rule of this Company for some years not to take on any new consumers between December first and May first.

We have tried to make this statement of present conditions in the gas industry and of the policy which these conditions force upon us plain and straight-forward as possible. The hardships which this situation imposes upon consumers are not of our making nor of our desire. We would be very glad to supply natural gas to every person in reach of our
40 lines, could we but find the gas to do it. The supply in the storehouses

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 80.
Letter, R. H.
Davies to Lee,
Simpson &
McCallum,
11th Decem-
ber, 1920.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 80.
Letter, R. H.
Davies to Lee,
Simpson &
McCallum,
11th Decem-
ber, 1920.

of nature from which we have for years drawn the fuel which we dis-
tribute, is playing out, and all our endeavours to find adequate new sup-
plies have been unavailing.

Yours very truly,

“R. H. DAVIES,”
General Manager.

HRD/M.

—continued

Part Ex. 80.
Letter, T. H.
Simpson to
Alfred G. E.
Bryant,
13th Decem-
ber, 1920.

Part Exhibit 80.

(Plaintiffs' Exhibit)

Letter, T. H. Simpson to Alfred G. E. Bryant.

10

LEE, SIMPSON & McCALLUM
Barristers, Solicitors, Etc.

Hamilton, Ont., 13th December, 1920.

Alfred G. E. Bryant, Esq.,
Clerk, Township of Barton,
Court House, Hamilton.

Dear Sir:—

RE GAS QUESTIONS

I enclose you herewith copy of a letter I have this morning received
from the General Manager of The Dominion Natural Gas Company. 20
You will note the stand the Company is taking, which is a peculiar one.

Yours truly,
T. H. SIMPSON,

ENCS.

Part Ex. 23.
By-law No.
2466 of the
City of
Hamilton,
5th April,
1921.

Part Exhibit 23.

(Defendant's Exhibit)

By-law No. 2466 of the City of Hamilton.

BY-LAW No. 2466

For Entering Into an Agreement with The United Gas and Fuel Com-
pany, Limited, and the Dominion Natural Gas Company, Limited, 30
Respecting Supply of Gas.

WHEREAS, it is expedient to enter into an agreement with The United
Gas and Fuel Company, Limited, and The Dominion Natural Gas Com-
pany, Limited, respecting the supply of gas until the 1st day of May, 1921,
in the terms of the draft agreement hereunto annexed.

THEREFORE the Council of the Corporation of the City of Hamilton enacts as follows:—

*In the
Supreme Court
of Ontario*

1. That the entering into of the proposed agreement is hereby approved and authorized.

Exhibits.
Part Ex. 23.
By-law No.
2466 of the
City of
Hamilton,
5th April,
1921.

2. That the Mayor and City Clerk be, and they are, hereby authorized and directed to sign the engrossment of the said proposed agreement and to affix to it the corporate seal of the municipality upon the same being regularly and validly executed by the said Companies on or before the 11th day of April, 1921. But the said agreement shall not be executed by or be binding on the City unless the same is so executed by the Companies on or before the said 11th day of April, 1921.

—continued

Passed this 5th day of April, 1921.

S. H. KENT,
City Clerk.

GEORGE C. COPPLEY,
Mayor.

Part Exhibit 23.

(Defendant's Exhibit)

Agreement Between United Gas and Fuel Company, Limited, Dominion Natural Gas Company, Limited, and the Corporation of the City of Hamilton.

Part Ex. 23.
Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited, and the Corporation of the City of Hamilton, 5th April, 1921.

20 PROPOSED AGREEMENT REFERRED TO IN FOREGOING BY-LAW

AGREEMENT, made this 5th day of April, A.D. 1921.

BETWEEN:

THE UNITED GAS AND FUEL COMPANY, LIMITED,
Formerly "The Ontario Pipe Line Company, Limited," Hereinafter
Called the "United Company,"

of the First Part,

THE DOMINION NATURAL GAS COMPANY, LIMITED,
Hereinafter Called the "Dominion Company,"

30

of the Second Part, and

THE CORPORATION OF THE CITY OF HAMILTON,
Hereinafter Called the "City,"

of the Third Part.

WHEREAS, by By-law No. 400 respecting The Ontario Pipe Line Company, Limited, passed on the 26th day of September, 1904, as amended by By-law No. 443, passed on the 13th day of March, 1905, the consent, permission and authority of the Corporation of the City of Hamilton were thereby given and granted to the Ontario Pipe Line Company,

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 23.
Agreement be-
tween United
Gas and Fuel
Company Lim-
ited, Dominion
Natural Gas
Company Lim-
ited, and the
Corporation
of the City of
Hamilton,
5th April,
1921.

—continued

Limited, its successors and assigns, to enter upon the streets, public alleys and public grounds of the City of Hamilton, to dig trenches and lay and bury therein, and to maintain, operate and repair mains and pipes of such sizes as the said Company might require for the transportation and supply of natural or manufactured gas in the said City of Hamilton for fuel, heating and lighting purposes, together with the right to construct and maintain and repair under the surface of such streets, alleys or public grounds all necessary regulators, valves, curb boxes, safety appliances and other appurtenances that might be necessary in connection with the transportation and supply of natural or manufactured gas; and the said 10
by-laws provided that the Company should supply gas to the City Corporation and the inhabitants thereof at the prices and upon the terms and conditions contained in said by-laws:

AND WHEREAS, the said by-laws were duly accepted by the said Company by an agreement which duly bound the said Company to perform, observe and comply with all terms and conditions contained in said by-laws.

AND WHEREAS, the said Dominion Company is also distributing natural gas in the eastern portion of the City of Hamilton under the provisions of a by-law of the Township of Barton in that behalf passed the 20
26th day of October, 1904, and numbered 533.

AND WHEREAS, by Articles of Agreement made the 25th September, 1905, between the "Dominion Company" and the Ontario Pipe Line Company, Limited, the Dominion Company agreed to deliver natural gas to the "United Company" upon the terms and conditions in said agreement contained.

AND WHEREAS, the said Companies, parties hereto, have represented that owing to conditions that exist at present, and to the limit the prices of gas mentioned in said by-laws, natural and manufactured gas cannot be obtained to supply the requirements of the City, and the inhabitants 30
thereof, except at financial loss to the Companies.

AND WHEREAS, the United Company and the Dominion Company have promised and agreed that they will endeavour to obtain an increased supply of natural gas to meet the requirements of the inhabitants of the City of Hamilton, and the Council of the Corporation of the City of Hamilton considered it advisable to allow the said Companies to increase the prices to be charged for gas in order that inducements may be made to producers and others to develop more natural gas wells, in an effort to obtain an additional supply of such gas for the City of Hamilton, upon and subject to certain conditions contained in the agreement between the 40
parties hereto authorized by By-law No. 2416, passed by the Council on the 29th day of September, 1920.

AND WHEREAS, the said Companies have requested that they be allowed to increase during the period only commencing from the 1st day of April, 1921, and ending on the 1st day of May, 1921, the prices to be charged for gas mentioned in said by-laws Numbers 400 and 443 of the City Council and By-law No. 533 of the Township of Barton.

1. Provided that the Companies immediately supply the citizens with an adequate supply of gas from the 1st April, 1921, and ending on the 1st day of May, 1921, the said Companies may charge to their users of gas in the City of Hamilton, the following prices for gas, namely:

(a) For natural gas, not more than seventy-five cents per 1,000 cubic feet, net;

(b) For manufactured gas, not more than one dollar and twenty-five cents per 1,000 cubic feet, net;

10 (c) For mixed natural and manufactured gas, in proportion to the quantities of natural and manufactured gas supplied at the above prices, to be determined pursuant to the provisions of section 12 of said By-law No. 400;

(d) And the said Companies shall have the right in all cases to charge and collect an additional five cents per 1,000 cubic feet of gas from all users whose bills remain unpaid after fourteen days from dates of rendering accounts;

(e) It being understood that in no case shall the Companies charge any person for gas at the rates mentioned in this by-law and in By-law No. 2416 for a longer period than 7 months.

20 2. Should the City of Hamilton, during the said term mentioned in paragraph two hereof, complain that the said Companies or either of them, are failing to carry out the terms of this agreement, it may apply to the Ontario Railway and Municipal Board for an order rescinding the privilege of the said Companies to charge greater rates than those mentioned in said by-laws and the said Board may at any time before the said first day of May, 1921, after hearing the parties, and upon reasonable and adequate grounds order the Company to discontinue the increased rates as set forth in said by-laws.

30 3. On and after the 1st day of May, 1921, the provisions of said by-law shall apply to said Companies as fully and completely as if this agreement had not been entered into, and from such date gas shall be supplied by the said Companies pursuant to terms and conditions contained in said by-laws, and it is hereby declared and agreed that nothing herein contained shall be to the prejudice of the said City.

40 4. The Dominion Company agrees that for gas produced from wells in the Townships of Binbrook, Glanford, Oneida and North Cayuga, and delivered into its main lines conveying gas to Hamilton, it will pay 25c per 1,000 cubic feet and the Company also agrees that it will accept all gas offered and delivered into the Company's main line and will turn into said Hamilton line all gas from such wells as produce gas in paying quantities, and that said gas so delivered and produced will be available for distribution in Hamilton subject to the said agreement of September, 1905.

5. The United Company also agrees that it will, during the term of this Agreement engage a staff of employees sufficient to properly adjust and keep adjusted, all gas burners of customers to the quality of gas supplied by the Company, free of cost to the gas customers.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 23.
Agreement between United
Gas and Fuel
Company Limited,
Dominion
Natural Gas
Company Limited,
and the
Corporation
of the City of
Hamilton,
5th April,
1921.

—continued

and to affix to it the corporate seal of the Municipality upon the same being regularly and validly executed by the said Companies on or before the 14th day of May, 1921; but the said agreement shall not be executed by or be binding on the city unless the same is so executed by the Companies and delivered to the City Clerk, on or before the said 14th day of May, 1921.

Passed this 10th day of May, 1921.

(Sgd.) GEORGE C. COPPLEY,
Mayor.

(Sgd.) S. H. KENT,
City Clerk.

10 (Seal)

*In the
Supreme Court
of Ontario*

—
Exhibits:
Part Ex. 24.
By-law No.
2503 of the
City of
Hamilton,
10th May,
1921.

—continued

Part Exhibit 24.

(Defendant's Exhibit)

Agreement Between United Gas and Fuel Company, Limited, Dominion Natural Gas Company, Limited, and The Corporation of the City of Hamilton.

PROPOSED AGREEMENT REFERRED TO IN THE FOREGOING BY-LAW.

AGREEMENT, made this 10th day of May, A.D. 1921.

BETWEEN :

20 THE UNITED GAS & FUEL COMPANY LIMITED,
formerly "The Ontario Pipe Line Company, Limited",
hereinafter called the "United Company",
of the First Part,

THE DOMINION NATURAL GAS COMPANY, LIMITED,
hereinafter called the "Dominion Company",
of the Second Part,

—AND—

THE CORPORATION OF THE CITY OF HAMILTON,
hereinafter called the "City",
of the Third Part.

30 WHEREAS, by By-law No. 400 respecting the Ontario Pipe Line Company, Limited, passed on the 26th day of September, 1904, as amended by By-law No. 443 passed on the 13th day of March, 1905, the consent, permission and authority of the Corporation of the City of Hamilton were thereby given and granted to the Ontario Pipe Line Company, Ltd., its successors and assigns, to enter upon the streets, public alleys and public grounds of the City of Hamilton, to dig trenches and lay and bury therein, and to maintain, operate and repair mains and pipes of such sizes as the said Company might require for the transportation and supply of natural or manufactured gas in the said City of Hamilton, for fuel, heating and

Part Ex. 24.
Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited, and the Corporation of the City of Hamilton, 10th May, 1921.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 24.
Agreement between United
Gas and Fuel
Company Limited, Dominion
Natural Gas
Company Limited, and the
Corporation
of the City of
Hamilton,
10th May,
1921.

—continued

lighting purposes, together with the right to construct and maintain and repair under the surface of such streets, alleys or public grounds all necessary regulators, valves, curb boxes, safety appliances and other appurtenances that might be necessary in connection with the transportation and supply of natural or manufactured gas; and the said by-laws provided that the Company should supply gas to the City Corporation and the inhabitants thereof at the prices and upon the terms and conditions contained in said by-laws;

AND WHEREAS, the said by-laws were duly accepted by the said Company by an agreement which duly bound the said Company to perform, observe and comply with all terms and conditions contained in said by-laws. 10

AND WHEREAS, the name of the Ontario Pipe Line Company, Limited, has been changed to the United Gas & Fuel Company, Limited.

AND WHEREAS, the said Dominion Company is also distributing natural gas in the eastern portion of the City of Hamilton under the provisions of a by-law of the Township of Barton in that behalf passed the 26th day of October, 1904, and numbered 533.

AND WHEREAS, by articles of Agreement made the 25th day of September, 1905, between the "Dominion Company" and the Ontario Pipe Line Company, Limited, the Dominion Company agree to deliver natural gas to the "United Company" upon the terms and conditions in said agreement contained. 20

AND WHEREAS, the said Companies, parties hereto, have represented that owing to conditions that exist at present and to the limit the prices of gas mentioned in said by-law, natural and manufactured gas cannot be obtained to supply the requirements of the city, and the inhabitants thereof, except at financial loss to the Companies.

AND WHEREAS, the United Company and the Dominion Company promised and agreed that they would endeavor to obtain an increased supply of natural gas to meet the requirements of the inhabitants of the City of Hamilton, and the Council of the Corporation of the City of Hamilton considered it advisable to allow the said Companies to increase the prices to be charged for gas in order that inducements may be made to producers and others to develop more natural gas wells, in an effort to obtain additional supply of gas for the City of Hamilton, upon and subject to certain conditions contained in the agreement between the parties hereto authorized by By-law No. 2416 passed by the Council on the 29th day of September, 1920. 30

AND WHEREAS, the said Companies requested that they be allowed to increase during the period only commencing from the 1st day of April, 1921, and ending on the 1st day of May, 1921, the prices to be charged for gas mentioned in the said By-laws numbers 400 and 443 of the City Council and By-law No. 533 of the Township of Barton, and the Council of the said city duly granted such request as evidenced by By-law No. 2466 passed on the 5th day of April, 1921, and the Agreement referred to therein. 40

AND WHEREAS, the United Company and the Dominion Company have requested that they be allowed to increase during the further period commencing from the 1st day of May, 1921, and ending on the 1st day of July, 1921, the prices to be charged for gas mentioned in said By-laws numbers 400 and 443 of the City Council and By-law number 533 of the Township of Barton.

NOW THEREFORE this agreement witnesseth that in consideration of the covenants and agreements hereinafter contained the parties hereto agree to and with each other as follows:

10 1. Provided the Companies supply citizens with an adequate supply of gas from 1st May, 1921, and ending the 30th day of June, 1921, the said Companies may charge to the users of gas, in the City of Hamilton the following prices for gas namely:

(a) For natural or mixed gas not more than seventy-five cents per 1,000 cubic feet net;

(b) For manufactured gas supplied from "Manufactured gas mains" not more than \$1.25 per 1,000 cubic feet.

20 (c) And the said Companies shall have the right in all cases to charge and collect an additional five cents per 1,000 cubic feet of gas from all users whose bills remain unpaid after fourteen days from dates of rendering accounts:

(d) It being understood that in no case shall the Companies charge any person for gas at the rates mentioned in this by-law and in By-laws No. 2416 and 2466 for a longer period than nine months.

30 2. Should the City of Hamilton during the said term mentioned in paragraph one hereof, complain that the said Companies or either of them are failing to carry out the terms of this agreement, it may apply to either the Minister of Mines or to the Ontario Railway and Municipal Board, whichever has jurisdiction in the premises, for an order rescinding the privilege of the said Companies to charge greater rates than those mentioned in said By-laws No. 400 and 443 of the City of Hamilton and By-law 533 of the Township of Barton, and the said Board may at any time before the 1st day of July, 1921, after hearing the parties, and upon reasonable and adequate grounds order the Company to discontinue the increased rate as set forth herein.

40 3. On or after the 30th day of June, 1921, the provisions of said By-law No. 400 and 443 of the City of Hamilton and By-law No. 533 of the Township of Barton shall apply to the said companies as fully and completely as if this agreement and the agreements referred to in By-laws Nos. 2416 and 2466 had not been entered into, and from such last mentioned date, gas shall be supplied by the said Companies pursuant to terms and conditions contained in said By-laws Nos. 400 and 443 of the City of Hamilton and By-law No. 533 of the Township of Barton and it is hereby declared and agreed that nothing herein contained shall be to the prejudice of the said city.

4. The Dominion Company agrees that for gas produced from wells in the Townships of Binbrook, Glanford, Oneida and North Cayuga, and

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 24.
Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited, and the Corporation of the City of Hamilton, 10th May, 1921.

—continued

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 24.
Agreement be-
tween United
Gas and Fuel
Company Lim-
ited, Dominion
Natural Gas
Company Lim-
ited, and the
Corporation
of the City of
Hamilton,
10th May,
1921.

—continued

delivered into its main lines conveying gas to Hamilton it will pay at least 25 cents per 1000 cubic feet, and the said Company also agrees that it will accept all gas offered and delivered into the Company's main line and will turn into said Hamilton line all gas from such wells as produce gas in paying quantities, and that said gas so delivered and produced will be available for distribution in Hamilton.

5. The United Company also agrees that it will, during the term of this agreement engage a staff of employees sufficient to properly adjust and keep adjusted, all gas burners of customers to the quality of gas supplied by the Company free of cost to the gas customer. 10

6. It is understood and agreed that except as the same are suspended or modified by this agreement and for the purposes thereof the rights of all parties hereto under said By-laws Nos. 400 and 443 of the City of Hamilton and By-law No. 533 of the Township of Barton or otherwise howsoever are not prejudiced or affected.

7. It is hereby agreed that no Tilbury or sulphur gas shall be supplied to the city without the consent of the Council of the said city.

8. The United Company also agrees that it will, during the term of this agreement furnish each user of gas with a copy of the meter reading at the time of such reading. 20

9. This agreement shall not be binding unless the same is duly executed by the said Companies in accordance with the provisions contained in the by-law authorizing the City Corporation to enter into this contract.

IN WITNESS WHEREOF the parties hereto have hereunto set their seals under the hands of the proper officers.

Signed, Sealed and Executed
in the presence of:

UNITED GAS & FUEL CO. OF HAMILTON, LIMITED,
(Sgd.) P. V. BYRNES, *President.* 30

THE DOMINION NATURAL GAS CO. LIMITED,
(Sgd.) H. R. DAVIS, *Vice-Pres.* H. A. RITCHIE, *Sec'y.*

(SEALS)

GEORGE C. COPPLEY, *Mayor.*

S. H. KENT, *City Clerk.*

Part Exhibit 25.

(Defendant's Exhibit)

By-law No. 2522 of the City of Hamilton.

BY-LAW No. 2522.

For Entering Into an Agreement with The United Gas and Fuel Company Limited, and the Dominion Natural Gas Company Limited, Respecting Supply of Gas.

WHEREAS it is expedient to enter into an agreement with the United Gas and Fuel Company, and The Dominion Natural Gas Company Limited, respecting the supply of gas until the 1st day of September, 1921, in the terms of the draft agreement hereunto annexed.

THEREFORE the Council of the Corporation of the City of Hamilton enacts as follows:—

1. That the entering into of the proposed agreement is hereby approved and authorized.

2. That the Mayor, and City Clerk be, and they are hereby authorized and directed to sign the agreement of the said proposed agreement and to affix to it the Corporate seal of the Municipality upon the same being regularly and validly executed by the said Companies on or before the 11th day of July, 1921; but the said agreement shall not be executed by or be binding on the city unless the same is so executed by the Companies and delivered to the City Clerk on or before the said 11th day of July, 1921.

PASSED this 28th day of June, 1921.

S. H. KENT,
City Clerk.

GEORGE C. COPPLEY,
Mayor.

*In the
Supreme Court
of Ontario
of Ontario*

—
Exhibits.
Part Ex. 25.
By-law No.
2522 of the
City of
Hamilton,
28th June,
1921.

*In the
Supreme Court
of Ontario*

Part Exhibit 25.

(Defendant's Exhibit)

Exhibits.
Part Ex. 25.
Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited, and the Corporation of the City of Hamilton, 28th June, 1921.

Agreement Between United Gas and Fuel Company, Limited, Dominion Natural Gas Company, Limited, and the Corporation of the City of Hamilton.

PROPOSED AGREEMENT REFERRED TO IN FOREGOING BY-LAW.

AGREEMENT, made this 28th day of June, A.D. 1921.

BETWEEN :

THE UNITED GAS & FUEL COMPANY, LIMITED, 10
Formerly "The Ontario Pipe Line Company, Limited,"
hereinafter called the "United Company",
of the First Part,

THE DOMINION NATURAL GAS COMPANY LIMITED,
hereinafter called the "Dominion Company",
of the Second Part,

—AND—

THE CORPORATION OF THE CITY OF HAMILTON,
hereinafter called the "City," 20
of the Third Part.

WHEREAS, by By-law No. 400 respecting the Ontario Pipe Line Company, Limited, passed on the 26th day of September, 1904, as amended by By-law No. 443 passed on the 13th day of March, 1905, the consent, permission and authority of the Corporation of the City of Hamilton were thereby given and granted to the Ontario Pipe Line Company, Limited, its successors and assigns, to enter upon the streets, public alleys and public grounds of the City of Hamilton to dig trenches and lay and bury therein, and to maintain, operate and repair mains and pipes of such sizes as the said Company might require for the transportation and supply of natural or manufactured gas in the said City of Hamilton, for fuel, heating and lighting purposes, together with the right to construct and maintain and repair under the surface of such streets, alleys or public grounds all necessary regulators, valves, curb boxes, safety appliances and other appurtenances that might be necessary in connection with the transportation and supply of natural or manufactured gas; and the said by-laws provided that the Company should supply gas to the City Corporation and the inhabitants thereof at the prices and upon the terms and conditions contained in said by-laws; 30

AND WHEREAS, the said By-laws were duly accepted by the said Company by an agreement which duly bound the said Company to perform, observe and comply with all terms and conditions contained in said by-laws. 40

AND WHEREAS, the name of the Ontario Pipe Line Company Limited has been changed to the United Gas & Fuel Company, Limited.

AND WHEREAS, the said Dominion Company is also distributing natural gas in the eastern portion of the City of Hamilton under the provisions of a by-law of the Township of Barton in that behalf passed the 26th day of October, 1904, and numbered 533.

AND WHEREAS, by articles of agreement made the 25th day of September, 1905, between the "Dominion Company" and the Ontario Pipe Line Company, Limited, the Dominion Company agreed to deliver natural gas to the "United Company" upon the terms and conditions in said agreement contained.

AND WHEREAS, the said Companies, parties hereto, have represented that owing to conditions that exist at present, and to the limit the prices of gas mentioned in said by-law, natural and manufactured gas cannot be obtained to supply the requirements of the city, and the inhabitants thereof, except at financial loss to the Companies.

AND WHEREAS, the United Company and the Dominion Company promised and agreed that they would endeavor to obtain an increased supply of natural gas to meet the requirements of the inhabitants of the City of Hamilton, and the Council of the Corporation of the City of Hamilton considered it advisable to allow the said Companies to increase the prices to be charged for gas in order that inducements may be made to producers and others to develop more natural gas wells, in an effort to obtain additional supply of gas for the City of Hamilton, upon and subject to certain conditions contained in the agreements between the parties hereto authorized by By-law No. 2416 passed by the Council on the 29th day of September, 1920, By-law No. 2466 passed on the 5th day of April, 1921, and By-law No. 2503 passed on the 10th day of May, 1921.

AND WHEREAS, the said Companies requested that they be allowed to increase during the period only commencing from the 1st day of July, 1921, and ending on the 1st day of September, 1921, the prices to be charged for gas mentioned in the said By-laws numbers 400 and 443 of the City Council and By-law No. 533 of the Township of Barton, and the council of the said city duly granted such request as evidence by By-law No. 2466 passed on the 5th day of April, 1921, and the agreement referred to therein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreements hereinafter contained the parties hereto agree to and with each other as follows:—

1. Provided the Companies supply citizens with an adequate supply of gas, from 1st July, 1921, and ending on the 1st day of September, 1921, the said Companies may charge to the users of gas, in the City of Hamilton the following prices for gas namely:—

(a) For natural or mixed gas not more than seventy-five cents per 1,000 cubic feet net;

(b) For manufactured gas, supplied from "manufactured gas mains" not more than \$1.25 per 1,000 cubic feet.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 25.
Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited, and the Corporation of the City of Hamilton, 28th June, 1921.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 25.
Agreement between United
Gas and Fuel
Company Limited, Dominion
Natural Gas
Company Limited, and the
Corporation
of the City of
Hamilton,
28th June,
1921.

—continued

(c) And the said Companies shall have the right in all cases to charge and collect an additional five cents per 1,000 feet of gas from all users whose bills remain unpaid after fourteen days from dates of rendering accounts;

(d) It being understood that in no case shall the Companies charge any person for gas at the rates mentioned in this By-law and in By-laws Nos. 2416, 2466, and 2503 for a longer period than eleven months.

2. Should the City of Hamilton during the said term mentioned in paragraph two hereof, complain that the said Companies or either of them are failing to carry out the terms of this agreement, it may apply to either the Minister of Mines or the Ontario Railway and Municipal Board, whichever has jurisdiction in the premises, for an order rescinding the privilege of the said Companies to charge greater rates than those mentioned in said By-laws Nos. 400 and 443 of the City of Hamilton and By-law No. 533 of the Township of Barton, and the said Board may at any time before the said 1st day of September, 1921, after hearing the parties, and upon reasonable and adequate grounds order the Company to discontinue the increased rate as set forth herein. 10

3. On and after the 1st day of September, 1921, the provisions of said By-laws numbers 400 and 443 of the City of Hamilton and By-law No. 533 of the Township of Barton, shall apply to the said Companies as fully and completely as if this agreement and the agreements referred to in By-laws Nos. 2416, 2466 and 2503 had not been entered into, and from such last mentioned date gas shall be supplied by the said Companies pursuant to terms and conditions contained in said By-laws numbers 400 and 443 of the City of Hamilton and By-law No. 533 of the Township of Barton and it is hereby declared and agreed that nothing herein contained shall be to the prejudice of the said city. 20

4. The Dominion Company agrees that for gas produced from wells in the Townships of Binbrook, Glanford, Oneida and North Cayuga, and delivered into its main lines conveying gas to Hamilton, it will pay at least 25 cents per 1,000 cubic feet and the said Company also agrees that it will accept all gas offered and delivered into the Company's main line and will turn into said Hamilton line all gas from such wells as produce gas in paying quantities, and that said gas so delivered and produced will be available for distribution in Hamilton. 30

5. The United Company also agrees that it will, during the term of this agreement engage a staff of employees sufficient to properly adjust and keep adjusted, all gas burners of customers to the quality of gas supplied by the Company, free of cost to the gas customers. 40

6. It is understood and agreed that except as the same are suspended or modified by this agreement and for the purposes thereof the rights of all parties hereto under said By-laws numbers 400 and 433 of the City of Hamilton and By-law No. 533 of the Township of Barton or otherwise howsoever are not prejudiced or affected.

7. It is hereby agreed that no Tilbury or sulphur gas shall be supplied to the city without the consent of the council of the said city.

8. The United Company also agrees that it will, during the term of this agreement furnish each user of gas with a copy of the meter reading at the time of such reading.

9. This agreement shall not be binding unless the same is duly executed by the said Companies in accordance with the provisions contained in the by-law authorizing the City Corporation to enter into this contract.

IN WITNESS WHEREOF the parties hereto have hereunto set their seals under the hands of the proper officers.

10 Signed, Sealed and Executed
In the Presence of:

UNITED GAS & FUEL CO. OF HAMILTON, LIMITED,
J. F. RICHTER. P. V. BYRNES, *President.*

THE DOMINION NATURAL GAS CO. LTD.
J. A. RITCHIE, *Sec'y.* H. R. DAVIS, *Vice-President.*

GEORGE C. COPPLEY, *Mayor.* S. H. KENT, *City Clerk.*

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 25.
Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited, and the Corporation of the City of Hamilton, 28th June, 1921.

—continued

Part Exhibit 26.

(Defendant's Exhibit)

By-law No. 2540 of the City of Hamilton.

20

BY-LAW No. 2540.

Respecting the United Gas & Fuel Company, Limited, and the Dominion Natural Gas Company, Limited.

WHEREAS it is deemed expedient to enter into an agreement with The United Gas & Fuel Co. Limited and the Dominion Natural Gas Company Limited to extend the period mentioned in the agreement dated the 28th day of June, 1921, between the above parties, authorized by By-law No. 2522, passed on the 28th day of June, 1921, within which the said Companies may charge the increased prices for gas, from the 1st day of September, 1921, until the 1st day of November, 1921, in the terms of the draft agreement hereunto annexed.

30 THEREFORE the Council of the Corporation of the City of Hamilton enacts as follows:—

1. That the entering into of the proposed agreement is hereby approved and authorized.

2. That the Mayor, and City Clerk be, and they are hereby authorized and directed to sign the engrossment of the said proposed agreement and to affix to it the corporate seal of the Municipality upon the same being regularly and validly executed by the said Companies on or before

Part Ex. 26.
By-law No. 2540 of the City of Hamilton, 25th August, 1921.

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 26.
By-law No.
2540 of the
City of
Hamilton,
25th August,
1921.

the 7th day of September, 1921; but the said agreement shall not be executed by or be binding on the city unless the same is so executed by the Companies and delivered to the City Clerk on or before the said 7th day of September, 1921.

PASSED this 25th day of August, 1921.

S. H. KENT,
City Clerk.

(SEAL)

CAL. DAVIS,
Presiding Officer.

—continued

Part Exhibit 26.

(Defendant's Exhibit)

Part Ex. 26.
Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited, and the Corporation of the City of Hamilton,
25th August, 1921.

**Agreement Between United Gas and Fuel Company, Limited, Dominion 10
Natural Gas Company, Limited, and the Corporation of the City
of Hamilton.**

**PROPOSED AGREEMENT REFERRED TO IN FOREGOING
BY-LAW.**

AGREEMENT, made this 25th day of August, 1921.

BETWEEN :

THE UNITED GAS & FUEL COMPANY, LIMITED,
formerly "The Ontario Pipe Line Company, Limited,"
hereinafter called the "United Company",
of the First Part, 20

THE DOMINION NATURAL GAS COMPANY, LIMITED,
hereinafter called the "Dominion Company",
of the Second Part,

—AND—

THE CORPORATION OF THE CITY OF HAMILTON,
hereinafter called the "City",
of the Third Part.

WHEREAS it is deemed expedient to extend the period mentioned in the agreement dated the 28th day of June, 1921, between the above parties, authorized by By-law No. 2222, passed on the 28th day of June, 1921, 30 within which the above Companies may charge the increased prices for gas from the 1st day of September, 1921, until the 1st day of November, 1921, upon the same terms and conditions as are contained in the said agreement of the 28th day of June, 1921.

NOW THEREFORE THIS agreement witnesseth that it is hereby agreed by and between the parties hereto as follows:—

1. The agreement dated the 28th day of June, 1921, between the parties hereto, authorized by By-law No. 2222, passed on the said 28th day of June, 1921, is hereby varied by extending the period mentioned in

said agreement within which the above Companies may charge the increased prices for gas set forth in such agreement from the 1st day of September, 1921, until the 1st day of November, 1921.

2. The terms, conditions and provisions contained in said agreement of the 28th day of June, 1921, save as amended by this agreement shall until the said 1st day of November, 1921, remain in full force and effect.

3. This agreement shall not be binding unless the same is duly executed by the said Companies in accordance with the provisions contained in the by-law authorizing the City Corporation to enter into this contract.

IN WITNESS WHEREOF the parties hereto have hereunto set their seals under the hands of the proper officers.

Signed, Sealed and Executed

In the Presence of:

UNITED GAS & FUEL CO. OF HAMILTON LIMITED,

(SEAL)

Per

J. F. RICHTER.

P. V. BYRNES, *President.*

THE DOMINION NATURAL GAS CO., LIMITED,

20 J. A. RITCHIE, *Sec'y.*

H. R. DAVIS, *Vice-Pres.*

(SEAL)

Exhibit 18.

(Plaintiffs' Exhibit)

By-law No. 2564 of the City of Hamilton.

BY-LAW No. 2564.

A By-law to Provide for Taking the Votes of the Electors on a Proposed By-law Entitled "A By-law to Amend By-law No. 400 as Amended by By-law No. 443 of the City of Hamilton."

WHEREAS it is desirable that the assent of the Municipal Electors be obtained to a proposed by-law of the Corporation of the City of Hamilton entitled "A By-law to amend By-law No. 400 as amended by By-law No. 443 of the City of Hamilton", which by-law granted certain privileges to the "Ontario Pipe Line Company, Limited," now called the "United Gas & Fuel Company of Hamilton, Limited," and it is expedient to pass this by-law for the purposes of enabling the said electors to vote on the proposed by-law:

BE IT THEREFORE ENACTED by the Municipal Council of the Corporation of the City of Hamilton as follows:

1. The proposed by-law above recited and annexed as a schedule to this by-law, shall be submitted to a vote of the Municipal Electors of the City of Hamilton;

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 26.
Agreement between United Gas and Fuel Company Limited, Dominion Natural Gas Company Limited, and the Corporation of the City of Hamilton,
25th August, 1921.

—continued—

Ex. 18.
By-law No. 2564 of the City of Hamilton,
21st October, 1921.

In the
Supreme Court
of Ontario

Exhibits.
Ex. 18.
By-law No.
2564 of the
City of
Hamilton,
21st Octo-
ber, 1921.

—continued

2. For the purpose of submitting the said proposed by-law, the polling sub-division defined by By-law No. 2504 shall be the polling sub-division to be used in taking the said proposed vote.

2. The votes of the said electors shall be taken on the said proposed by-law on the 14th day of November, 1921, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, at the following places, and by the following Deputy Returning Officers, namely:

(There follows here a list of the names of 99 Returning Officers and their locations. These have not been copied in.)

3. On the 10th day of November, 1921, at the hour of eleven o'clock 10
in the forenoon the head of the council of the said Corporation or some member of said council appointed for that purpose by resolution shall attend at the Council Chambers, City Hall, in the said Municipality for the purposes of appointing, and if requested so to do, shall, appoint by writing signed by him, two persons to attend at the final summing up of the votes by the Clerk, and one person to attend at each polling place on behalf of the persons interested in and promoting the proposed by-law, and a like number on behalf of the persons interested in and opposing the proposed by-law.

4. On the 15th day of November, 1921, at the hour of eleven o'clock 20
in the forenoon, at the City Hall, in the said Municipality the Clerk of the said Municipality shall attend and sum up the votes given for and against the proposed by-law.

PASSED the 21st day of October, 1921.

S. H. KENT,
City Clerk.

GEORGE C. COPPLEY,
Mayor.

Certified a true copy.
S. H. KENT, *City Clerk.*

(SEAL)

Part Exhibit 27.

(Defendant's Exhibit)

30

By-law No. 2567 of City of Hamilton.

BY-LAW No. 2567.

Respecting The United Gas and Fuel Company, Limited, and The Dominion Natural Gas Company, Limited.

WHEREAS, it is deemed expedient to enter into an agreement with the United Gas & Fuel Co. Limited, and The Dominion Natural Gas Company, Limited, to extend the period mentioned in the agreement dated the 25th day of August, 1921, between the above parties and the City Corporation authorized by By-law No. 2540, passed on the 25th day of August, 1921, within which the said Companies may charge the increased 40
prices for gas mentioned in the agreement of the 28th September, 1920,

Part Ex. 27.
By-law No.
2567 of the
City of
Hamilton,
25th Octo-
ber, 1921.

from the 1st day of November, 1921, until the 1st day of December, 1921, in the terms of the draft agreement hereunto annexed:

THEREFORE the Council of the Corporation of the City of Hamilton enacts as follows:—

1. That the entering into of the proposed agreement is hereby approved and authorized.

10 2. That the Mayor and City Clerk be, and they are hereby authorized and directed to sign the engrossment of the said proposed agreement and to affix to it the Corporate Seal of the Municipality upon the same being regularly and validly executed by the said Companies on or before the 5th day of November, 1921; but the said agreement shall not be executed by or be binding on the city unless the same is so executed by the Companies and delivered to the City Clerk on or before the said 5th day of November, 1921.

PASSED this 25th day of October, 1921.

S. H. KENT,
City Clerk.

GEORGE C. COPPLEY,
Mayor.

*In the
Supreme Court
of Ontario*
—
Exhibits.
Part Ex. 27.
By-law No.
2567 of the
City of
Hamilton,
25th Octo-
ber, 1921.

—continued

Part Exhibit 27.

(Defendant's Exhibit)

20 **Agreement Between United Gas and Fuel Company, Limited, Dominion
Natural Gas Company, Limited, and the Corporation of the City
of Hamilton.**

PROPOSED AGREEMENT REFERRED TO IN FOREGOING
BY-LAW.

AGREEMENT made this 25th day of October, 1921.

BETWEEN:

THE UNITED GAS & FUEL COMPANY, LIMITED,
formerly "The Ontario Pipe Line Company, Limited",
hereinafter called the "United Company,"

30 *of the First Part;*

THE DOMINION NATURAL GAS COMPANY, LIMITED,
hereinafter called the "Dominion Company",

of the Second Part;

—AND—

THE CORPORATION OF THE CITY OF HAMILTON,
hereinafter called the "City",

of the Third Part.

40 WHEREAS it is deemed expedient to extend the period mentioned in the agreement dated the 25th day of August, 1921, between the above parties, authorized by By-law No. 2540, passed on the 25th day of August,

Part Ex. 27.
Agreement be-
tween United
Gas and Fuel
Company Lim-
ited, Dominion
Natural Gas
Company Lim-
ited, and the
Corporation
of the City of
Hamilton,
25th Octo-
ber, 1921.

In the
Supreme Court
of Ontario

Exhibits.
Part Ex. 27.
Agreement be-
tween United
Gas and Fuel
Company Lim-
ited, Dominion
Natural Gas
Company Lim-
ited, and the
Corporation
of the City of
Hamilton,
25th Octo-
ber, 1921.

—continued

1921, within which the above Companies may charge the increased prices for gas, from the 1st day of November, 1921, until the 1st day of December, 1921, upon the same terms and conditions as are contained in the agreement of the 29th day of September, 1920.

NOW THEREFORE THIS AGREEMENT WITNESSETH that it is hereby agreed by and between the parties hereto as follows:

1. The agreement dated the 25th day of August, 1921, between the parties hereto, authorized by By-law No. 2540, passed on the said 25th day of August, 1921, is hereby varied by extending the period mentioned in said agreement within which the above Companies may charge the increased prices for gas from the 1st day of November, 1921, until the 1st day of December, 1921, and by providing that the city consents that for the said period commencing on the 1st day of November, 1921, and ending on the 1st day of December, 1921, the said Companies may charge to their users of gas in the City of Hamilton the prices set forth in Section 2 of the agreement between the parties hereto dated the 29th day of September, 1920, authorized by By-law No. 2416, passed on such last mentioned date. 10

2. The terms, conditions and provisions contained in said agreement of the 28th day of June, 1921, and the agreement of 25th August, 1921, save as amended by this agreement shall, until the 1st day of December, 1921, remain in full force and effect. 20

3. This agreement shall not be binding unless the same is duly executed by the said Companies in accordance with the provisions contained in the by-law authorizing the City Corporation to enter into this contract.

IN WITNESS WHEREOF the parties hereto have hereunto set their seals under the hands of the proper officers.

Signed, Sealed and Executed

In the Presence of:

UNITED GAS & FUEL CO. OF HAMILTON, LIMITED,

30

J. F. RICHTER.

(SEAL)
P. V. BYRNES, *President.*

THE DOMINION NATURAL GAS COMPANY, LIMITED,

(SEAL)

H. R. DAVIS, *Vice-Pres.*

J. A. RITCHIE, *Sec'y.*

GEORGE C. COPPLEY, *Mayor.*

S. H. KENT, *City Clerk.*

(SEAL)

Exhibit 19.

(Plaintiffs' Exhibit)

Certificate of Result of Vote.

CITY CLERK'S OFFICE

Hamilton, Ontario, November 15th, 1921.

To the Council of the
Corporation of the City of Hamilton.

Gentlemen:

I, Samuel H. Kent, City Clerk, do hereby certify that the voting on
10 by-law to amend By-laws Nos. 400 and 443 respecting the United Gas and
Fuel Company and the supply and price of gas, held on Monday, November
14th, resulted as follows:

For the by-law	5,393
Against the by-law	1,492
Majority in favor of the by-law	3,901

Yours respectfully,
S. H. KENT, *City Clerk.*

Certified a true copy.
S. H. KENT, *City Clerk.*

20

(SEAL)

Part Exhibit 17.

(Plaintiffs' Exhibit)

By-law No. 2590 of the City of Hamilton.

BY-LAW No. 2590.

A By-law to Amend By-law No. 400 as Amended by By-law No. 443 of
the City of Hamilton.

30 WHEREAS by By-law No. 400 respecting the Ontario Pipe Line Com-
pany, Limited, passed on the 26th day of September, 1904, as amended by
By-law No. 443 passed on the 13th day of March, 1905, the consent, per-
mission and authority of the Corporation of the City of Hamilton were
given and granted to the Ontario Pipe Line Company, Limited, to enter
upon the streets, public alleys and public grounds of the City of Hamilton,
and to construct, maintain, operate and repair mains and pipes for the
transportation and supply of natural or manufactured gas in the said
City of Hamilton, for fuel, heating and lighting purposes; and the said
by-laws provided that the Company should supply gas to the City Cor-
poration and the inhabitants thereof at the prices and upon the terms
and conditions contained in said by-law.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 19.
Certificate
of Result
of Vote,
15th Novem-
ber, 1921.

Part Ex. 17.
By-law No.
2590 of the
City of
Hamilton,
29th Novem-
ber, 1921.

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 17.
By-law No.
2590 of the
City of
Hamilton,
29th Novem-
ber, 1921.

—continued

AND WHEREAS the name of the Ontario Pipe Line Company, Limited, has been changed to the United Gas and Fuel Company of Hamilton, Limited, hereinafter referred to as "The Company."

AND WHEREAS the said Company has represented that owing to the greatly increased cost of all materials and labor entering into the production and distribution of artificial and natural gas the price provided for in said By-law No. 400 are inadequate and that the Company cannot continue to supply gas at such prices except at a great financial loss.

AND THAT the supply of natural gas is continually decreasing and will continue to decrease, and the future requirements of the city must be met more and more by artificial gas. 10

AND THAT it will be necessary, in order to secure an adequate supply of gas for the present and future requirements of the citizens of Hamilton for the said Company to construct or procure the construction of a gas plant of sufficient capacity therefor.

AND THAT it would be impossible to secure the capital necessary to provide such adequate supply unless a reasonable price can be obtained by the said Company for the gas supplied by the said Company.

AND WHEREAS it has been determined that One Dollar and twenty-five cents net per thousand cubic feet for artificial gas is a reasonable price to be charged under present prices of material and labour. 20

AND WHEREAS the said Company is prepared to make reasonable reductions in such prices of artificial gas as the combined costs of material and labor decrease.

AND WHEREAS it is expedient to amend said By-law No. 400 and its amending By-law No. 443 as hereinafter set forth.

NOW THEREFORE BE IT ENACTED by the Municipal Council of the Corporation of the City of Hamilton as follows:—

1. That Clauses Five to Thirteen inclusive of By-law No. 400 of this corporation are hereby repealed and the following substituted therefor; 30

(5) The Company shall render its accounts monthly or quarterly at its option.

(6) The Company shall not charge the Corporation of the City of Hamilton or the consumers of gas in the said city more than the following prices for gas namely:

(a) For natural gas not more than seventy-five cents net per thousand feet.

(b) For manufactured gas not more than one dollar and twenty-five cents net per thousand cubic feet.

(c) For mixed natural and artificial gas in proportion to the quantities of natural and manufactured gas respectively so supplied at the above prices, and in the event of the City Corporation and the Company failing to agree as to the proportions and the price of the mixed gas so supplied by the Company, such proportions and price shall be determined by the Ontario Railway and Municipal Board. 40

(d) Notwithstanding the provisions of clause "C" of this section,

the price of mixed gas from May 1st, 1921, to October 31st, 1921, shall not exceed seventy-five cents net per thousand cubic feet.

Provided however that the said Company may charge an additional five cents per thousand cubic feet over and above the prices hereinbefore set forth, the same to be taken off by way of discount on all bills paid within fourteen days from presentment of said bills. Such presentment may be effectually made by delivery of such bill at the residence of the consumer or by mailing the same to his street address.

10 (7) Meters shall be furnished by the Company free of charge to all consumers of gas, and no charge shall be made for any supply pipe from the main to the margin of the street.

(8) For the purpose of determining the reduction to be made in the price to be paid to the Company from time to time for manufactured gas supplied to the City of Hamilton or its inhabitants, the gross revenues of the Company shall from year to year be dealt with and applied in manner following:

The fees of the President, Vice-President and Directors (which shall not exceed Seventy-five hundred Dollars a year), the proper and reasonable working expenses, interest and the cost of management and of all 20 necessary repairs and renewals and all proper allowances for bad and doubtful debts or losses by accidents or otherwise shall first be deducted therefrom, and after payment out of the surplus of a dividend not exceeding ten per cent. per annum, payable half-yearly upon the paid up capital stock of the Company, the balance shall be placed in equal shares to the credit of a reserve fund of the Company, and of a fund to be called the surplus profit fund; and as soon as such surplus profit fund shall amount to a sum equal to five cents per thousand feet of gas consumed by customers in the City of Hamilton during the immediate preceding year, a reduction of five cents per thousand feet shall be made to 30 the consumers in said city and the price of gas supplied by the Company for the then succeeding year, and such reduction shall continue to be made from time to time when the amount at the credit of the surplus profit fund shall be sufficient to warrant it upon the basis hereinbefore mentioned, and further reduction of five cents per thousand feet in the price of gas supplied to customers in the City of Hamilton shall be made from time to time when the amount of the credit of such fund shall so warrant upon the basis aforesaid.

40 (9) The application of the revenue in the manner hereinbefore provided shall begin from and after the date of passing of this by-law, and the accounts of the funds in the next preceding section mentioned shall be made up the thirty-first day of January in each succeeding year, and the amount to be from time to time placed to the credit of the surplus profit fund shall be so credited annually on the thirty-first day of January in each year.

(10) It is hereby declared that for the purposes of section 8 of this by-law the paid up capital stock of the Company as of December 31st, A.D. 1919, shall be taken as the sum of Two Million Dollars and the

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 17.
By-law No.
2590 of the
City of
Hamilton,
29th Novem-
ber, 1921.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 17.
By-law No.
2590 of the
City of
Hamilton,
29th Novem-
ber, 1921.

—continued

bond issue of the said Company at the sum of One Million and Fifty Thousand Dollars and the Company is hereby authorized to make the required adjustments in its present capitalization, and such paid up capital stock shall only be thereafter increased as may be necessary to provide for capital expenditures actually made for additions, improvements or betterments to the Company's plant after the said 31st December, A.D. 1919.

(11) After the date of the passing of this by-law the Company shall permit the Corporation of the City of Hamilton to make an annual audit of the receipts and expenditures of the Company and of the paid up capital stock and the sums paid to the Company thereon, and of the accounts of or relating to the said reserve fund and the said surplus profit fund. 10

(12) In lieu of the provisions for the reduction of the price of gas contained in section 8 as above set forth, and until the price of manufactured gas has been again reduced to Ninety cents per thousand cubic feet, the price of manufactured gas whether sold alone or that portion sold in mixed gas, shall at the option of the City Corporation be subject to be reduced as follows:

(a) The base market price of material and labor as of the first of May, A.D. 1921, upon which the present price of One Dollar and Twenty-five cents net per thousand cubic feet is fixed, are declared to be as follows: $\frac{3}{4}$ " screened gas coal (8.20) Eight Dollars and Twenty Cents per net of two thousand pounds delivered at railroad siding or at dock of Company's works; lump coal (12.00) Twelve Dollars per net ton of two thousand pounds delivered as above. Gas oil at 28 degrees to 36 degrees Baume gravity thirteen and one-half cents per imperial gallon delivered as above—and labor fifty cents per hour average for all labor employed at the gas works. 20

(b) On the first day of May in each and every year the average market price of the above materials delivered as above for the year just past and the price of labor shall be ascertained and if the average price of same is sufficiently reduced from the above base prices, to make a decrease of five cents per thousand cubic feet in the price of gas, as referred to in section 6 of this by-law, computed as provided in sub-section a, c, d, and e of this section, then the Company shall make a reduction of five cents per thousand cubic feet in the price of gas to its consumers during the succeeding year or such further reductions in multiples of Five cents as may be justified by such computation. 30

(c) If coal gas including gas from by-product coke ovens alone is manufactured, the price of gas per thousand cubic feet shall be decreased by an amount equal to 5% of each and every decrease in the market price per net ton of run of mine $\frac{3}{4}$ " screened gas coal delivered on railroad siding or alongside dock at gas works. 40

(d) If carburetted water gas alone is manufactured, the price of gas per thousand cubic feet shall be decreased by an amount equal to 210% of each and every decrease in the market price per Imperial gallon

of gas oil delivered in tank cars on railroad siding or in tank boat alongside dock at gas works. And said price for gas per thousand cubic feet shall also be decreased by an amount equal to 3% of each decrease in the price of lump coke delivered in railroad siding or alongside dock at the gas works. If the Company in the manufacture of carburetted water gas uses coke produced in its own coal gas plant the price to be taken for such coke shall be that at which similar coke is sold in the Company's yards.

10 (e) If both coal gas and carburetted water gas are manufactured and the artificial gas supplied by the Company consists of a mixture of these two gases, the decrease in price of such gas will be determined from the decrease in price of each gas obtained as specified above and the proportions of the two gases in the mixture. Thus for a mixture consisting of A% of coal gas and B% of carburetted water gas with a calculated decrease in price of C cents for coal gas and D cents for carburetted water gas the decrease in price would be AC plus BD divided by 100 cents per thousand cubic feet of the gas supplied.

(f) The City Corporation shall have the right to examine the books of account and vouchers of the Company relating to the matters mentioned in this section immediately after the 1st of May in any year.

20 2. Section 22 of said By-law No. 400 is amended as follows:

(a) By striking out the words "every five years" where they occur in said section and inserting in lieu thereof the words "any year" and by striking out the words "every fifth year" where they appear in said section and inserting in lieu thereof the words "any such year."

30 (b) By adding to said section 22 the following: "Provided that should the said City Corporation desire to acquire the rights, franchises and property of the Company by arbitration, as above set forth, the arbitrators shall not take into account, in making their award, any increased value of the Company's franchise accruing to it by reason of the increased price for gas given to the Company by the provisions of this by-law, nor shall it be necessary for the city to acquire in such arbitration or by purchase as hereinafter set forth any new manufacturing plant which may be erected by the Company after the date of this by-law unless the said City Corporation so desires, but only the holder and other franchises and property of the Company. Provided however that at any time fixed under said clause 22 of said By-law No. 400 for the taking over by the said City Corporation of the rights and franchises and the real and personal property in connection with the working thereof of the Company the said City Corporation in lieu of acquiring them in the
40 manner hereinbefore set forth may acquire the said rights and franchises and the real and personal property in connection with the working thereof, excepting however, cash on hand, book accounts and securities for money of the Company, by paying to the said Company the sum of Three Million Dollars and such further sum as shall have been expended by the Company after December 31st, 1919, by way of capital expenditure on the expansion, improvement or betterment of its plant and property, subject to a reasonable allowance for any depreciation which may

*In the
Supreme Court
of Ontario*

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Exhibits.
Part Ex. 17.
By-law No.
2590 of the
City of
Hamilton,
29th November,
1921.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 17.
By-law No.
2590 of the
City of
Hamilton,
29th Novem-
ber, 1921.

—continued

have taken place in said plant after the 31st day of December, 1919, and in the event of the failure of the City Corporation and Company to agree upon the amount so expended since December 31st, 1919, or upon the amount of depreciation, if any, the amount so expended and the amount of such depreciation, if any, shall be determined by arbitration as set forth above in this section. The amount of any existing mortgage, charge or other incumbrance shall be deducted from the purchase money under the provisions of section 22 as amended.

3. Section 23 of said By-law No. 400 and section 2 of By-law No. 443 amending said section 23 are amended by striking out the words "five years" and "five year" where they occur in said section relating to the purchase of the Company's plant only and by inserting in lieu thereof the words "one year". 10

4. The Company in consideration of the City Corporation making the above amendments to By-law No. 400 agrees as follows:

(a) To erect an up-to-date gas Holder of Five Million Feet storage capacity by the 31st day of December, 1921, such holder to be the property of the Company, and to connect up its system with the said holder, so that its consumers in the City of Hamilton may have the benefit of said holder by the first day of January, A.D. 1922. 20

(b) That as soon as satisfactory financial arrangements can be made by it, to erect or cause to be erected a plant of sufficient size and capacity to take care of the present and future gas requirements of the citizens of Hamilton, or to procure some other company or individual to erect such plant, as soon as satisfactory arrangements therefor can be made with such company or person, so that the said company will be able to furnish an adequate supply of gas to the said citizens.

(c) Subject to the other provisions of By-law No. 400 as soon as said holder has been erected and put into operation to at all times thereafter supply the City Corporation and all persons, firms and corporations in said city who desire to use gas with a continuous and adequate supply of gas as hereinafter set forth; 30

(1) The calorific value of all such manufactured gas shall be in accordance with the Dominion Government standard from time to time in force, and tests as made by the Dominion Government inspector shall govern.

(2) The pressure of any distributing main of the Company shall, so far as reasonably possible, be kept uniform so as not to fall below 3.5 inches of water or two ounces per square inch. In order to determine whether or not this regulation is being complied with the Company agrees to install recording gauges at not less than ten or more than fifteen points upon its distributing mains so that there will always be one of such gauges for every twenty miles of its mains and the charts made by them shall be kept on file for at least six months and shall be open at all times during ordinary business hours to the inspection of an accredited representative of the City Corporation. The correctness of said gauges may be tested 40

by the City Corporation at any time desired by a competent person with a recognized instrument in use for such purpose.

(3) If such pressure shall fall below the above requirements on 15 days in any 30 days as shown from such gauges, then the Board of Control, after hearing any explanation of the Company, if not satisfied that such default is due to causes beyond the reasonable power of the Company to prevent, shall give notice to the Company that the price to be charged for manufactured gas shall while such default continues be the price authorized by original By-law No. 400 and such price shall be the price
 10 allowed to be charged by the Company while such default continues, unless the Company within 20 days from the receipt of notice appeals for relief from such notice to The Ontario Railway and Municipal Board or any other Board hereafter appointed to exercise the jurisdiction in such matters now enjoyed by such board, who shall have the power if it is established to their satisfaction that such default is due to causes not reasonably within the powers of the Company to prevent, to grant to such Company such relief as such body may deem reasonable. In the event of such application being made by the Company the increased price fixed by this by-law shall be collected until judgment has been delivered by such
 20 body and if any refund is ordered the same shall be forthwith repaid by the Company in cash or by allowance on the next bill of the customer affected.

(d) To supply the demands of the City Corporation and the inhabitants of said city for natural gas so long as sufficient natural gas is obtainable at a price not to exceed forty-five cents per thousand cubic feet delivered into the Company's mains.

5. Provided that if natural gas can be procured at a higher price than 45c per 1000 cubic feet and the City Corporation is willing to permit the Company to charge its consumers with an additional price equal to
 30 such additional cost, to supply such quantities of said gas as can be procured at such additional price as the city is willing to authorize the Company to charge its consumers over and above the prices hereinbefore set forth.

6. Said contracts on the part of the Company, however, to be subject to the proviso that in the event of the Company being prevented from carrying out its obligations under this by-law by reason of strikes (other than strikes in the plants or works of the Company), embargoes, fire, explosions, act of God or the King's enemies, or by order of any legislative or federal authority or commission having jurisdiction over it or
 40 by any other similar cause over which it has no control or cannot prevent, the Company shall be relieved from such obligations while such disability continues, and in the event of the City Corporation disputing the existence of such disability the Ontario Railway and Municipal Board shall decide whether such disability actually exists. The Company shall exercise prompt and reasonable diligence and take all possible steps within their reasonable power to remove any of such disabilities.

7. The provisions of By-laws numbered 400 and 443 of the Council

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 17.
By-law No.
2590 of the
City of
Hamilton,
29th November,
1921.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 17.
By-law No.
2590 of the
City of
Hamilton,
29th Novem-
ber, 1921.

—continued

of the Corporation of the City of Hamilton, are amended so as to give full effect to the provisions and amendments above set forth, but save as hereinbefore amended, shall be and remain in full force and effect.

8. This by-law and the powers and privileges hereby granted shall not take effect or be binding on the said city unless and until this by-law is assented to by a majority of the Municipal electors of the said city, and unless formally accepted by the said Company within one month after the passing thereof by an agreement which shall legally bind the said Company to perform, observe and comply with all the agreements, obligations, terms and conditions herein contained, and shall be approved by the City Solicitor, and such agreement when executed by the Company to his satisfaction shall also be executed under the city seal by the Mayor and the City Clerk. 10

Passed this 29th day of November, 1921.

S. H. KENT,
City Clerk.

GEORGE C. COPPLEY,
Mayor.

Certified a true copy.
S. H. KENT, *City Clerk.*

(SEAL.)

Part Exhibit 17.

(Plaintiffs' Exhibit)

**Agreement Between United Gas and Fuel Company of Hamilton, Limited,
and the Corporation of the City of Hamilton.**

THIS AGREEMENT made the 15th day of December One thousand nine hundred and twenty-one.

BY AND BETWEEN:

THE UNITED GAS AND FUEL COMPANY OF HAMILTON, LIMITED,
(hereinafter called the "Company"),
of the First Part,

—AND—

THE CORPORATION OF THE CITY OF HAMILTON
(hereinafter called the "City Corporation"),
of the Second Part.

WHEREAS by a By-law numbered 2590 a copy whereof is hereto annexed, certain amendments were made to By-law No. 400 of the City of Hamilton, as amended by By-law No. 443.

AND WHEREAS it is necessary that the said Company should enter into a formal agreement to perform and observe its obligations as set forth in said By-law No. 2590, which the said Company has agreed to do.

NOW THIS INDENTURE WITNESSETH and the parties hereto do re- 40
spectively covenant and agree to and with each other as follows:

Part Ex. 17.
Agreement be-
tween United
Gas and Fuel
Company of
Hamilton
Limited and
The Corpor-
ation of the
City of
Hamilton,
15th Decem-
ber, 1921.

20

30

The Company do hereby accept the said By-law No. 2590 and agree with the City Corporation to perform, observe and comply with all the agreements, obligations, terms and conditions therein contained.

AND WHEREAS this agreement has been approved by F. R. Waddell, Esq., K.C., Solicitor for the City Corporation, testified by his marking each page thereof "Approved" and adding his signature thereto, and the City Corporation do hereby agree to accept and do accept these presents, and declare the same to be the agreement required to be executed by the Company under the provisions of the said by-law, and that such by-law is therefore in full force and effect.

IN WITNESS WHEREOF the Company has caused its corporate seal to be hereto affixed under the hand of its President and Secretary, and the City Corporation has caused its corporate seal to be hereto affixed under the hand of the Mayor of the City Corporation and the City Clerk.

Signed, Sealed and Delivered
In the Presence of:

UNITED GAS & FUEL CO. OF
HAMILTON LIMITED
(SEAL)

Approved:
20 F. R. WADDELL,
City Solicitor.

"P. V. BYRNES," *President.*
J. F. RICHTER, *Asst. Sec.*
GEORGE C. COPPLEY, *Mayor.*
S. H. KENT, *City Clerk.*

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 17.
Agreement between United Gas and Fuel Company of Hamilton Limited and The Corporation of the City of Hamilton,
15th December, 1921.

—continued

Exhibit 9.

(Plaintiffs' Exhibit)

Order of The Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

Friday the 22nd day of December, 1922.

BEFORE:

30 D. M. McINTYRE, ESQ., K.C.,
Chairman, AND
A. B. INGRAM, ESQ.,
Vice-Chairman.

} IN THE MATTER of the application of the Board of Education of the City of Hamilton under Section 21 of "The Consolidated Municipal Act, 1922", for annexation to the City of Hamilton of those portions of the Township of Barton, in the County of Wentworth, adjacent to the City of Hamilton hereinafter described.

O R D E R

40 UPON the application of the above mentioned Petitioners and upon reading the Petition of the Applicant herein filed with this Board, the Resolution of the Council of the Corporation of the City of Hamilton, passed on the 28th day of November, 1922, declaring the expediency of such annexation, upon reading the notice of the passing of the said

Ex. 9.
Order of The Ontario Railway and Municipal Board,
22nd December, 1922.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 9.

Order of The
Ontario Rail-
way and
Municipal
Board,
22nd Decem-
ber, 1922.

—continued

Resolution, and the admission of service of same with a copy of said Resolution and Petition attached, upon the Clerk of the Township of Barton, the Clerk of the County of Wentworth and the Secretary of the Board of Education; and upon reading the Declaration proving the advertising and posting up of the Notice of Hearing issued by this Board, and admissions of service of same upon the said Clerks of the Township of Barton and County of Wentworth respectively and upon the Secretary of the Board of Education, and upon hearing the evidence of the representatives of the said Board of Education in person, that there are no municipal electors in such portions of the adjacent Township and what was alleged by counsel for the Corporations of the City of Hamilton, the Township of Barton and the County of Wentworth. 10

THIS BOARD DOETH ORDER AND PROCLAIM that the following portions of the Township of Barton, in the County of Wentworth, adjacent to the City of Hamilton, described as follows, namely:—

PARCEL "A"

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Barton, in the County of Wentworth, in the Province of Ontario, being composed of part of Lot Number 3 in the Third Concession in the said Township of Barton and which may be more particularly described as follows that is to say: COMMENCING at the intersection of the western limit of Tuxedo Garden Survey with the southern limit of the City of Hamilton as established by Order No. P.F. 5615 of the Ontario Railway and Municipal Board, dated March 18th, 1920, said point being distant one hundred (100) feet measured southerly along the said western limit of Tuxedo Gardens Survey, from the southern limit of Main Street, being the road allowance between Concessions 2 and 3. 20

THENCE south eighteen degrees and four minutes west (S. 18°04'W.) four hundred and fifty feet and eleven inches (450'11"). 30

THENCE north seventy-one degrees west (N. 71°W.) parallel with and distant thirty-three feet northerly from the production westerly of the centre line of Maple Avenue two hundred and ninety-six feet and ten and one-half inches (296'10½").

THENCE north eighteen degrees east (N. 18°E.) parallel with and distant sixty-six feet easterly from the western limit of Graham Street as shown on registered Plan of Overdene Survey four hundred and twenty-eight feet and eleven inches (428'11") to the said southern limit of George Harris' land. Thence south seventy-three degrees and eighteen minutes east (S. 73°18'E.) along the southern limit of said George Harris' land forty-five feet (45'). 40

THENCE north eighteen degrees east (N. 18°E.) parallel with Graham Street ten feet to the southern limit of the City of Hamilton.

THENCE south seventy-three degrees and eighteen minutes east (S. 73°18'E.) along the said southern limit of the City of Hamilton two hundred and fifty-two feet and eleven inches (252'11") to the point of com-

mencement. And containing by admeasurements three and twenty-seven one thousandths acres (3.027) acre be the same more or less.

*In the
Supreme Court
of Ontario*

PARCEL "B"

Exhibits.
Ex. 9.

10 ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Barton, in the County of Wentworth, in the Province of Ontario, being composed of Parcel "A" as shown on a Plan entitled "Plan showing the resubdivision Muir's subdivision of parts of Lots 1, 2, 3, 4, 5, 6, 7 and the reserve lot in John Hill's subdivision of part of lot 11, Concession 4, Township of Barton," and registered in Registry Office for the said County of Wentworth on the 10th day of May, 1920, as Plan No. 633 and which parcel may be more particularly described as follows, that is to say:—

Order of The
Ontario Rail-
way and
Municipal
Board,
22nd Decem-
ber, 1922.

—continued

COMMENCING at the intersection of the southern limit of Concession Street, with the western limit of East Nineteenth Street.

THENCE WESTERLY along the said southern limit of Concession Street, two hundred and forty-three feet (243') more or less to the eastern limit of East Eighteenth Street. Thence southerly along the said eastern limit of East Eighteenth Street eight hundred and seventeen feet and eleven inches (817'11") to the northerly limit of Mountville Survey.

20 THENCE EASTERLY along the said northern limit of Mountville Survey two hundred and forty-three feet (243') more or less to the said western limit of East Nineteenth Street.

THENCE northerly along the said western limit of the East Nineteenth Street, eight hundred and fifteen feet and ten inches (815'10") more or less to the place of beginning. And containing by admeasurement four and five hundred and fifty-six one thousandths acres (4.556 acs.) be and the same are hereby annexed to the City of Hamilton.

30 THE BOARD DOETH ORDER AND PROCLAIM that the portion of the said annexed territory herein described as Parcel "A" shall form part of Ward No. 1 of the said city.

THE BOARD DOETH FURTHER ORDER AND PROCLAIM that the portion of the said annexed territory herein described as Parcel "B" shall form part of Ward No. 2 of the said city.

AND THIS BOARD DOETH ORDER AND PROCLAIM that this Order shall take effect upon the 1st day of January, 1923.

40 THE BOARD DOETH FURTHER ORDER AND PROCLAIM that the Corporations of the Township of Barton and of the County of Wentworth shall be entitled to an adjustment of assets and liabilities pursuant to Section 38 of "The Consolidated Municipal Act, 1922", and to a valuation and adjustment of the rights and claims of all parties affected, by this Order pursuant to Section 28 of "The Public Schools Act".

(Signed) D. M. McINTYRE,
Chairman.

(SEAL)

Certified a true copy.
S. H. KENT, *City Clerk.*

In the
Supreme Court
of Ontario

Part Exhibit 44.

(Defendant's Exhibit)

Exhibits.
Part Ex. 44.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
2nd June,
1923.

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

June 2nd, 1923.

The Dominion Natural Gas Co.,
315 Colborne Street,
Brantford, Ont.

ATT.' C. C. ROBERTS, Esq.

Dear Sir:

The Board of Control have instructed me to report on the amount of 10
natural gas supplied to the United Gas & Fuel Company.

In February this year the amount of natural gas obtainable by the
United Gas & Fuel Co. dropped down considerably and it is felt there is
some doubt as to the amount available for the United Gas & Fuel Co. and
also as to whether they are taking all that is available.

I made a personal inspection of the charts at this time with Mr.
Byrnes and he has assured me that he is taking all that you are able to
supply him with. Will you kindly advise me as to the situation and the
reason for the big drop at this time in the amount of natural gas supplied
to the United Gas & Fuel Co. by your company. 20

Yours very truly,

City Engineer.

W.L. McF/K.H.

Part Exhibit 44.

(Defendant's Exhibit)

Part Ex. 44.
Letter,
Dominion
Natural Gas
Company
Limited
to City
Engineer,
8th June,
1923.

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

June 8, 1923.

Mr. W. L. McFaul,
City Engineer,
Hamilton, Ont.

Dear Sir:

Replying to your letter of the 2nd also conversation which I had with
you this morning with reference to the amount of natural gas furnished
to the United Gas & Fuel Company in February, 1923, would say that the
total amount delivered during that time, according to our check meters,
where the gas is delivered to the distributing company was 4,699,000 cubic
feet or 11.8% more than for the corresponding month of 1922. While
the actual sales as reported by the distributing company were 16,457,000
cubic feet or 22.5% greater in February, 1923, than they were in Febru-
ary, 1922. 40

This may account for what appears to be the decrease in the supply of natural gas.

Trusting that the above is the information desired we remain,

Yours very truly,

DOMINION NATURAL GAS CO., LTD.,
Per C. C. ROBERTS, *Supt.*

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 44.
Letter,
Dominion
Natural Gas
Company
Limited
to City
Engineer,
8th June,
1923.

—
—continued
—

Part Exhibit 45.

(Defendant's Exhibit)

10 **Letter, Dominion Natural Gas Company, Limited, to City Engineer.**

September 22, 1923.

Mr. W. L. McFaul,
City Engineer,
Hamilton, Ont.

Part Ex. 45.
Letter,
Dominion
Natural Gas
Company
Limited
to City
Engineer,
22nd September,
1923.

Dear Sir:

We would like permission to construct 2 and 3" gas line on the following boulevards and alley in East Hamilton.

3" on Maple Ave. from intersection of Maple and Gage Ave. to Prospect St.

20 3" on Prospect St. from intersection of Prospect and Maple Ave. North to Alley, approximately half way between Maple Avenue and Main St.

3" in Alley from Prospect St. West to West Blvd. of Springer Ave. 2 each and south Blvd. of Main St. from South East Corner of intersection of Spadina and Main to South East Corner of Fairholt Rd. and Main St.

It is immaterial to us as to which side of street we take on Maple and Prospect.

30 I am enclosing sketch showing extension. Would like this passed on as soon as convenient.

Thanking you in advance we are,

Yours truly,

DOMINION NATURAL GAS CO., LTD.,
Per W. C. HOWARD, *Ass't. Supt.*

WCH/HEB

In the
Supreme Court
of Ontario

Part Exhibit 45.

(Defendant's Exhibit)

Exhibits.
Part Ex. 45.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
26th Septem-
ber, 1923.

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

September 26, 1923.

Dominion Natural Gas Company, Ltd.,
315 Colborne Street,
Brantford, Ont.

ATTENTION MR. HOWARD.

Dear Sirs:

You are hereby granted permission to instal 3" gas main on Maple Ave., from Gage Ave., to east side of Prospect Street to be laid 4 feet south of north curb and on Prospect Street from Maple Ave. to Alley 120' south of Main Street to be laid 2 feet east of east curb. 10

Also 2" main on Springer Ave. from above mentioned Alley to Main Street to be laid 2 feet East of east walk; thence East on Main Street 2 feet North of South side walk to East side of Spadina Ave.; thence North 100 feet on Spadina Ave. 2' East of East sidewalk.

Also on Main Street from Springer Ave. to East side of Fairholt Road parallel and adjacent to north side of south sidewalk.

With reference to Alley from Prospect Street to Springer Avenue 20 this is private property belonging to property owners whose lands abutt on it and it would therefore be necessary for you to obtain their permission to lay your main therein.

This permit is granted with the understanding that all mains be laid with minimum covering of 3' and under the inspection of this Department, your Company to bear the cost of the inspector's salary at the rate of \$28.00 per week.

Kindly advise us when you propose to start this work in order that the work may be laid out and inspector appointed.

Yours very truly,

30

WMJ/IC
Enc.

City Engineer.

Part Exhibit 45.

(Defendant's Exhibit)

Part Ex. 45.
Letter,
Dominion
Natural Gas
Company
Limited
to City
Engineer,
1st Octo-
ber, 1923.

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

October 1st/23.

Mr. W. L. McFaul,
City Engineer,
Hamilton, Ont.

Dear Sir,

Due to the fact that the alley from Prospect Street to Springer Avenue is private property we ask the permission to instal 3" gas Main 40

on Maple Ave., 4' South of the north curb from Gage Ave., to north east side of Springer Ave., also 3" pipe to be installed 4' West of east curb of Springer Ave. and Maple North to Alley as mentioned in our first application. Balance of permit to stand as named in permit No. 6715 dated September 26, 1923.

Yours truly,

DOMINION NATURAL GAS CO., LTD.
Per W. C. HOWARD, Ass't Supt.

WCH/HEB.

*In the
Supreme Court
of Ontario*
—
Exhibits.
Part Ex. 45.
Letter,
Dominion
Natural Gas
Company
Limited
to City
Engineer,
1st Octo-
ber, 1923.

10

Part Exhibit 45.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

October 1st, 1923.

W. L. McFaul,
City Engineer,
Hamilton, Ont.

Dear Sir,

We expect to commence construction work at the corner of Maple and Gage Avenue Wednesday morning, October 3rd, if convenient. Please
20 have a man there to oversee this work on behalf of the City of Hamilton.

Yours truly,

DOMINION NATURAL GAS CO., LTD.,
W. C. HOWARD, Ass't Supt.

WCH/ATB.

—continued

Part Ex. 45.
Letter,
Dominion
Natural Gas
Company
Limited
to City
Engineer,
1st Octo-
ber, 1923.

Exhibit 10.

(Plaintiffs' Exhibit)

Order of The Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

Tuesday, the Eleventh Day of March, A.D. 1924.

30 BEFORE:

A. B. INGRAM, ESQUIRE,
Vice-Chairman, AND

J. A. ELLIS, ESQUIRE.
Commissioner.

IN THE MATTER of the Petition of Henry Dirks, and others under Section 21 of "The Consolidated Municipal Act, 1922" for annexation to the City of Hamilton of that part of the Township of Barton hereinafter mentioned and described.

UPON THE APPLICATION of the above mentioned Petitioners and upon reading the Petition of the Applicants herein filed with the Board, and

Ex. 10.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th March,
1924.

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 10.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th March,
1924.

—continued

the resolution of the Council of the Corporation of the City of Hamilton passed on the 12th day of June, 1923, declaring the expediency of such annexation and the terms mentioned in said resolution, and the amendment thereto, adopted by the said Council on the 5th day of February, 1924, and upon hearing representatives of the said Petitioners and what was alleged by Counsel on behalf of the Corporation of the City of Hamilton, the Township of Barton and the County of Wentworth, Frank Crosthwaite, David Parmenter, Alfred Parmenter and C. E. Burkholder.

THIS BOARD doth Order and Proclaim that the portion of the Town-
ship of Barton, in the County of Wentworth, described as follows:—

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Barton, in the County of Wentworth, in the Province of Ontario, being composed of parts of lots numbers three and four, in the Third Concession, parts of lots two and three and four in the Fourth Concession, part of the road allowance between lots two and three and part of the concession between the third and fourth concessions of the said Township of Barton, and which parcel may be more particularly described as follows, that is to say:

COMMENCING at a point on the eastern limit of the road allowance between lots two and three (now known as Kenilworth Ave.) where it is intersected by the present southern limit of the City of Hamilton, said point being distant one hundred and nine feet and seven inches (109'7") measured southerly along the said eastern limit of Kenilworth Avenue from the northern limit of the third concession of the southern limit of Main Street.

THENCE southerly along the said eastern limit of Kenilworth Avenue and along its production southerly to the southern limit of the right-of-way lands of the Toronto, Hamilton & Buffalo Railway Company, thence westerly along the said southern limit of the right-of-way lands of the Toronto, Hamilton & Buffalo Railway Company to a point where it would be intersected by the northerly production of the eastern limit of the lands deeded to the Corporation of the City of Hamilton, as per Instrument Number 16581 and filed in the Registry Office, for the said County of Wentworth on the 5th day of March, 1913.

THENCE southerly to and along the said eastern limit of the lands described in instrument number 16581 to the southern limit of the said lands.

THENCE westerly along the said southern limit of the lands described in instrument number 16581 to the northern limit of the right-of-way lands of the Canadian National Railway between Hamilton and Rymal.

THENCE continuing westerly along the westerly production of the above last mentioned southerly limit of the lands described in instrument number 16581 to the brow of the mountain.

THENCE continuing westerly along the brow of the mountain to the present eastern limit of the City of Hamilton as established by Order of the Ontario Railway and Municipal Board, dated September 27th, 1909.

THENCE northerly along the said eastern limit of the City of Ham-

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40

ilton, to the southern limit of the City of Hamilton as established by Order No. P.F. 5615, of The Ontario Railway and Municipal Board, dated March 18th, 1920.

THENCE easterly along the said southern limit of the City of Hamilton being along a line (100 feet) one hundred feet south of Main Street, where parts of the Township lots are unsubdivided and along the southern limit of lots fronting on Main Street where subdivision occur to the place of beginning.

10 SAVING AND EXCEPTING thereout and therefrom that portion of the said Lot No. 3 in the third concession of the said Township of Barton, annexed to the City of Hamilton by Order of the Ontario Railway and Municipal Board, dated December 22nd, 1922.

Be and the same is hereby annexed to the City of Hamilton; and the said annexation shall take effect upon and subject to the following terms and conditions, namely:

1. (a) That the taxes, assessments, rents, water, school and other rates (with the exception of local improvement rates hereinafter mentioned), to be levied by the City of Hamilton in respect of the said territory, shall for the year 1924 and thereafter, be the same, and payable at
20 the same time and in the same manner as taxes, assessments, rents, water, school and other rates, levied and raised from time to time on the property within the old boundaries of the city as they existed on the 1st day of January, 1891, and the assessment of the said territory by the said city shall, for the year 1924 and thereafter, be on the same basis and made at the same time and in the same manner as in the said old boundaries of the city except that the assessment by the Corporation of the City of Hamilton of the said territory for the year 1924, may be taken by the city assessors at any time during such year. The Township of Barton shall at all reasonable times allow the Corporation of the City of Ham-
30 ilton, its servants and agents, access to the assessment rolls of the said portion of the said Township of Barton, and to all local improvement by-laws and local improvement assessment rolls, and also all plans, surveys and maps applicable to the said portion of the said township for the purpose of making copies of the same.

(b) The City of Hamilton shall pay to the Township of Barton on the 31st day of December, 1924, an amount equal to twenty-five per centum of the amount of the general taxes levied and collected by the City of Hamilton in respect of the annexed area, and the township shall pay out of the said amount the sums which the County of Wentworth
40 and the several school sections affected shall be entitled to be paid respectively, in respect of the first three months of the year 1924, and in any arbitration between the city, the Township of Barton and the County of Wentworth, the arbitrator or arbitrators may take into consideration the payment made or to be made under this paragraph.

(c) That the Corporation of the Township of Barton shall forthwith prepare and furnish to the Corporation of the City of Hamilton a special roll showing all arrears of taxes or special rates assessed against

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 10.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th March,
1924.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 10.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th March,
1924.

—continued

the lands above described up to the thirty-first day of December, 1923, and the persons assessed therefor.

(d) That the Corporation of the City of Hamilton shall have the right to collect all said arrears of taxes according to said special roll, including the right to distrain for non-payment of said arrears, or if necessary the right to sell the said lands, if any, for non-payment of such arrears as fully as if the said taxes had been assessed and levied by such corporation, but the proceeds of the collection of such arrears, or any part of the same, after deducting therefrom the proper costs and expenses in connection with the collection of same, shall be repaid by the Corporation of the City of Hamilton to the said Corporation of the Township of Barton within six months from the date of collection, provided that the said Corporation of the City of Hamilton shall proceed to collect the said arrears of taxes shown on said special roll, in the same way as if it had assessed and levied the same, but shall not be responsible to the Corporation of the Township of Barton for any such arrears of taxes which it may be unable to collect. 10

(e) That the Corporation of the Township of Barton shall indemnify and save harmless the Corporation of the City of Hamilton from all loss, costs, charges and expenses arising from any act or omission of the Township of Barton or their officials or servants in connection with the said special roll. 20

2. (a) Subject to paragraph (c) of this clause, in the district so added to the city, the opening, widening, extending, grading, altering the grade of, diverting, macadamizing, paving and improving of streets and alleys, the opening of new streets, the construction, enlarging and extending sewers, the construction of curbing and sidewalks upon or along any street or alley, shall be constructed as local improvements, and the entire cost of all such works undertaken shall be borne by the property owners, and specially assessed upon their lots, pursuant to the terms of "The Local Improvement Act," with the exception of the reduction and the corporation's portion of the cost which the said Act provides shall be paid by the corporation. 30

(b) Subject to paragraph (c) of this clause in the district so added the cost of the reductions and the corporation's portion of the cost which the said Act provides shall be paid by the Corporation, mentioned in the preceding sub-section, and also the cost of gulley drains, shall be borne at large by the said annexed district and the city shall annually or otherwise, levy and raise by a special rate on the whole rateable property in the said district, over and above all other rates and taxes, an amount sufficient to pay the cost of such reductions and the corporation's portion of the cost including the cost of gulley drains herein mentioned. 40

(c) The provisions of the above paragraphs (a) and (b) shall apply to all works and undertakings commenced or completed prior to the 1st day of January, 1928, and after such date, all such works shall be constructed under the provisions of the Local Improvement Act in the same

manner as local improvement works are constructed within the original boundaries of the city.

3. The district or lands hereby annexed shall be charged with its or their proper share of the cost of the main and trunk sewers which were constructed of sufficient capacity to provide an outlet for the drainage of the district to be annexed which share shall be determined by the said council subject to an appeal to this Board, and the Council of the Corporation of the City of Hamilton may from time to time pass by-laws without submitting the same to the electors qualified to vote on a money
 10 by-law for raising the amounts required to pay the said district's share of the cost of such main and trunk sewers, and may issue debentures of the City Corporation from time to time for such required amounts payable at the end of ten years from the time such debentures are issued; and during the currency of any such debentures the city shall annually levy and raise by a special rate on the whole ratable property in the said district over and above all other rates and taxes, an amount sufficient to pay such debt and interest.

4. Where any work heretofore has been constructed in the said district and such work is defective or insufficient, the Corporation of
 20 the City of Hamilton may proceed with the construction of required works under the provisions of The Local Improvement Act notwithstanding the lifetime of the first mentioned work has not expired.

5. The residents of the district to be annexed shall be entitled to water from the Hamilton water works upon the same terms and conditions as the residents of Hamilton.

6. The said annexed territory shall form part of Ward No. 1 of the said city.

7. The provisions of section 38 of "The Consolidated Municipal Act, 1922" and section 28 of "The Public School Act" shall apply as
 30 between the municipalities and School Section Number 2, Barton, affected by this Order.

8. The Order shall come into force on the 1st day of April, 1924.

(Signed) A. B. INGRAM, *Vice-Chairman*.

(SEAL)

Certified a true copy,
 S. H. KENT, *City Clerk*.

*In the
 Supreme Court
 of Ontario*

—
 Exhibits.
 Ex. 10.
 Order of The
 Ontario Rail-
 way and
 Municipal
 Board,
 11th March,
 1924.

—continued

Part Exhibit 46.

(Defendant's Exhibit)

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 46.
Letter City
Engineer to
Dominion
Natural Gas
Company,
30th, August,
1924.

Letter, City Engineer, to Dominion Natural Gas Company, Limited.**CITY ENGINEER'S OFFICE**

Hamilton, Ont., August 30, 1924.

The Dominion Natural Gas Co., Ltd.,
Hamilton, Ont.

Dear Sirs:—

You are hereby given permission to instal gas main on Concession St., between 25th St. and 300 ft. west of Wentworth St., to be laid fifteen feet north of south street line and with a minimum covering of three feet. 10

Your company to pay the wage of an inspector at \$30.00 per week, during the construction of same.

Kindly advise us when you will be ready to start this work.

Yours very truly,

W. L. McFAUL,
City Engineer.

WMJ/IC.

Part Exhibit 46.

(Defendant's Exhibit)

Part Ex. 46.
Letter City
Engineer to
Dominion
Natural Gas
Company
Limited, 5th
September,
1924.

Letter, City Engineer, to Dominion Natural Gas Company, Limited.**CITY ENGINEER'S OFFICE**

Hamilton, Ont., Sept. 5/24.

Dominion Natural Gas Co.,
Hamilton, Ont.

Dear Sirs:—

You are hereby given permission to instal a gas main on Concession St., between the west side of East 18th St. and the East City limits, to be laid, with a minimum covering of three feet. Your company to pay the wage of an inspector at \$30.00 per week, during construction. 30

Kindly advise us when you will be ready to commence this work.

Yours very truly,

W. L. McFAUL,
City Engineer.

WMJ/IC.

Encl.

Note: Location on Concession St. between 25th St. and 300 ft. west of Wentworth St., to be laid 15' north of south street line.

Part Exhibit 47.

(Defendant's Exhibit)

Permit.**HAMILTON CITY CORPORATION**

CITY ENGINEER'S DEPARTMENT

No. 7412

Hamilton, Aug. 30, 1924.

PERMIT

This permit is issued to DOMINION NATURAL GAS Co. for the purpose
 10 of installing gas main on Concession St. between 25th St. and 300 ft. west
 of Wentworth St. to be laid 15' N. of South street line.

SUBJECT TO CITY BY-LAWS AND REGULATIONS AND CONDITIONS PRINTED
 ON BACK HEREOF.

(Signed) W. L. McFAUL, *City Engineer.*

(Endorsement on Back of Above Permit.)

EXTRACT FROM CITY BY-LAW No. 30

1. No person shall dig or tear up any pavement, side or cross walk,
 or dig any hole, ditch drain or sewer in any street, alley or public space,
 except such person or persons as may be employed especially for the
 20 purpose by the Committee of Works, City Engineer, District Foreman or
 Manager of the Water Works, or except when it shall be necessary for
 the purpose of building, and it shall be the duty of any person digging
 or tearing up any pavement, side or cross walk, or digging any hole, ditch,
 drain or sewer, in any street, alley or public space, as speedily as practi-
 cable, to repair and put the same in as good order and condition as before,
 and in order to do this, such person shall pound down the earth so as to
 make it firm and solid, and if the earth shall settle, such person shall
 fill the same from time to time as may be necessary.

(1) It shall not be lawful for any person to dig or make a hole in
 30 any of the public streets, lanes, alleys or sidewalks of the City of Ham-
 iltion, or to construct a drain or sewer into any of the common sewers
 thereof, without first having obtained permission from the City En-
 gineer.

(2) Every person who may obtain such permission shall pay the
 expense of an inspector, who shall be appointed by said Engineer to
 superintend the work.

(3) The City Engineer shall be charged with the duty of enforcing
 the observance of section 1 of this by-law and of conducting all prosecu-
 tions for any breach hereof.

40 ALSO GENERAL CONDITIONS.

The conditions under which this permit is granted are, viz:

*In the
 Supreme Court
 of Ontario*

Exhibits.
 Part Ex. 47.
 Permit,
 30th August,
 1924.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 47.
Permit,
30th August,
1924.

(1) That the streets or sidewalks shall be left in as good condition as they are when permit is granted.

(2) That all damage to city property shall be made good or paid for.

(3) That the person to whom it is granted shall be liable for and hold the City Corporation harmless for any damages which may arise through the prosecution of the work for which this permit is granted.

—continued

Part Ex. 47.
Permit,
5th September,
1924.

Part Exhibit 47.

(Defendant's Exhibit)

Permit.

HAMILTON CITY CORPORATION

10

CITY ENGINEER'S DEPARTMENT

No. 7414

Hamilton, Sept. 5/24.

PERMIT

This permit is issued to Dominion Natural Gas Co. for the purpose of installing a gas main on Concession St. bet. 25th Street and 300 ft. w. of Wentworth, bet. the W. S. of East 18th St. and the East city limits, to be laid with a minimum covering of three feet, to be laid 15' north of south street line.

Subject to city by-laws and regulations and conditions printed on back hereof.

(Signed) W. L. McFAUL, *City Engineer.*

20

(Contains similar endorsement to first permit printed in this exhibit.)

Part Exhibit 43.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to United Gas and Fuel Company, Limited.

The United Gas & Fuel Co., Ltd.,
Hamilton, Ontario.

September 22, 1924.

Attention of P. V. BYRNES, President.

Dear Sir:—

The contract dated September 25, 1905, between the Dominion Natural Gas Company, Ltd., and the Ontario Pipe Line Company, Ltd., which latter company has since changed its name to the United Gas and Fuel Co., Ltd., expires on the 25th day of September, 1924.

As a temporary arrangement between the United Gas and Fuel Co., Ltd., and the Dominion Natural Gas Co., Ltd., for furnishing natural gas to your company in the City of Hamilton, we make the following proposal.

30

Part Ex. 43.
Letter, Dominion Natural Gas Company Limited to United Gas and Fuel Company Limited, 22nd September, 1924.

The Dominion Natural Gas Co., Ltd., will sell and deliver as herein specified to the United Gas and Fuel Co., Ltd., who shall purchase and take a minimum of 500,000 cubic feet of natural gas per day of twenty-four hours each for a period of thirty days from the 25th day of September, 1924, at the price of 50 cents per 1,000 cubic feet.

If the Dominion Natural Gas Co., Ltd., should have available a supply in excess of said minimum of 500,000 cubic feet of gas per day and the United Gas and Fuel Co., Ltd., desires to take such excess, it may do so during said term of thirty days and pay therefor at said rate of 50 cents per 1,000 cubic feet for all such excess gas so taken.

All deliveries of gas during said term of 30 days shall be made to the United Gas and Fuel Co., Ltd., at our meters as at present located at or within the limits of the City of Hamilton that is at Gage Avenue, Wellington Street, and Dundurn Street, at which points of delivery the United Gas and Fuel Company, Company, Ltd., agrees to accept and take possession thereof. The United Gas and Fuel Co., Ltd., to assume all risk and be liable for all damages from the transportation and distribution of the gas after it passes the point of delivery.

The gas to be furnished shall be such as is from time to time conveyed by our company for commercial purposes (not what is known as sulphur gas). All sales of gas and all payments therefor for said period of thirty days shall be computed on the basis of a pressure of four ounces per square inch.

The Dominion Natural Gas Co., Ltd., will compute the quantity of gas registered by the orifice charts as soon as practical after the said 30 days have expired and the United Gas and Fuel Co., Ltd., shall pay therefor within 15 days after the bill has been rendered.

The Dominion Natural Gas Co., Ltd., to change the charts of the meters daily and shall compute the same as soon thereafter as practical and furnish the United Gas and Fuel Co., Ltd., weekly with a statement of such computations and the charts, and the said charts to remain the property of the Dominion Natural Gas Co., Ltd.

If during the said period of thirty days the Dominion Natural Gas Company, Ltd., and the United Gas and Fuel Company, Ltd., enter into a contract in writing for a longer period than said thirty days, then this temporary arrangement shall cease except that the United Gas and Fuel Company, Ltd., shall pay to the Dominion Natural Gas Company, Ltd., for all gas sold and delivered to it at the rate herein specified, during the time this temporary arrangement has been operative.

In order that there shall be no question as to the accuracy of the meters, we agree to test the meters through which gas is to be measured at the beginning and the end of this temporary term, said tests to be made in the presence of a representative of the United Gas & Fuel Co., Ltd. Any corrections are to be made in accordance with these tests.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 43.
Letter, Dominion Natural Gas Company Limited to United Gas and Fuel Company Limited, 22nd September, 1924.

—continued

In the
Supreme Court
of Ontario

Exhibits.
Part Ex. 43.
Letter, Dom-
inion Natural
Gas Company
Limited to
United Gas
and Fuel
Company
Limited,
22nd Septem-
ber, 1924.

—continued

This temporary arrangement as herein above specified shall be for the period beginning at 8 a.m., September 25, 1924, and terminating absolutely at 8 a.m. on the 25th day of October, 1924.

Yours very truly,

THE DOMINION NATURAL GAS COMPANY, (SEAL)

(Sd.) S. B. SEVERSON, *Vice-President.*

Accepted
(SEAL)

UNITED GAS AND FUEL COMPANY, LTD.

P. V. BYRNES, *President.*

Witnessed.

10

Part Exhibit 43.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to United Gas and Fuel Company, Limited.

United Gas & Fuel Co., Ltd.,
Hamilton, Ontario.

October 22nd, 1924.

Attention of P. V. BYRNES, President.

Dear Sir:—

The temporary agreement between the Dominion Natural Gas Co., Ltd., and the United Gas and Fuel Co., Ltd., dated September 22nd, 1924, for furnishing natural gas, expires as you know, at 8 a.m. on the 25th day of October, 1924. 20

As a further temporary arrangement between the United Gas and Fuel Co., Ltd., and the Dominion Natural Gas Co., Ltd., for furnishing natural gas to your company in the City of Hamilton, Ontario, we make the following proposal:—

The Dominion Natural Gas Co., Ltd., will sell and deliver as herein specified to the United Gas and Fuel Co., Ltd., who shall purchase and take a minimum of 500,000 cubic feet of natural gas per day of twenty-four hours each for a period of thirty-one days from the 25th day of October, 1924, to the 25th day of November, 1924, at the price of 50 cents per 1,000 cubic feet. 30

If the Dominion Natural Gas Co., Ltd., should have available a supply in excess of said minimum of 500,000 cubic feet of gas per day, and the United Gas and Fuel Co., Ltd., desires to take such excess, it may do so during said term of thirty-one days and pay therefor at said rate of 50 cents per 1,000 cubic feet for all such excess gas so taken.

All deliveries of gas during said term of thirty-one days shall be made to the United Gas and Fuel Co., Ltd., at our orifice meters as at present located at or within the limits of the City of Hamilton, that is at Gage Avenue, Wellington St. and Dundurn St., and at our positive meters as at present located at or within the City of Hamilton, Ontario, 40

Part Ex. 43.
Letter, Dom-
inion Natural
Gas Company
Limited to
United Gas
and Fuel
Company
Limited,
22nd Octo-
ber, 1924.

at Concession St. and Gage Ave., at which points of delivery the United Gas and Fuel Company, Ltd., agrees to accept and take possession thereof. The United Gas and Fuel Co., Ltd., to assume all risk and be liable for all damages from the transportation and distribution of the gas after it passes the point of delivery.

The gas to be furnished shall be such as is from time to time conveyed by our company for commercial purposes (not what is known as sulphur gas.) All sales of gas and all payments therefor for said period of thirty-one days shall be computed on the basis of a pressure of four
10 ounces per square inch.

The Dominion Natural Gas Co., Ltd., will compute the quantity of gas registered by the orifice charts and also will furnish the readings of the two positive meters, together with the computation of quantity of gas registered by them as soon as practical after the said thirty-one days have expired, and the United Gas and Fuel Co., Ltd., shall pay therefor within 15 days after the bill has been rendered.

The Dominion Natural Gas Co., Ltd., to read the positive meters and to change the charts of the orifice meters daily, and shall compute the same as soon thereafter as practical and furnish the United Gas and
20 Fuel Co., Ltd., weekly with a statement of such computations and the charts, and the said charts to remain the property of the Dominion Natural Gas Co., Ltd.

If during the said period of thirty-one days the Dominion Natural Gas Co., Ltd., and the United Gas and Fuel Co., Ltd., enter into a contract in writing for a longer period than said thirty-one days, then this temporary arrangement shall cease except that the United Gas and Fuel Co., Ltd., shall pay to the Dominion Natural Gas Co., Ltd., for all gas sold and delivered to it at the rate herein specified, during the time this temporary arrangement has been operative.

In order that there shall be no question as to the accuracy of the
30 meters, we agree to test the meters through which gas is to be measured at the beginning and the end of this temporary term, said tests to be made in the presence of a representative of the United Gas & Fuel Co., Ltd. Any corrections are to be made in accordance with these tests.

This temporary arrangement as herein above specified shall be for the period beginning at 8 a.m. October 25, 1924, and terminating absolutely at 8 a.m., on the 25th day of November, 1924.

Yours very truly,

THE DOMINION NATURAL GAS COMPANY, LTD.

(Sd.) S. B. SEVERSON, *Vice-President*.

40

Accepted

(SEAL)

UNITED GAS AND FUEL COMPANY, LTD.

(Sd.) P. V. BYRNES, *President*.

(SEAL)

Witnessed.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 43.
Letter, Dom-
inion Natural
Gas Company
Limited to
United Gas
and Fuel
Company
Limited,
22nd Octo-
ber, 1924.

—continued

Part Exhibit 43.

(Defendant's Exhibit)

*In the
Supreme Court
of Ontario*Exhibits.
Part Ex. 43.
Letter, Dom-
inion Natural
Gas Company
Limited to
United Gas
and Fuel
Company
Limited,
22nd Novem-
ber, 1924.**Letter, Dominion Natural Gas Company, Limited, to United Gas and Fuel Company, Limited.**

November 22nd, 1924.

United Gas & Fuel Co., Ltd.,
Hamilton, Ontario.

Attention of P. V. BYRNES, President.

Dear Sir:—

The temporary agreement between the Dominion Natural Gas Co., Ltd., and the United Gas and Fuel Co., Ltd., dated October 22nd, 1924, for furnishing natural gas, expires, as you know, at 8 a.m. on the 25th day of November, 1924. 10

As a further temporary arrangement between the United Gas and Fuel Co. Ltd., and the Dominion Natural Gas Co., Ltd., for furnishing natural gas to your company in the City of Hamilton, Ontario, we make the following proposal:

The Dominion Natural Gas Co., Ltd., will sell and deliver as herein specified to the United Gas and Fuel Co., Ltd., who shall purchase and take a minimum of 500,000 cubic feet of natural gas per day of twenty-four hours each for a period of thirty-one days from the 25th day of November 1924, to the 26th day of December 1924, at the price of 50 cents per 1,000 cubic feet. 20

If the Dominion Natural Gas Co., Ltd., should have available a supply in excess of said minimum of 500,000 cubic feet of gas per day, and the United Gas and Fuel Co., Ltd., desires to take such excess, it may do so during said term of thirty-one days and pay therefor at said rate of 50 cents per 1,000 cubic feet for all such excess gas so taken.

All deliveries of gas during said term of thirty-one days shall be made to the United Gas and Fuel Co., Ltd., at our orifice meters as at present located at or within the limits of the City of Hamilton, that is, at Gage Avenue, Wellington Street and Dundurn Street, and at our positive meters as at present located at or within the City of Hamilton, Ontario, at Concession Street and Gage Avenue, at which points of delivery the United Gas and Fuel Co., Ltd., agrees to accept and take possession thereof. The United Gas and Fuel Co., Ltd., to assume all risk and be liable for all damages from the transportation and distribution of the gas after it passes the point of delivery. 30

The gas to be furnished shall be such as is from time to time conveyed by our company for commercial purposes (not what is known as sulphur gas). All sales of gas and all payments therefor for said period of thirty-one days shall be computed on the basis of a pressure of four ounces per square inch. 40

The Dominion Natural Gas Co., Ltd., will compute the quantity of gas registered by the orifice charts and also will furnish the readings

of the two positive meters, together with the computation of quantity of gas registered by them as soon as practical after the said thirty-one days have expired, and the United Gas and Fuel Co., Ltd., shall pay therefor within 15 days after the bill has been rendered.

10 The Dominion Natural Gas Co., Ltd., to read the positive meters and to change the charts of the orifice meters daily, and shall compute the same as soon thereafter as practical and furnish the United Gas and Fuel Co., Ltd., weekly with a statement of such computations and the charts, and the said charts to remain the property of the Dominion Natural Gas Co., Ltd.

If during the said period of thirty-one days the Dominion Natural Gas Co., Ltd., and the United Gas and Fuel Co., Ltd., enter into a contract in writing for a longer period than said thirty-one days, then this temporary arrangement shall cease except that the United Gas and Fuel Co., Ltd., shall pay to the Dominion Natural Gas Co., Ltd., for all gas sold and delivered to it at the rate herein specified, during the time this temporary arrangement has been operative.

20 In order that there shall be no question as to the accuracy of the meters, we agree to test the meters through which gas is to be measured at the beginning and the end of this temporary term, said tests to be made in the presence of a representative of the United Gas & Fuel Co., Ltd. Any corrections are to be made in accordance with these tests.

This temporary arrangement as herein above specified shall be for the period beginning at 8 a.m., November 25, 1924, and terminating absolutely at 8 a.m. on the 26th day of December, 1924.

Yours very truly,

THE DOMINION NATURAL GAS COMPANY, LTD.
(Sd.) S. B. SEVERSON, *Vice-President.*

30 Accepted

UNITED GAS AND FUEL COMPANY, LTD.
(Sd.) P. V. BYRNES, *President.*

(SEAL)

Witnessed.

Part Exhibit 47.

(Defendant's Exhibit)

Permit.

HAMILTON CITY CORPORATION

CITY ENGINEER'S DEPARTMENT

No. 7526.

HAMILTON, Dec. 1, 1924.

40

PERMIT

This permit is issued to Dominion Natural Gas for the purpose of opening Dundurn St. bet. Brantford Radial tracks and Hillcrest for the purpose of repairing gas pipe.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 43.
Letter, Dominion Natural Gas Company Limited to United Gas and Fuel Company Limited, 22nd November, 1924.

—continued

Part Ex. 47.
Permit,
1st December, 1924.

*In the
Supreme Court
of Ontario*

Subject to City By-laws and Regulations and Conditions printed on back hereof.

(Signed) W. L. McFAUL,
City Engineer.
Per W. M.

Exhibits.
Part Ex. 47.
Permit,
1st Decem-
ber, 1924.

(Usual extract from City By-laws endorsed on back).

—continued

Part Exhibit 47.

(Defendant's Exhibit)

Permit.

HAMILTON CITY CORPORATION

10

CITY ENGINEER'S DEPARTMENT

No. 7536.

Hamilton, Dec. 11, 1924.

PERMIT

This permit is issued to Dominion Natural Gas Co. for the purpose of opening street to repair gas pipes on Gage Ave. south of Main-Maple, west side.

Subject to City By-laws and Regulations and Conditions printed on back hereof.

(Signed) W. L. McFAUL,
City Engineer.
Per W. M. 20

(Endorsement of extract from City By-law, etc., on back).

Part Exhibit 43.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to United Gas and Fuel Company, Limited.

December 26th, 1924.

United Gas & Fuel Co., Ltd.,
Hamilton, Ontario.

30

Attention of P. V. BYRNES, President.

Dear Sir:—

The temporary agreement between the Dominion Natural Gas Co., Ltd., and the United Gas and Fuel Co. Ltd., dated November 22nd, 1924, for furnishing natural gas, expires, as you know, at 8 a.m. on the 26th day of December, 1924.

As a further temporary arrangement between the United Gas and Fuel Co., Ltd., and the Dominion Natural Gas Co., Ltd., for furnishing

Part Ex. 43.
Letter, Dom-
inion Natural
Gas Company
Limited to
United Gas
and Fuel
Company
Limited,
26th Decem-
ber, 1924.

natural gas to your company in the City of Hamilton, Ontario, we make the following proposal:

The Dominion Natural Gas Co., Ltd., will sell and deliver as herein specified to the United Gas and Fuel Co., Ltd., who shall purchase and take a minimum of 500,000 cubic feet of natural gas per day of twenty-four hours each for a period of ninety days, from the 26th day of December, 1924, to the 26th day of March, 1925, at the price of 50 cents per 1,000 cubic feet.

10 If the Dominion Natural Gas Co., Ltd., should have available a supply in excess of said minimum of 500,000 cubic feet of gas per day, and the United Gas and Fuel Co., Ltd., desires to take such excess, it may do so during said term of ninety days and pay therefor at said rate of 50 cents per 1,000 cubic feet for all such excess gas so taken.

All deliveries of gas during said term of ninety days shall be made to the United Gas and Fuel Co., Ltd., at our orifice meters as at present located at or within the limits of the City of Hamilton, that is at Gage Avenue, Wellington Street and Dundurn Street, and at our positive meters as at present located at or within the City of Hamilton, Ontario, at Concession Street and Gage Avenue, at which points of delivery the
20 United Gas and Fuel Co., Ltd., agrees to accept and take possession thereof. The United Gas and Fuel Co., Ltd., to assume all risk and be liable for all damages from the transportation and distribution of the gas after it passes the point of delivery.

The gas to be furnished shall be such as is from time to time conveyed by our Company for commercial purposes (not what is known as sulphur gas). All sales of gas and all payments therefor for said period of ninety days shall be computed on the basis of a pressure of four ounces per square inch.

30 The Dominion Natural Gas Co., Ltd., will compute the quantity of gas registered by the orifice charts and also will furnish the readings of the two positive meters, together with the computation of quantity of gas registered by them, every thirty days during the period of this agreement, and the United Gas and Fuel Co., Ltd., shall pay therefor within fifteen days after each bill has been rendered.

The Dominion Natural Gas Co., Ltd., to read the positive meters and to change the charts of the orifice meters daily, and shall compute the same as soon thereafter as practical and furnish the United Gas and Fuel Co., Ltd., weekly with a statement of such computations and the charts, and the said charts to remain the property of the Dominion Natural Gas
40 Co., Ltd.

If during the said period of ninety days the Dominion Natural Gas Co., Ltd., and the United Gas and Fuel Co., Ltd., enter into a contract in writing for a longer period than said ninety days, then this temporary arrangement shall cease except that the United Gas and Fuel Co., Ltd., shall pay to the Dominion Natural Gas Co., Ltd., for all gas sold and delivered to it at the rate herein specified, during the time this temporary arrangement has been operative.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 43.
Letter, Dominion Natural Gas Company Limited to United Gas and Fuel Company Limited, 26th December, 1924.

—continued

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 43.
Letter, Dom-
inion Natural
Gas Company
Limited to
United Gas
and Fuel
Company
Limited,
26th Decem-
ber, 1924.

In order that there shall be no question as to the accuracy of the meters, we agree to test the meters through which gas is to be measured every thirty days. The United Gas & Fuel Co., Ltd., may, at its option, have a representative present at such tests. Any corrections are to be made in accordance with these tests.

This temporary arrangement as herein above specified shall be for the period beginning at 8 a.m., December 26, 1924, and terminating absolutely at 8 a.m., on the 26th day of March, 1925.

Yours very truly,

THE DOMINION NATURAL GAS COMPANY, LTD., 10
(Sd.) S. B. SEVERSON, *Vice-President.*

(SEAL)

—continued

Accepted

UNITED GAS AND FUEL COMPANY, LTD.,
(Sd.) P. V. BYRNES, *President.*

(SEAL)

Witnessed.

(Sd.) AGNES GEDDES.

Exhibit 48.

(Defendant's Exhibit)

Four Letters from City Engineer of Hamilton. 20

Note: This exhibit contains four letters (all dated in 1925) from City Engineer of City of Hamilton giving notice of intention to pave—in form similar to Ex. 29. See Record, p. 236.)

Exhibit 11.

(Plaintiffs' Exhibit)

Order of The Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD

Wednesday, the 6th day of May, A.D. 1925.

BEFORE:

A. B. INGRAM, ESQ.,
Vice-Chairman, AND
J. A. ELLIS, ESQ.,
Commissioner.

IN THE MATTER of the petition of 30
Alfred Sims and Louisa M. Sims,
under Section 21 of "The Consoli-
dated Municipal Act, 1922," for
annexation to the City of Hamil-
ton of that part of the Township
of Barton, hereinafter mentioned
and described.

UPON THE APPLICATION of the above named Petitioners and upon reading the petition of the applicants herein filed with the Board, and the resolution of the Council of the Corporation of the City of Hamilton, 40

Ex. 48.
4 Letters
from City
Engineer
of Hamilton,
1925.

Ex. 11.
Order of The
Ontario Rail-
way and
Municipal
Board,
6th May,
1925.

passed on the 14th day of April, 1925, declaring the expediency of such annexation, and upon hearing said petitioners and what was alleged by counsel on behalf of the Corporation of the City of Hamilton and the Township of Barton, and public notice of the hearing having been given as directed by the Board.

THIS BOARD DOETH ORDER AND PROCLAIM that the portion of the Township of Barton in the County of Wentworth, described as follows:—

10 ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Barton, in the County of Wentworth, in the Province of Ontario, being composed of a part of Lot Number 20 in the Fourth Concession of the said Township of Barton, and which parcel may be more particularly described as follows, that is to say:—

COMMENCING at the intersection of the eastern limit of the said lot 20 with the southern limit of the road allowance between the Third and Fourth Concessions of the said Township of Barton, now known as Aberdeen Avenue.

20 THENCE southerly along the said eastern limit of Lot 20 to the bottom of the perpendicular rock that runs along the brow of the mountain, being the eastern limit of what is known as the Colquhoun property.

THENCE northerly, westerly and southerly following along the easterly, northerly and westerly limits of the said Colquhoun property to the southern limit of the said Lot 20.

THENCE westerly along the southern limit of the said Lot 20 to the eastern limit of the road allowance between the said Lot 20 and Lot 21 of the said Township of Barton.

30 THENCE northerly along the said eastern limit of the Road allowance between Lots 20 and 21 to the southerly limit of the lands deeded to the Corporation of the Township of Barton by deed dated July 23rd, 1897, and registered in the Registry Office for the said County of Wentworth as instrument number 64035 for the purpose of a public highway.

THENCE easterly along the southern limit of the said lands deeded to the Corporation of the Township of Barton the southern limit of Aberdeen Avenue.

THENCE easterly along the said southern limit of Aberdeen Avenue to the place of beginning.

40 AND containing by admeasurement eighty-six and twenty-two one-hundredths acres (86.22 acres) be the same more or less, be and the same is hereby annexed to the City of Hamilton; and the said annexation shall take effect upon and subject to the following terms and conditions, namely:—

1. That the taxes, assessments, school and other rates in respect of the lands in said territory, shall for the year 1925 and thereafter be levied by the Corporation of the City of Hamilton, and the assessment of such lands for the year 1925 may be made at any time during the year.

2. The Board doth further order and proclaim that the Corporation of the Township of Barton and County of Wentworth, and the City

*In the
Supreme Court
of Ontario
Exhibits.*

Ex. 11.
Order of The
Ontario Rail-
way and
Municipal
Board,
6th May,
1925.

of Hamilton, shall be entitled to an adjustment of assets and liabilities pursuant to section 38 of "The Consolidated Municipal Act, 1922," and the rights and claims of all parties affected by this Order, shall be valued and adjusted in an equitable manner pursuant to the provisions of section 28 of "The Public Schools Act."

3. The said annexed territory shall form part of Ward No. 3 of the said city.

4. The Order shall come into force on the 6th day of May, 1925.

(Sgd.) A. B. INGRAM, *Vice-Chairman.*

—continued

(SEAL)

Certified a true copy,
S. H. KENT, *City Clerk.*

10

Ex. 50.
Permits,
1926.

Exhibit 50.

(Defendant's Exhibit)

Permits.

Note: This exhibit contains 13 permits (all dated in 1926) from City Engineer of City of Hamilton—some to instal mains at designated locations; other, to repair leaks in mains, one to instal gas service at a particular residence—all on printed forms similar to Ex. 47. (See Record, p. 291.)

20

Part Ex. 52.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
23rd March,
1926.

Part Exhibit 52.

(Defendant's Exhibit)

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

CITY ENGINEER'S OFFICE

Hamilton, Ont., Mar. 23/26.

Dom. Natural Gas Co.,
City.

Dear Sir:—

I beg to advise that it is the intention of the city to pave the following streets, work to be proceeded with as soon as possible, and if you are contemplating work on any of these streets, it should be proceeded with at once.

30

Markland, Bay to Queen.
Roxboro, Ottawa to Park Row.
Beach Rd., Ottawa to Gertrude.
Beach Rd., Gertrude to Kenilworth.

Beach Rd., Kenilworth to Strathearne.
Kindly acknowledge receipt of this communication.

Yours very truly,

W. L. McFAUL,
City Engineer.

NMA/NN.

(PEN NOTATION): "Please answer this letter we have no lines on these streets. E. S."

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 52.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
23rd March,
1926.

—continued

Note: This exhibit contains 7 further letters from the City Engineer of a similar nature to the letter dated March 23rd, 1926, and 7 further letters similar to the letter dated August 10th, 1926 (all dated in 1926). The letter of August 10th, 1926, is printed in the Record at page 305.

Part Exhibit 49.

(Defendant's Exhibit)

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

June 12/26.
1000-19
W. L. McF.

Part Ex. 49.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
12th June,
1926.

The Dominion Natural Gas Company,
City.

Dear Sirs:—

20 In reply to your letter of the 2nd inst., re application to lay a 2" line on Cliff Avenue, I beg to advise that I have gone into this matter very fully and would ask that you advise me by letter whether in your opinion you have carried out all the construction work designated in the provisions of By-law No. 533, Barton Township.

Kindly advise me as to your opinion in this matter.

Yours very truly,

WLMcF/EM.

City Engineer.

Exhibit 53.

(Defendant's Exhibit)

Petition.

Ex. 53.
Petition,
22nd June,
1926.

30

Letter paper of
N. G. Co., Ltd.
(Copy)

Hamilton, June 22/26.

We, the undersigned parties living on Cliff Avenue, Mt. Hamilton, hereby petition the City Council to allow the Dominion Natural Gas Co.,

*In the
Supreme Court
of Ontario*

Ltd., to lay natural gas mains on this street as we wish to use natural gas as soon as possible:—

Exhibits.
Ex. 53.
Petition,
22nd June,
1926.

—continued

- John Geddes, 24 Cliff.
- R. H. Wallace, 37 Cliff.
- C. W. Yoger, 20 Cliff.
- A. Girvan, 28 Cliff.
- T. W. Nancekivell, 569 Concession
- R. G. Blaney, 35 Cliff.
- James R. Gun, 33 Cliff.
- C. W. Parrish, 30 Cliff.
- Robt. Sharp, 32 Cliff.
- M. B. Zimmerman, 27 Cliff.
- T. M. Chambers, 19 Cliff.
- Herbert Hedden, 17 Cliff.
- D. T. Ambrose, 18 Cliff.
- Mary Townsend, 26 Cliff.
- Wm. Fleming, 34 Cliff.
- J. E. Cornfoot, 31 Cliff.
- A. S. Mardoff, 39 Cliff.

10

Part Exhibit 49.

20

(Defendant's Exhibit)

Letter, Harley & Sweet, to City Engineer.

July 31st, 1926.

Part Ex. 49.
Letter, Harley
& Sweet
to City
Engineer,
31st July,
1926.

W. L. McFaul, Esq.,
City Engineer,
Hamilton, Ontario.

Dear Sir:—

Re Dominion Natural Gas Company.

Re Township of Barton By-law Number 533.

Your letter of the 12th ult. has been handed to us for reply.

30

We are instructed to say that in the opinion of the company it has carried out all the construction work required by it under the provisions of the above by-law. The line referred to in paragraph twenty-two of the by-law was not required to be laid. The Manufacturers Natural Gas Company, Limited, laid a ten inch line on the stone road which rendered the line referred to in section twenty-two unnecessary as it would have been a duplication.

Yours truly,
HARLEY & SWEET,
By.....

40

ES/M.

Part Exhibit 52.

(Defendant's Exhibit)

*In the
Supreme Court
of Ontario*

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

CITY ENGINEER'S OFFICE

Hamilton, Ont., August 10th, 1926.

Dominion Natural Gas Co., Ltd.,
City.

Exhibits.
Part Ex. 52.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
10th August,
1926.

Dear Sirs:—

10 You are hereby granted permission to instal a two inch (2") and a four inch (4") gas main on Cliff Ave., from Concession St. to Mountain Park Ave. Location in each case to be two feet six inches (2'6") back of the sidewalks and to have a minimum covering of three (3) feet.

Yours very truly,

W. L. McFAUL,
City Engineer.

FV/CM.

Exhibit 51.

(Defendant's Exhibit)

Ex. 51.
Permit to Cut
Pavement,
16th August,
1926.

Permit to Cut Pavement.

WORKS DEPARTMENT, CITY OF HAMILTON

20 Permit to Cut Pavement for Repairing Gas Leak.

ORIGINAL.

Hamilton, Aug. 16th, 1926.

Dominion Natural Gas Co.,
City.

You are hereby granted permission to make cuts in pavements, below specified, as per your application.

.....192.....

Name of Street	Side	Location of Cut	District No.
Sherman Ave. N.		At E. C. Atkin's Co's. Plant	8

30 Repairing of above cuts to be done by the City of Hamilton, and cost of same chargeable to Dom. Natural Gas.

W. L. McFAUL,
City Engineer.

Permit No. 388.

Per N.

(Note: Attached to the above are five other permits of a similar nature issued later in the year 1926, permitting pavements to be cut on other streets).

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 56.
Permits,
1927.

Exhibit 56.

(Defendant's Exhibit)

Permits.

Note: This exhibit contains 17 permits of a similar nature to Ex. 47 see Record, p. 291) and on the same form (all dated in 1927) and includes a permit with respect to the construction of a regulating chamber.

Ex. 57.
Permits to Cut
Pavements,
1927.

Exhibit 57.

(Defendant's Exhibit)

Permits to Cut Pavements.

Note: This exhibit contains 10 permits to make cuts in pavements, 10 of a similar nature to Ex. 51 (see Record, p. 305) and on the same form (all dated in 1927).

Part Ex. 54.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
4th May,
1927.

Part Exhibit 54.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

Hamilton, May 4th, 1927.

Mr. W. L. McFaul,
City Hall,
Hamilton.

Dear Sir:—

20

Attached hereto is a sketch of the territory in which we want to run distribution mains this summer. The dotted lines show the mains to be run.

We hereby make a request for a permit to run these lines in the boulevards of the above streets.

Yours truly,

DOMINION NATURAL GAS Co., LIMITED,
C. M. SIEGER.

CMS/R.

P.S.—This will be the first of a series of requests for permits for 30 distribution mains which we want to lay this summer. Within a few days we will send you a sketch showing our entire proposed extension for the summer. You will note that all of these extensions are adjacent to our present distribution mains in the City of Hamilton, and the object of renewing these distribution mains is not only to increase the number of

customers in Hamilton, but also part of this is necessary in order to render better service to our present customers.

(**Note:** The exhibit contains 6 further letters of a similar nature, all dated in 1927, and also two letters of October 22nd, 1927, which are printed in the Record at pages 309 and 310).

Part Exhibit 55.

(Defendant's Exhibit)

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

CITY ENGINEER'S OFFICE

Hamilton, Ont., May 21/27.

W. H. COLLINS

Dominion Natural Gas Co.,
10 Fennel Ave., Hamilton, Ont.

Dear Sirs:—

You are hereby permitted to instal mains on the following streets, to be laid as indicated and with a minimum covering of three feet.

- Balsam Ave., Main St. to Cumberland Ave.
 - 2" Gas Main, east side, 4' East of East Walk.
 - 2" Gas Main, West Side, 3' West of West Walk.
- 20 Cedar Ave., Maple Ave. to Cumberland Ave.
 - 2" Gas Main, East Side, 3' East of East Walk.
 - 2" Gas Main, West Side, 3' West of West Walk.
- Main St., Balsam Ave. to Prospect Ave.
 - 3" Gas Main, South Side, 2' South of South Walk.
- Elm St., Balsam Ave. to End of Street.
 - 2" Gas Main, North Side, 4' North of North Walk.
 - 2" Gas Main, South Side, 3' South of South Walk.
- Central Ave., Prospect St. to East End of Street.
 - 2" Gas Main, North Side, 3' North of North Walk.
- 30 Central Ave., Balsam Ave. to East End of Street.
 - 2" Gas Main, South Side, 3' South of South Walk.
- Cumberland Ave., Balsam Ave. to Cedar Ave.
 - 3" Gas Main, North Side, 3' North of North Walk.
- Cumberland Ave., Cedar Ave. to Prospect Ave.
 - 3" Gas Main, North Side, 2' North of North Walk.

Yours very truly,

W. L. McFAUL,
City Engineer.

Per W.

40 WHC/AM.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 54.
Letter, Dominion Natural Gas Company Limited to City Engineer, 4th May, 1927.

—continued

Part Ex. 55.
Letter, City Engineer to Dominion Natural Gas Company Limited, 21st May, 1927.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 55.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
21st May,
1927.

(Note: This exhibit also contains 13 further letters of a similar nature to the one of May 21, 1927 (all dated in 1927), and also letters of June 18, 1927; Sept. 12, 1927; and Nov. 23, 1927, which are printed in the Record.)

Part Exhibit 55.

(Defendant's Exhibit)

Letter, City Engineer, to Dominion Natural Gas Company.

CITY ENGINEER'S OFFICE

Hamilton, Ont., June 18/27.

Refer to File No. 1000-9
Attention of W. L. McF.

10

Dominion Natural Gas Co., Ltd.,
City.

Att. Mr. C. M. Sieger, General Manager.

Dear Sir:—

In reply to your letter of the 17th inst. re gas survey, I beg to advise that you are hereby permitted to make excavations as required on the distinct understanding that you make application for pavement permit within twenty-four hours of making the cut.

It seems to me though, that as far as possible, your company should locate the cuts and make application for permits so that my foreman may know what is going on prior to making the cut.

Yours very truly,

W. L. McFAUL,
City Engineer.

WLMcF/EM.

Part Exhibit 55.

(Defendant's Exhibit)

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

CITY ENGINEER'S OFFICE

Hamilton, Ont., Sept. 12/27.

30

Refer to File No.....
Attention of F. Veale.

Dominion Natural Gas Co.,
10 Fennell Ave.,
City.

Dear Sirs:—

You are hereby permitted to construct a regulating chamber in the future, south boulevard on Justine Ave., west of intersection of Graham

--continued

Part Ex. 55.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
18th June,
1927.

Part Ex. 55.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
12th Septem-
ber, 1927.

Ave., dimensions 6'0" x 6'0", same to be constructed so as not to interfere with future walk or curb on Justine Ave.

You are also permitted to instal 6" gas mains on the following streets, to be laid as indicated, and with a minimum covering of 3'0":—

1. At intersection of Justine Ave., Graham Ave., and King St., from regulating chamber in south boulevard of Justine Ave. northerly in a line 4'0" east of walk at south west corner of King and Justine Sts. to gas main on north side of King St.
- 10 2. On King St. from south west corner of King St. and Justine Ave. to Ottawa St. 4'0" north of south walk.
3. On King St. from Ottawa to Rosslyn 2'9" south of south walk.
4. On Rosslyn from King to Dunsmure 2'6" east of east walk.
5. On Dunsmure from Rosslyn to East Bend, 3'0" south of south walk.
6. On East Bend from Dunsmure to Main St., 3'0" east of east walk.
7. On Main St. from East Bend to Gage Ave., north boulevard.
8. On Gage Ave. from Main St. to point opposite regulating chamber, 4'0" east of east curb.
- 20 9. On Gage Ave. from above point across roadway to regulating chamber on west side.

Yours very truly,

W. L. McFAUL,
City Engineer.

FV/AM
Encls.

Part Exhibit 54.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

30 City Engineer's Office,
City Hall,
Hamilton.

Hamilton, October 22, 1927.

Attention Mr. McFaul.

Dear Sir:—

We hereby respectfully request permission to lay the following lines in the City of Hamilton, pursuant to By-law 583 of the Township of Barton, dated October 26, 1904.

- 40 1. A 2" line on the east side of Barnesdale from Main to Dunsmure.
2. A 2" line on the west side of Barnesdale from Main to Dunsmure.
3. A 2" line on the west side of Spadina from Main to Dunsmure.
4. A 2" line on the east side of Spadina from Main to Dunsmure.
5. A 2" line on the west side of Melrose from Main to Dunsmure.
6. A 4" line on the east side of Melrose from Main to Dunsmure.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 55.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
12th Septem-
ber, 1927.

—continued

Part Ex. 54.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
22nd Octo-
ber, 1927.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 54.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
22nd Octo-
ber, 1927.

7. A 4" line on the north side of Main from Melrose to Barnesdale.
8. A 4" line crossing Main Street to connect to our present mains on the west side of Barnesdale.

Yours truly,

DOMINION NATURAL GAS CO., LIMITED,
Hamilton Dist.

General Manager.

—continued CMS/R.

Part Exhibit 54,

(Defendant's Exhibit)

10

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

Hamilton, October 22, 1927.

City Engineer's Office,
City Hall,
Hamilton.

Attention Mr. McFaul.

Dear Sir:—

We hereby respectfully request permission to lay our lines on the following streets in the City of Hamilton, pursuant to By-law 583 of the 20 Township of Barton, dated October 26, 1904:

1. A 6" main on the west side of Dundurn Street, from the regulator house at the B. & H. Electric tracks, to the north side of Glenside.
2. A 2" line on the south side of Hillcrest from Dundurn Street to Chedoke.
3. A 4" line on the north side of Hillcrest from Dundurn Street to Chedoke.
4. A 2" line on the west side of Chedoke Ave. from Hillcrest to Aberdeen.
5. A 4" line on the east side of Chedoke Ave. from Hillcrest to 30 Aberdeen.
6. A 2" line on the south side of Glenside from Dundurn Street to Chedoke.
7. A 4" line from the north side of Glenside from Dundurn to Chedoke.

Yours truly,

DOMINION NATURAL GAS CO., LIMITED,
Hamilton Dist.

Encl.
CMS/R.

General Manager.

40

Part Exhibit 55.

(Defendant's Exhibit)

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

CITY ENGINEER'S OFFICE

Hamilton, Ont., Nov. 23/27.

Refer to File No.
Attention of W. H. Collins.Dominion Natural Gas Co.,
10 Fennell Ave.,
City.

10

Dear Sirs:—

You are hereby permitted to erect a pole in the boulevards on Justine Ave., near Graham Ave., at your regulator chamber, the location of this pole to be given you by this department.

Yours very truly,

WHC/AM

W. L. McFAUL,
*City Engineer.**In the
Supreme Court
of Ontario*Exhibits.
Part Ex. 55.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
23rd Novem-
ber, 1927.**Part Exhibit 58.**

(Defendant's Exhibit)

20 **Letters from Dominion Natural Gas Company, Limited, to City Engineer.**

Note: 25 letters (all dated in 1928) from defendant to City Engineer of a similar nature to Ex. 54 (See Record, p. 306.)

Part Ex. 58.
Letters from
Dominion
Natural Gas
Company
Limited to
City Engineer,
1928.**Exhibit 60.**

(Defendant's Exhibit)

Permits.

Note: This exhibit contains 39 permits to instal mains (all dated 1928) of a similar nature to Ex. 47 and on the same form. (See Record, p. 291.)

Ex. 60.
Permits,
1928.**Exhibit 61.**

(Defendant's Exhibit)

Permits to Cut Pavements.

30

Note: This exhibit contains 47 permits to cut pavements (all dated 1928) on the same form as Ex. 51 See Record, p. 305.)

Ex. 61.
Permits to Cut
Pavements,
1928.

Part Exhibit 59.

(Defendant's Exhibit)

Exhibits.
Part Ex. 59.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
30th April,
1928.

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

CITY ENGINEER'S OFFICE

Hamilton, Ont., April 30, 1928.

Attention of W. Cust.

Dominion Natural Gas Co.,
Fennell Ave.,
City.

Dear Sirs:—

You are hereby permitted to install gas mains on the following streets, located as follows:—

Dunsmure Road.

Rosslyn Ave. to Ottawa St., a 6" gas main to be laid 2'0" north of the north walk.

Ottawa St. to London St., a 6" gas main to be laid 4'0" north of the north walk.

London St. to Graham Ave., a 6" gas main to be laid 3'0" north of the north walk.

Province St., east side.

Dunsmure Rd. to Cumberland Ave., a 2" gas main to be laid 4'6" east of the east walk.

Cumberland Ave. to King St., a 2" gas main to be laid 2'0" east of the east walk.

Province St., west side.

Dunsmure Rd. to Main St., a 2" gas main to be laid 3'0" west of the west walk.

Main St. to King St., a 2" gas main to be laid 2'6" west of the west walk.

Ottawa St., west side.

King St. to Main St., a 2" gas main to be laid 1'0" west of the west curb.

Ottawa St., east side.

Dunsmure Rd. to Main St., a 2" gas main to be laid 5'0" east of the east curb.

Main St. to Maple Ave., a 2" gas main to be laid 5'6" east of the east curb.

Maple Ave. to King St., a 2" gas main to be laid 6'9" east of the east curb.

Maple Ave.

Ottawa St. to King St., a 4" gas main to be laid 3'0" south of the south walk.

Grosvenor Ave., west side.

10

20

30

40

- Maple Ave. to Main St., a 2" gas main to be laid 3'0" west of the west walk.
 Grosvenor Ave., east side.
 Maple Ave. to Main St., a 2" gas main to be laid 2'0" east of the east walk.
 Belmont Ave., west side.
 King St. to Dunsmure Rd., a 2" gas main to be laid 2'6" west of the west walk.
 Belmont Ave., east side.
 10 King St. to Dunsmure Rd. a 2" gas main to be laid 4'6" east of the east walk.
 Kensington Ave., west side.
 Main St. to Dunsmure Rd., a 2" gas main to be laid 2'0" west of the west walk.
 Kensington Ave., east side.
 Main St. to Dunsmure Rd., a 2" gas main to be laid 2'6" east of the east walk.
 King St.
 20 Hilda Ave. to Glendale Ave., a 2" gas main to be laid 6'0" south of the south curb.
 Glendale Ave., west side.
 Main St. to 133'0" northerly, a 2" gas main to be laid 6'0" west of the west walk, then 2'0" west of the west walk to King St.
 Glendale Ave., east side.
 Main St. to King St., a 2" gas main to be laid 1'6" east of the east walk.
 Main St.
 Rosslyn Ave. to Balmoral Ave., a 2" gas main to be laid 3'6" north of the north curb.
 30 Rosslyn Ave.
 Main St. to Dunsmure Rd., a 2" gas main to be laid 3'0" west of the west walk.
 Balmoral Ave.
 Main St. to Dunsmure Rd., a 2" gas main to be laid 6'0" west of the west walk.
 London St., west side.
 Main St. to Dunsmure Rd., a 2" gas main to be laid 2'0" west of the west walk.
 London St., east side.
 40 Main St. to Dunsmure Rd., a 2" gas main to be laid 4'0" east of the east walk.

The above mentioned gas mains to be laid with a minimum covering of 3'0", and subject to the supervision of this department.

These locations are given with respect to information of the location of other gas mains, etc., available in this office. Should further information show that other gas mains exist on these locations or within three

*In the
Supreme Court
of Ontario*

—
Exhibits,
Part Ex. 59.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
30th April,
1928.

—continued

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 59.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
30th April,
1928.

—continued

feet thereof, the Dominion Natural Gas Co. must assume the responsibility of changing these locations at their own cost.

Yours very truly,
W. L. McFAUL,
City Engineer.

WC/AM.
Enc.

Note: This exhibit also contains 28 letters (all dated in 1928) of a similar nature to the letter of 30th April, 1928 (except that some of the letters do not contain the last paragraph in the letter of 30th April, 1928); also 10 letters (all dated in 1928) of a similar nature to Ex. 29— (notices of intention to pave.) (See Record, p. 236). The letter of Dec. 8, 1928, part of this exhibit, is printed in the Record.

Exhibit 12.

(Plaintiffs' Exhibit)

Order of The Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD

Tuesday, the 11th September, 1928.

BEFORE:

C. R. McKEOWN, ESQUIRE,
Chairman.
A. B. INGRAM, ESQUIRE,
Vice-Chairman.
J. A. ELLIS, ESQUIRE,
Commissioner.

IN THE MATTER of the application 20
of the Corporation of the City of
Hamilton, under Section 20 of
"The Municipal Act" for annexa-
tion thereto of that part of the
Township of Barton (Chedoke
Civic Golf Lands) hereinafter
mentioned and described.

UPON THE APPLICATION of the Corporation of the City of Hamilton herein filed with the Board and the resolution of the Council of the said Corporation of the City of Hamilton, passed on the 31st day of July, 1928, declaring the expediency of such annexation and upon hearing what was alleged by counsel on behalf of the Corporation of the City of Hamilton and the Township of Barton and the County of Wentworth, and public notice of the hearing having been given as directed by the Board: 30

THIS BOARD DOETH ORDER AND PROCLAIM that the portion of the Township of Barton, in the County of Wentworth, described as follows:

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Barton, in the County of Wentworth, in the Province of Ontario, being composed of part of Lot 21 in the Fourth Concession of the said Township of Barton and the lands conveyed to the Township of Barton for highway purposes, situated in Lot 20 in the Fourth Concession of the said Township, as described 40

Ex. 12.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th Septem-
ber, 1928.

in Instrument No. 64035, dated July 23rd, 1897, and all of the unopened road allowance between Lots 20 and 21 (Paradise Road) extending southerly from the southerly limit of the T. H. & B. Railway property (Aberdeen Yards) to the Mountain Brow, and part of the unopened road allowance between concession 4 and 5 across Lot 21 in the said Township all of which may be more particularly described as follows, that is to say:

10 COMMENCING at a stone monument planted in the southerly limit of Aberdeen Avenue, distant four hundred and seventy-four feet and ten inches (474'10") measured westerly thereon from a stone monument planted at the intersection of the southerly limit of Aberdeen Avenue with the easterly limit of Lot 20 in the Fourth Concession of the said Township.

THENCE westerly along the southerly limit of Aberdeen Avenue a distance of eighty-nine feet and four inches (89'4") to its intersection with the south-easterly limit of the Freight Yards of the T. H. and B. Railway Company (Aberdeen Yards).

20 THENCE south sixty-one degrees twelve minutes west (S. 61°12'W.) along the said south-easterly limit of the T. H. & B. Railway Company's freight Yards a distance of five hundred and forty-six feet and nine inches (546'9") to a point.

THENCE south sixty-eight degrees eleven minutes west (S. 68°11'W.) continuing along the said limit of the said Freight Yards a distance of five hundred and seven feet (507'0") to a point.

THENCE westerly along the southerly limit of said Freight Yards a distance of sixty-seven feet (67'0") more or less to its intersection with the westerly limit of the unopened road allowance between Lots 20 and 21 in the Fourth Concession of the said Township.

30 THENCE southerly along the said westerly limit of the unopened road allowance between Lots 20 and 21 a distance of one thousand and eighty-four feet and six inches (1084'6") to a stone monument planted at the S. E. Angle of the lands belonging to the Canadian Porcelain Company.

THENCE south eighty-nine degrees thirty minutes west (S. 89°30' W.) along the southerly limit of the lands belonging to the Canadian Porcelain Company a distance of nine hundred and twenty feet (920'0") to the S. W. Angle of the lands belonging to the Canadian Porcelain Company.

40 THENCE south eighteen degrees twenty-four minutes west (S. 18°24' W.) a distance of one thousand two hundred and forty-four feet and six inches (1244'6") more or less to a point in the southerly limit of the unopened road allowance between Concessions Four and Five in the said Township.

THENCE easterly along the said southerly limit of the unopened road allowance between Concessions Four and Five, a distance of six hundred and forty-seven feet (647'0") more or less to its intersection with the Mountain Brow, which is the northerly limit of "Edgemount" Survey at this point.

THENCE northerly and easterly along the said brow of the Mountain in all its windings to an intersection with the easterly limit of the said

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 12.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th Septem-
ber, 1928.

—continued

In the
Supreme Court
of Ontario

—
Exhibits.
Ex. 12.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th Septem-
ber, 1928.

—continued

unopened road allowance between Lots 20 and 21 in the Fourth Concession of the said Township.

THENCE northerly along the said easterly limit of the unopened road allowance between lots 20 and 21 in the Fourth Concession of the said Township, a distance of two thousand four hundred and twenty feet (2420'0") more or less to a stone monument planted at its intersection with the southerly limit of the lands described in the said Instrument No. 64035.

THENCE north sixty-eight degrees eleven minutes east (N. 68°11'E.) along the said southerly limit of the lands described in Instrument No. 64035 a distance of five hundred and sixty-five feet (565'0") to a stone monument. 10

THENCE north sixty-one degrees twelve minutes east (N. 60°12'E.) continuing along the said southerly limit of the lands described in Instrument No. 64035, a distance of six hundred and eleven feet (611'0") more or less to the place of beginning.

The above described parcel of land containing by admeasurement thirty-two and seventy-eight one hundredths acres (32.78 acres) and being further shown outlined in red on the attached plan, be and the same is hereby annexed to the City of Hamilton, and the said annexation shall take effect upon and subject to the following terms and conditions, namely: 20

1. That the taxes, assessments, rents, water, school and other rates in respect of the said annexed District to be levied by the City of Hamilton in respect of the said territory shall for the year 1929 and thereafter, be the same, and payable at the same time and in the same manner as taxes, assessments, rents, water, school and other rates, levied and raised from time to time on the property within the old boundaries of the city as they existed on the 1st day of January, 1891, and the assessment of the said territory by the city shall for the year 1929 and thereafter be on the same basis and made at the same time and in the same manner as in the said old boundaries of the city, except that the assessment by the Corporation of the City of Hamilton of the said territory for the year 1929 may be taken by the City Assessor at any time after the date of this Order. 30

2. (a) The Corporation of the Township of Barton shall pay to the Corporation of the City of Hamilton on the 31st day of December, 1928, an amount equal to seventeen and one-half (17½) per centum of the amount of the general taxes, assessed and paid against the said annexed area for the year 1928, excepting school, county and debenture rates. 40

(b) Except as provided in Clause 2 (a) all taxes imposed by the Township in the annexed district for the year 1928 and any and all arrears of taxes owing in the said district shall belong to the Township of Barton.

3. The Township shall pay the sums which the County of Wentworth and the several school sections affected shall be entitled to be paid

respectively for the year 1928, and in any arbitration between the city, the Township of Barton and the County of Wentworth and the School sections affected, the Arbitrator or Arbitrators may take into consideration the payment made or to be made under this paragraph, and in the adjustment of the assets and liabilities such adjustment shall be based on the Township assessment for the year 1928, as finally revised, and the Township assessment of the district annexed. The adjustment between the city and the county to be based upon the Township's equalized assessment—the adjustments between the Township, the county and the school sections respecting the debenture debt to be adjusted as of the 1st January, 1929, excepting therefrom any debentures issued by the Township or County after the date of this Order.

4. The adjustments of the assets and liabilities of the Hydro-Electric Commission of the Township of Barton, shall be subject to the approval of the Hydro-Electric Power Commission of Ontario at the present actual value, and the Hydro-Electric Power Commission of Ontario shall be the sole arbiter as between the Hydro-Electric Commission of the Township of Barton and the Hydro-Electric Commission of the City of Hamilton.

5. THE BOARD DOETH FURTHER ORDER AND PROCLAIM that the Corporation of the Township of Barton and County of Wentworth, and the City of Hamilton shall be entitled to an adjustment of assets and liabilities, pursuant to the provisions of section 38 of "The Municipal Act", and Section 37 of "The Public Schools Act", shall apply as between the municipalities and the school sections affected by this Order.

6. The said annexed territory shall form part of Ward No. 3 of the said city.

7. THIS ORDER shall come into force on the 1st day of October, 1928.

(SEAL)

(Signed) C. R. McKEOWN,

Certified a true copy.

S. H. KENT, *City Clerk.* (SEAL)

Exhibit 21.

(Plaintiffs' Exhibit)

Order of The Ontario Railway and Municipal Board.

THE ONTARIO RAILWAY AND MUNICIPAL BOARD.

Tuesday, the eleventh day of September, A.D. 1928.

BEFORE:

C. R. McKEOWN, ESQUIRE,
Chairman,

A. B. INGRAM, ESQUIRE,
Vice-Chairman, AND

J. A. ELLIS, ESQUIRE,
Commissioner.

IN THE MATTER OF THE PETITION OF MRS. GEORGE REID, and other, pursuant to Section 20 of "The Municipal Act" R.S.O. 1927, C. 233, for annexation to the City of Hamilton of that part of the Township of Barton hereinafter mentioned and described.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 12.

Order of The
Ontario Rail-
way and
Municipal
Board,
11th Septem-
ber, 1928.

—continued

Ex. 21.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th Septem-
ber, 1928.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 21.

Order of The
Ontario Rail-
way and
Municipal
Board,
11th Septem-
ber, 1928.

—continued

UPON THE APPLICATION of the above mentioned petitioners and upon reading the Petition of the Applicants herein filed with the Board, and the resolution of the Council of the Corporation of the City of Hamilton, passed on the 9th day of July, 1928, declaring the expediency of such annexation upon the terms mentioned in said resolution, and upon hearing representatives of the said Petitioners and what was alleged by Counsel on behalf of the Corporation of the City of Hamilton, the Township of Barton, the County of Wentworth, the Board of Education of the City of Hamilton and the Trustees of the School Sections Nos. 3 and 7 of the Township of Barton, and reading the consents filed herein, and public notice of the hearing having been given as directed by the Board. 10

THIS BOARD doth Order and Proclaim that the portion of the Township of Barton, in the County of Wentworth, described as follows:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being the Township of Barton, in the County of Wentworth, in the Province of Ontario, being composed of all of lots 10 and 11 and parts of lots 6, 7, 8, 9, and 12 in the Fourth Concession, and parts of lots 10, 11 and 12 in the Fifth Concession of the said Township of Barton and which parcel may be more particularly described as follows, that is to say: 20

COMMENCING at the intersection of the southerly limit of Concession Street with the division line between lots 65 and 66 between Salem Avenue and Harvard Avenue, according to the plan of Mount Royal Subdivision.

THENCE southerly along said division line between lots 65 and 66 and along the rear line or division line between the lots facing on Salem Avenue and Harvard Avenue, respectively, in said Mount Royal Subdivision and continuing southerly in a straight line, along the production of said line to a point 100'0" south of the south limit of Queensdale Avenue.

THENCE easterly on a line parallel with and distant 100' southerly at right angles from the south limit of Queensdale Avenue to a point in the northerly production of a straight line drawn half way between East 13th and East 14th Streets, and parallel with same. 30

THENCE southerly in a straight line to and along said line drawn half way between East 13th and East 14th Streets and along the southerly production thereof to a point 100'0" south of the south limit of Fennell Avenue.

THENCE easterly on a line parallel with and distant 100' southerly at right angles from the south limit of Fennell Avenue to the division line between lots 9 and 10 in the Fifth Concession of said Township. 40

THENCE northerly along last mentioned line and continuing northerly along the line between lots 9 and 10 in the Fourth Concession of said Township to where it intersects a line drawn along the rear of lots 47, 48, 49 and 50 on the south side of Fourth Avenue as laid out in Brandon Hill Survey.

THENCE easterly along the rear line of the lots fronting on the said south side of Fourth Avenue in said Brandon Hill Survey, and continuing

easterly along the production of said line to a point 100' easterly from the east side of Sherman Avenue.

THENCE northerly on a line parallel with and distant 100' easterly at right angles from the said easterly limit of Sherman Avenue to a point 100' southerly at right angles from the south limit of Munn Street.

THENCE easterly along a line parallel with and distant 100' southerly at right angles from the south limit of Munn Street to the division line between lots 7 and 8 in the Fourth Concession of said Township.

10 THENCE southerly along the last mentioned line between lots 7 and 8 to a point 100' south from the south limit of Park Street.

THENCE easterly along a line parallel with and distant 100' southerly at right angles from the south limit of Park Street to a point 100' easterly from the east limit of Gage Avenue.

THENCE northerly on a line parallel with and distant 100' easterly at right angles from the east limit of Gage Avenue to a point 100' southerly at right angles from the south limit of Concession Street.

20 THENCE easterly on a line parallel with and distant 100' southerly at right angles from the south limit of Concession Street to its intersection with the mountain brow, which is also the southerly limit of the City of Hamilton at this point.

THENCE westerly along the mountain brow and southerly along Sherman Avenue to Concession Street and westerly along Concession Street, and following the various deviations of the said southerly limits of the City of Hamilton to the place of beginning, as shown on the plan attached hereto, be, and the same is hereby annexed to the City of Hamilton, and the said annexation shall take effect upon and subject to the following terms and conditions, namely:

30 1. That the taxes, assessments, rents, water, school and other rates in respect of the said annexed district to be levied by the City of Hamilton be the same, and payable at the same time and in the same manner as taxes, assessments, rents, water, school and other rates, levied and raised from time to time on the property within the old boundaries of the city as they existed on the 1st day of January, 1891, and the assessment of the said territory by the city shall, for the year 1929 and thereafter be on the same basis and made at the same time and in the same manner as in the said old boundaries of the city, except that the assessment by the Corporation of the City of Hamilton of the said territory for the year 1929 may be taken by the City Assessors at any time after the date of this
40 order.

2. The Township of Barton shall at all reasonable times allow the Corporation of the City of Hamilton, its servants and agents access to the Assessment Rolls of the said portion of the said Township of Barton and to all local improvement by-laws and local improvement assessment rolls, and also all plans, surveys and maps applicable to the said portion of the said Township for the purpose of making copies of the same.

3. (a) The Corporation of the Township shall pay to the Corpor-

*In the
Supreme Court
of Ontario
Exhibits.
Ex. 21.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th Septem-
ber, 1928.*

--continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 21.

Order of The
Ontario Rail-
way and
Municipal
Board,
11th Septem-
ber, 1928.

—continued

ation of the City of Hamilton on the 31st day of December, 1928, an amount equal to seventeen and one-half (17½) per centum of the amount of the general taxes, assessed against the said annexed area for the year 1928, excepting school, county and debenture rates.

(b) Except as provided in Clause 3 (a) all taxes imposed by the Township of the annexed district for the year 1928 and any and all arrears of taxes owing in the said district shall belong to the Township.

4. (a) The Corporation of the Township of Barton shall forthwith prepare and furnish to the Corporation of the City of Hamilton a special collector's roll showing all arrears of taxes or special rate assessed against the lands in the annexed area up to the thirty-first day of December, 1928, and the persons assessed therefor. 10

(b) The Corporation of the City of Hamilton shall have the right to collect all said arrears of taxes to the 31st day of December, 1928, owing in the said annexed area, according to said special collector's roll, including the right to distrain for non-payment of said arrears, or if necessary the right to sell the said lands, if any, for non-payment of such arrears, as fully as if the said taxes had been assessed and levied by such Corporation, but the proceeds of the collection of such arrears, or any part of the same, after deducting therefrom the proper costs and expenses in connection with the collection of same, shall be repaid by the Corporation of the City of Hamilton to the said Corporation of the Township of Barton within six months from the date of collection providing that the said Corporation of the City of Hamilton shall proceed to collect the said arrears of taxes shown on said special roll, in the same manner as if it had assessed and levied the same, and for that purpose the City Corporation shall have all the rights and powers conferred upon municipalities by the Assessment Act, or other Act in force regarding the collection of arrears of taxes in the annexed area, but the City Corporation shall not be responsible to the Corporation of the Township of Barton for any such arrears of taxes which it may be unable to collect. 20 30

(c) The Corporation of the Township of Barton shall indemnify and save harmless the Corporation of the City of Hamilton from all loss, costs, charges and expenses arising from any act or omission of the Township of Barton or their officials or servants in connection with the said special roll.

5. Until the first day of January, 1929, the Public Schools in the said annexed district shall remain under the management of the trustees of the respective school sections of the Township in which the same are located, and such trustees shall continue to pay the costs of maintenance of such schools for and during that period, and the present agreement between the County of Wentworth and the Board of Education for Hamilton, for school pupils of the said annexed district attending the High Schools, Collegiate Institutes and Technical Schools in the said City of Hamilton during same period until January 1, 1929, shall continue unaltered, the intention being that the responsibility for, and costs of education of school children of such annexed district during all said period, 40

shall remain the same, as if the annexation of such district is not to take effect until said first day of January, 1929.

6. The Township shall pay the sums which the County of Wentworth and the several school sections affected shall be entitled to be paid respectively for the year 1928, and in any arbitration between the city, the Township of Barton and the County of Wentworth, and the school sections affected, the arbitrator or arbitrators may take into consideration the payment made or to be made under this paragraph, and in the adjustment of the assets and liabilities such adjustment shall be based on the Township assessment for the year 1928, as finally revised, and the Township assessment of the district annexed—the adjustment between the city and the county to be based upon the Township's equalized assessment—the adjustments between the Township, county and school sections respecting the debenture debt to be adjusted as of the 1st January, 1929, excepting therefrom any debentures issued by the Township or County after the date of this Order.

7. The Council of the Corporation of the City of Hamilton is hereby empowered to pass a by-law or by-laws defining the polling sub-divisions of the said annexed district, and the City Clerk shall prepare from the last certified voters' list of the Township of Barton, a supplementary list of voters containing the names of and the other particulars relating to the persons who would have been entitled to vote in such district or territory if it had not been detached, pursuant to Section 101 of the Municipal Act.

8. All rights, title and interest of the Township of Barton and the County of Wentworth in the highways and streets in said area, together with any and all right, title and interest in any franchises or agreements heretofore given or made respecting the said highways and streets, shall vest in the Corporation of the City of Hamilton.

9. The adjustments of the assets and liabilities of the Hydro-Electric Commission of the Township of Barton shall be subject to the approval of the Hydro-Electric Power Commission of Ontario at the present actual value, and the Hydro-Electric Power Commission of Ontario shall be the sole arbiter as between the Hydro-Electric Commission of the Township of Barton and the Hydro-Electric Commission of the City of Hamilton.

10. Where any work heretofore has been constructed in the said district and such work is defective or insufficient, the Corporation of the City of Hamilton may proceed with the construction of required works under the provisions of "The Local Improvement Act" notwithstanding the lifetime of the first mentioned work has not expired.

11. The residents of the district to be annexed shall be entitled to water from the Hamilton Waterworks upon the same terms and conditions as the residents of Hamilton.

12. That part of the said annexed territory east of Wentworth Street (being allowance for road between lots 10 and 11 of the Township of Barton) shall form part of Ward No. 1 of the said city, and that part

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 21.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th Septem-
ber, 1928.

—continued

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 21.
Order of The
Ontario Rail-
way and
Municipal
Board,
11th Septem-
ber, 1928.

—continued

of the said annexed territory west of the said Wentworth Street shall form part of Ward No. 2 of the said city.

13. The Corporation of the Township of Barton, the County of Wentworth and the City of Hamilton shall be entitled to an adjustment of assets and liabilities pursuant to the provisions of Section 38 of "The Municipal Act" and Section 37 of "The Public Schools Act" shall apply as between the municipalities and school sections Number 3 and 7, Barton, affected by this order.

14. The Order shall come into force on the 1st day of October, 1928.

(Signed) C. R. McKEOWN,
Chairman.

10

(SEAL)

No. 310082 Registered in the Registry Office, 1st October, 1928.

Certified a true copy.

S. H. KENT, *City Clerk.*

(SEAL)

Part Exhibit 58.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

November 8, 1928.

20

The City Engineer,
City Hall,
City.

Dear Sir:

As we are running an intermediate feeder system from the Grand Trunk right of way on Rosslyn Ave., it is necessary for us to install an underground regulator station.

We refer to the same type of station which you built for us last year, at the corner of Graham Ave. and King Street.

This regulator we want to have located in the boulevard on the east side of Glendale Ave. just at the point where Rowe Street runs into Glendale Avenue.

We would appreciate very much if we could procure this location and we would request also that the station be put in by the City of Hamilton, under the same circumstances as the one which the city built for us last season.

The underground station is to be 6' wide, 8' long and the height to be at your discretion. As a matter of fact a station of the exact duplicate as the one you built for us last year would be very satisfactory, including the sewer drain.

We would appreciate a reply to this letter as soon as possible.

Yours very truly,

DOMINION NATURAL GAS COMPANY, LIMITED,
Hamilton District, General Manager.

40

Part Ex. 58.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
8th Novem-
ber, 1928.

Exhibit 62.

(Defendant's Exhibit)

Order from Dominion Natural Gas Company, Limited, to City Engineer.

No. 12742

Charge to Dominion Natural Gas Co.

Buffalo, N.Y., Nov. 14, 1928.

City Engineer,
Hamilton, Ont.

10 Please ship to Dominion Natural Gas Co. at Hamilton, Ont., via Local
the following.

1 Underground Regulator Station at the corner of Row and Glendale
Aves. 6' x 8' x 8' at \$400.00.

(Requisition has been made out — S.)

Bill in duplicate, noting Number of this Order, and shipping point
thereon, must be rendered upon completion of each order. If for export
furnish two additional invoices with certificate thereon complying with
the Custom Laws of Canada. Mail all invoices and Bill of Lading to the
undersigned at 518 Jackson Bldg., Buffalo, N.Y.

(Signed) C. D. LIMBURNER,
Purchasing Agent.

20 (NOTE: Duplicate of above attached.)

(Note: Letter of Nov. 8, 1928, attached to this order is printed in
the Record at p. 322.)

Part Exhibit 59.

(Defendant's Exhibit)

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

CITY ENGINEER'S OFFICE

Hamilton, Ont., Dec. 8/28.

Attention of J. Stodart.

30 Dominion Natural Gas Co.,
City.

Dear Sirs:—

My attention has been called to the very shallow covering, in some
cases not more than six inches, on the gas mains and services belonging
to your company in that part of Barton Township recently annexed to
the city.

This will advise you that in view of the above conditions, the city
will not be responsible for damage that may be done to these mains by
any of their operations on city streets.

40

Yours very truly,
W. L. McFAUL,
City Engineer.

JS/EM.

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 62.
Order from
Dominion
Natural Gas
Company
Limited to
City Engineer,
14th Novem-
ber, 1928.

Part Ex. 59.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
8th Decem-
ber, 1928.

Part Exhibit 65.

(Defendant's Exhibit)

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 65.
Permits and
Permits to Cut
Pavements,
1929.

Permits and Permits to Cut Pavements.**Note:** This exhibit contains

- (1) 19 permits to instal mains (all dated in 1929) on the same form as Ex.47. (See Record, p. 291.)
- (2) 34 permits (all dated in 1929) to cut pavement, on same form as Ex. 51. (See Record, p. 305.)

Exhibit 13.

(Plaintiffs' Exhibit)

Ex. 13.
Order of The
Ontario Rail-
way and
Municipal
Board,
28th Febru-
ary, 1929.

10

Order of The Ontario Railway and Municipal Board.**THE ONTARIO RAILWAY AND MUNICIPAL BOARD.**

Thursday, the twenty-eighth day of February, 1929.

BEFORE:

A. B. INGRAM, ESQUIRE,
Vice-Chairman, AND
J. A. ELLIS, ESQUIRE,
Commissioner.

IN THE MATTER OF THE PETITION OF
Thomas Histed and others, pursuant to
section 20 of "The Municipal Act, R.
S. O. 1927, C. 233" for annexation to
the City of Hamilton of that part of
the Township of Barton hereinafter 20
mentioned and described.

UPON THE APPLICATION OF THE above mentioned Petitioners and upon reading the Petition of the Applicants herein filed with the Board, and the resolution of the Council of the Corporation of the City of Hamilton, passed on the 29th day of January, 1929, declaring the expediency of such annexation upon the terms mentioned in said resolution, and upon hearing representatives of the said Petitioners and what was alleged by counsel on behalf of the Corporation of the City of Hamilton, the Township of Barton, the County of Wentworth, the Board of Education of the City of Hamilton and the Trustees of the School Section No. 3 of the Township of Barton, and reading the consents filed herein, and public notice of the hearing having been given as directed by the Board:

THIS BOARD doth Order and Proclaim that the portion of the Township of Barton, in the County of Wentworth, described as follows:

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Barton, in the County of Wentworth, in the Province of Ontario, being composed of all of lot 13 in the Fourth Concession and parts of lots 12, 13, 14 and 15 in the Fourth and Fifth Concessions of the said Township of Barton, and part of the road allowance between lots 15 and 16 in the Fourth and Fifth Conces- 40

sions of the said Township, all of which may be more particularly described as follows, that is to say:

COMMENCING at the intersection of the southerly limit of Concession Street with the division line between lots 65 and 66 between Salem Avenue and Harvard Avenue, according to the plan of Mount Royal Subdivision.

10 THENCE southerly along said division line between lots 65 and 66 and along the rear line or division line between the lots facing on Salem and Harvard Avenues respectively in said Mount Royal Sub-division and continuing southerly in a straight line along the production of said line to a point 100'0" south of the south limit of Queensdale Avenue.

THENCE easterly on a line parallel with and distant 100' southerly at right angles from the south limit of Queensdale Avenue to a point in the northerly production of a straight line drawn half-way between East 13th and East 14th Street, and parallel with same.

THENCE southerly in a straight line to and along said line drawn half-way between East 13th and East 14th Streets and along the southerly production thereof to a point 100'0" south of the south limit of Fennell Avenue.

20 THENCE westerly along a line parallel with and distant one hundred feet southerly at right angles from the southerly limit of Fennell Avenue to an intersection with the westerly limit of the road allowance between lots 14 and 15 in the Fifth Concession of the said Township of Barton.

THENCE southerly along the said westerly limit of the road allowance between lots 14 and 15 a distance of five feet (5'0").

THENCE westerly along a line parallel with the said southerly limit of Fennell Avenue, and distant one hundred and five feet (105'0") measured southerly at right angles therefrom to an intersection with the westerly limit of the road allowance between lots 15 and 16 in the Fifth Concession of the said Township of Barton.

30 THENCE northerly along the said westerly limit of the road allowance between lots 15 and 16 in the Fifth and Fourth Concessions of the said Township to its intersection with the southerly limit of the City of Hamilton.

THENCE easterly along the southerly limit of the City of Hamilton in all its winding to the place of beginning, as shown on the plan attached hereto, be and the same is hereby annexed to the City of Hamilton and the said annexation shall be deemed to have taken effect on and from the 1st day of January, 1929, upon and subject to the following terms and conditions, namely:

40 1. That the taxes, assessments, rents, water, school and other rates in respect of the said annexed district to be levied by the City of Hamilton in respect of the said territory, shall for the year 1929 and thereafter belong to "The Corporation of the City of Hamilton", and "The Board of Education for the City of Hamilton", respectively, and shall be the same, and payable at the same time and in the same manner as taxes, assessments, rents, water, school and other rates, levied and raised from time to time on the property within the old boundaries, of the city

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 13.
Order of The
Ontario Rail-
way and
Municipal
Board,
28th Febru-
ary, 1929.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 13.

Order of The
Ontario Rail-
way and
Municipal
Board,
28th Febru-
ary, 1929.

—continued

as they existed on the 1st day of January, 1891, and the assessment of the said territory by the city shall, for the year 1929, and thereafter, be on the same basis and made at the same time and in the same manner as in the said old boundaries of the city, except that the assessment by the Corporation of the City of Hamilton of the said territory for the year 1929 may be taken by the City Assessors at any time after the date of this Order.

2. All taxes imposed by the Township of Barton upon the annexed district for the year 1928 and any and all arrears of taxes prior thereto owing in the said district shall belong to the Township of Barton. 10

3. The City of Hamilton shall pay to the Township of Barton on the 1st day of July, 1929, the sum of \$1400.00 in full of all expenditures made and expenses and liabilities incurred by the Township, between the 31st day of December, 1928, and the date of this Order, for and in respect of the said annexed district.

4. The Corporation of the City of Hamilton shall pay to the Trustees of School Section Number 3 of the Township of Barton on the 1st day of July, 1929, the amount of all expenditures made and debts incurred by the said Trustees from the 1st day of January, 1929, to the 28th day of February, 1929, inclusive, in connection with the schools in the said annexed area. 20

5. The Corporation of the Township of Barton shall forthwith prepare and furnish to the Corporation of the City of Hamilton a special collector's roll showing all arrears of taxes or special rates assessed against the lands in the annexed area up to the 31st day of December, 1928, and the persons assessed therefor.

6. The Corporation of the Township of Barton shall up to and including the 31st day of December, 1929, have the right to collect all such arrears of taxes to the 31st day of December, 1928, owing in the said annexed area according to the said special collector's roll including the right to distrain for non-payment of such arrears or, if necessary, the right to sell the said lands, if any, for non-payments of such arrears as fully and effectually as if the lands were still within the limits of the Township of Barton. After the 31st day of December, 1929, the Corporation of the City of Hamilton shall collect any and all such arrears of taxes owing up to the 31st day of December, 1928, and which might still be owing in the said annexed area according to said special collector's roll, and shall have the right to distrain for non-payment of such arrears, and, if necessary, the right to sell the said lands, if any, for non-payment of such arrears as fully and effectually as if the said taxes had been assessed and levied by the Corporation of the City of Hamilton, but the proceeds of the collection of such arrears or any part of the same after deducting therefrom the proper costs and expenses in connection with the collection of the same shall be repaid by the Corporation of the City of Hamilton to the Corporation of the Township of Barton quarterly on the 1st days of April, July, October and January, provided that the said Corporation of the City of Hamilton shall proceed to collect the said arrears of taxes 30 40

shown on said special roll in the same manner as if it had assessed and levied the same; and for that purpose the said Corporation shall have all the rights and powers conferred upon municipalities by The Assessment Act or other Act in force regarding the collection of arrears of taxes in the annexed area, but the City Corporation shall not be responsible to the Corporation of the Township of Barton for any such arrears of taxes which it may be unable to collect. When any of the taxes of the Township of Barton against any of the lands in the area hereby annexed are in arrear for a period of four years, such lands against which the taxes are

10 so in arrear shall be put up for sale by tax sale.

7. The Corporation of the Township of Barton shall indemnify and save harmless the Corporation of the City of Hamilton from all loss, costs, charges and expenses arising from any act or omission of the Township of Barton or their officials or servants in connection with the Special Roll.

8. The Township of Barton shall at all reasonable times allow the Corporation of the City of Hamilton, its servants and agents access to the assessment rolls of the said portion of the said Township of Barton, and to all local improvement by-laws and local improvement assessment rolls, and also all plans, surveys and maps applicable to the said portion of the

20 said Township for the purpose of making copies of the same.

9. All rights, title and interest of the Township of Barton, and the County of Wentworth in and to the lands in the said area including the highways and streets in said area together with any and all right, title and interest in any franchises, or agreements heretofore given or made respecting the said highways and streets shall vest in the Corporation of the City of Hamilton.

10. There shall be an adjustment of the assets and liabilities of the Hydro-Electric Commission of the Township of Barton which shall be subject to the approval of the Hydro-Electric Power Commission of Ontario at the present actual value, and "The Hydro-Electric Power Commission of Ontario" shall be the sole arbiter as between "The Hydro-Electric Commission of the Township of Barton" and the "Hydro-Electric Commission of the City of Hamilton."

11. Where any work heretofore has been constructed in the said district and such work is defective or insufficient, the Corporation of the City of Hamilton may proceed with the construction of required works under the provisions of the Local Improvement Act, notwithstanding the lifetime of the first mentioned work has not expired.

12. The residents of the district to be annexed shall be entitled to water from Hamilton Waterworks upon the same terms and conditions as the residents of Hamilton.

13. The said annexed territory shall form part of Ward No. 2 of the said city.

14. Notwithstanding anything hereinbefore contained all adjustments pursuant to the provisions of Section 38 of "The Municipal Act", Section 37 of "The Public Schools Act" and "The Housing Adjustment

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 13.
Order of The
Ontario Rail-
way and
Municipal
Board,
28th Febru-
ary, 1929.

—continued

Act, 1927", Statutes of Ontario 17 Geo. V. Chapter 74, shall be made as of the 1st day of January, 1929, the date the annexation is deemed to have taken effect.

15. In the adjustment of the assets and liabilities as between the Township of Barton and the City of Hamilton, such adjustment shall be based on the Township assessment for the year 1928, as finally revised, and the Township assessment of the district annexed—the adjustment between the city and the county to be based upon the Township's equalized assessment—the adjustments between the Township, the county and the school section respecting the debenture debts to be made as of the 1st January, 1929. 10

16. THIS ORDER shall come into force on the 28th day of February, 1929.

(Signed) C. R. McKEOWN,
Chairman.

(SEAL)

Certified a true copy.

S. H. KENT, *City Clerk.* (SEAL)

Part Exhibit 63.

(Defendant's Exhibit)

Letter, City Engineer, to Dominion Natural Gas Company, Limited. 20

CITY ENGINEER'S OFFICE

Hamilton, Ont., Apr. 5/29.
Refer to File No.
Attention of C. N. Stewart.

Dominion Natural Gas Co.,
Fennell St.,
City.

Dear Sirs:—

Re: Your application for Permission to Lay Trans-
mission Line on Paradise Rd. & Other Streets. 30

I beg to enclose herewith copy of letter from the City Solicitor, with reference to your application, and would be glad if you would supply him with the information which he desires.

I might advise that this matter was considered by the Works Committee at its meeting on Tuesday last, and was referred to the City Solicitor for his report.

Yours very truly,

W. L. McFAUL,
City Engineer.

CNS/AM

ENC.

Note: Exhibit 63 also contains: (1) 14 letters (all dated in 1929) 40
of a similar nature to the letter of 30th April, 1928, in Ex. 59 (Record, p. 312), and (2) 11 letters (all dated in 1929) from City Engineer giving notice intention to pave—in form similar to Ex. 29 (Record, p. 236). Further letters of April 5, 1929, and October 19, 1929, are printed in the Record pages 329 and 335.

Part Ex. 63.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
5th April,
1929.

Part Exhibit 63.

(Defendant's Exhibit)

Letter, F. R. Waddell, to C. N. Stewart, Secretary, Board of Works.

(Copy)

CITY OF HAMILTON

LEGAL DEPARTMENT

Hamilton, Ont., Apr. 5, 1929.

Re: Application of Dominion Natural Gas Co. Limited
for permission to lay transmission line—Paradise Road
to C. P. R. Tracks.

10

Dear Sir:

On the 4th inst., I received your letter enclosing application of "The Dominion Natural Gas Co. Limited" to the City Engineer, dated 30th March, 1929, for permission to lay transmission line on Paradise Road.

I would respectfully suggest that the Company be asked to furnish the City Corporation with plans showing location of pipes, etc., and to advise the City Corporation for what purpose the transmission line will be used.

Mr. C. N. Stewart,

Yours truly,

20

Sec'y. Board of Works,
Hamilton, Ont.

(Sgd.) F. R. WADDELL.

Part Exhibit 64.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

The City Engineer,
City Hall,
Hamilton, Ontario.

April 17, 1929.

Dear Sir,

We respectfully request permission to lay the following lines in the
30 City of Hamilton:

A 2" main on the east side of Ottawa St., from the south
side of Maple Ave. to the south side of Main St.

A 2" main on the south side of Cumberland Ave. from
the west side of Edgemont Ave. to the east side London
St.

Yours very truly,

DOMINION NATURAL GAS COMPANY, LIMITED,
Hamilton District.

CMS:GF

General Manager.

40

Note: This exhibit also contains 14 other letters of a similar nature
(all dated in 1929) and other letters printed or described elsewhere in the
Record.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 63.
Letter, F. R.
Waddell to
C. N. Stewart,
Secretary
Board of
Works,
5th April,
1929.

Part Ex. 64.
Letter, Dom-
inion Natural
Gas Company
Company
Limited to
City Engineer,
17th April,
1929.

Exhibit 78.

(Defendant's Exhibit)

Letter, City Engineer, to Board of Control.

CITY ENGINEER'S OFFICE

Hamilton, Ont., Aug. 14, 1929.

Mr. Chairman and Members,
Board of Control.

Gentlemen:—

I beg to attach herewith list of gas mains for which the Dominion Natural Gas Company have applied, together with the locations for same 10 as determined by a survey on the ground and from information available at this office.

Kindly instruct me whether I am to issue these permits or not.

Respectfully submitted,

W. L. McFAUL,
City Engineer.

WLMcF/EM.

Encl.

August 10, 1929.

Balmoral Ave., west side, from the north side of Dunsmure Rd. to a 20 point 85'0" north of the north walk of Dunsmure Rd., a 2" gas main to be laid 10'0" west of the west walk; then 1'6" west of the west walk to the south side of Cannon St.

Balmoral Ave., east side, from the north side of Dunsmure Rd. to the south side of Roxborough Ave., a 2" gas main to be laid 5'0" east of the east walk; then 1'6" east of the east walk to the south side of Cannon St.

Grosvenor Ave., west side, from the north side of Dunsmure Rd. to a point 88'0" north of the north curb of Dunsmure Rd., at 2" gas main to be laid 11'0" west of the west walk; then 2'6" west of the west walk to the south side of Cannon St. 30

Grosvenor Ave., east side, from the north side of Dunsmure Rd. to the south side of Cannon St., a 2" gas main to be laid 2'6" east of the east walk.

Ottawa St., west side, from a point 80'0" north of the north curb of Dunsmure Rd., to the south side of Roxborough Ave., a 2" gas main to be laid 3'0" west of the west walk; then running from a point 3'6" west of the west walk at Roxborough Ave. to a point 2'6" west of west walk at Cannon St.

Ottawa St., east side, from the north side of Dunsmure Rd. to the south side of Cannon St., a 2" gas main to be laid 5'0" east of the east 40 curb. In the boulevard.

London St., west side, from a point 75'0" north of the north curb of

Dunsmure Rd. to the south side of Cannon St., a 2" gas main to be laid 2'0" west of the west walk.

London St., east side, from the north side of Dunsmure Rd. to the south side of Cannon St., a 2" gas main to be laid 2'6" east of the east walk.

Edgemont St., west side, from the south side of Roxborough Ave. to the south side of Cannon St., a 2" gas main to be laid 2'6" west of the west walk.

10 Edgemont St., east side, from the south side of Roxborough Ave. to the south side of Cannon St., a 2" gas main to be laid 2'0" east of the east walk.

Park Row Ave., west side, from the south side of Roxborough Ave., to the south side of Cannon St., a 2" gas main to be laid 2'0" west of the west walk.

Park Row Ave., east side, from the south side of Roxborough Ave. to the south side of Cannon St., a 2" gas main to be laid 2'0" east of the east walk.

20 Province St., west side, from the south side of Roxborough Ave. to the south side of Cannon St., a 2" gas main to be laid 3'0" west of the west walk.

Frederick Ave., west side, from the north side of Roxborough Ave. to the south side of Cannon St., a 2" gas main to be laid 2'0" west of the west walk.

Frederick Ave., east side, from the north side of Roxborough Ave. to the south side of Cannon St., an 8" gas main to be laid 3'0" east of the east walk.

30 Houghton Ave., west side, from the north side of Main St. to the south side of Dunsmure Rd., a 2" gas main to be laid 4'6" west of the west walk; then 9'0" west of the west walk, from the south side of Dunsmure Rd. to the north side of Dunsmure Rd., then an 8" gas main to be laid from the north side of Dunsmure Rd. to the north side of Roxborough Ave., 4'6" west of the west walk.

Houghton Ave., west side, from the north side of Main St. to the north side of Roxborough Ave., a 2" gas main to be laid 3'6" east of the east walk.

Wexford Ave., west side, from the north side of Main St., to the north side of Roxborough Ave., a 2" gas main to be laid 3'6" west of the west walk.

40 Wexford Ave., east side, from the north side of Main St. to the north side of Roxborough Ave., a 2" gas main to be laid 2'6" east of the east walk.

Robins Ave., west side, from the north side of Roxborough Ave. to the south side of Cannon St., a 2" gas main to be laid 2'0" west of the west walk.

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 78.
Letter, City
Engineer to
Board of
Control,
14th August,
1929.

—continued

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 78.
Letter, City
Engineer to
Board of
Control,
14th August,
1929.

—continued

Robins Ave., east side, from the north side of Roxborough Ave. to the south side of Cannon St., a 2" gas main to be laid 2'0" east of the east walk.

Huxley Ave., west side, from the north side of Main St. to the south side of Dunsmure Rd., a 2" gas main to be laid 2'0" west of the west walk; then 1'0" west of the west walk to the north side of Dunsmure Rd., then 2'0" west of the west walk to the north side of Dunsmure Rd.; then 2'0" west of the west walk to the north side of Roxborough Ave.

Huxley Ave., east side, from the north side of Main St. to the north side of Roxborough Ave., a 2" gas main to be laid 2'6" east of the east walk. 10

Tuxedo Ave., west side, from the north side of Main St. to the north side of Roxborough Ave., a 2" gas main to be laid 2'6" west of the west walk.

Tuxedo Ave., east side, from the north side of Main St. to the north side of Roxborough Ave., a 2" gas main to be laid 2'6" east of the east walk.

Kenilworth Ave., west side, from the south side of Main St. to the north side of Dunsmure Rd., a 6" gas main to be laid 3'6" west of the west curb; then a 2" gas main to be laid 3'6" west of the west curb to the north side of Roxborough Ave.; then 3'0" west of the west curb to the north side of Cambridge Ave.; then 3'6" west of the west curb, to the north side of Cannon St. 20

Dunsmure Rd., north side, from the east side of Graham Ave. to the west side of Houghton Ave., an 8" gas main to be laid 3'0" north of the north walk; then a 6" gas main to be laid 3'0" north of the north walk to the west side of Kenilworth Ave.

Roxborough Ave., north side, from the east side of London St. to the west side of Park Row Ave., a 2" gas main to be laid 2'0" north of the north walk. 30

Roxborough Ave., north side, from the east side of Graham Ave. to the west side of Frederick Ave., a 2" gas main to be laid 2'0" north of the north walk.

Roxborough Ave., north side, from the east side of Frederick Ave. to the west side of Kenilworth Ave., a 4" gas main to be laid 2'0" north of the north walk.

Roxborough Ave., south side, from the west side of Graham Ave. to the west side of Houghton Ave., a 2" gas main to be laid 2'0" south of the south walk.

Roxborough Ave., south side, from the east side of Houghton Ave. to the west side of Wexford Ave., a 2" gas main to be laid 2'0" south of the south walk. 40

Cambridge Ave., south side, from the east side of Frederick Ave. to the west side of Robins Ave., a 2" gas main to be laid 2'0" south of the south walk.

Cambridge Ave., south side, from the east side of Robins Ave. to the west side of Kenilworth Ave., a 2" gas main to be laid 2'0" south of the south walk.

Cambridge Ave., north side, from the east side of Frederick Ave. to the west side of Robins Ave., a 2" gas main to be laid 2'0" north of the north walk.

10 Cambridge Ave., north side, from the east side of Robins Ave. to the west side of Kenilworth Ave., a 2" gas main to be laid 2'0" north of the north walk.

Cannon St., south side, from the east side of Rosslyn Ave. to the east side of London Ave., a 4" gas main to be laid 1'6" south of the south walk; then 2'0" south of the south walk, to the west side of Edgemont Ave.; then 1'0" south of the south walk to the east side of Edgemont Ave.; then 1'6" south of the south walk to the west side of Frederick Ave.; then 0'6" south of the south walk to the east side of Frederick Ave.; then a 2" gas main to be laid 1'6" south of the south walk to the west side of Kenilworth Ave.

20 Park Row Ave., west side, from the south side of Cannon St. to the south side of Edinburgh Ave., a 4" gas main to be laid 1'6" west of the west walk.

Park Row Ave., east side, from the north side of Cannon St., to the south side of Edinburgh Ave., a 2" gas main to be laid 1'6" east of the east walk.

L.S.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 78.
Letter, City
Engineer to
Board of
Control,
14th August,
1929.

—continued

Part Exhibit 74.

(Defendant's Exhibit)

30 **Letter, Dominion Natural Gas Company, Limited, to City Engineer.**

DOMINION NATURAL GAS COMPANY

Oct. 16th, 1929.

City Engineer,
City Hall,
Hamilton, Ontario.

Dear Sir: —

On May 14th we requested permits to lay mains on a number of streets east of Sherman Avenue, in the City of Hamilton.

40 Up to date, we have not yet received these permits. We are hereby giving you notice that we intend to start Thursday morning laying mains on the following locations in Hamilton:—

A 2" main on the west side of Balmoral from the north side of Duns-mure Road to the north side of Cannon Street.

Part Ex. 74.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
16th Octo-
ber, 1929.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 74.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
16th Octo-
ber, 1929.

—continued

A 2" main on the east side of Balmoral from the north side of Duns-
mure Road to the south side of Cannon Street.

I am writing you this letter to let you know that we intend to go on
with our main extension, and also, in case you think it necessary to have
an inspector on this work, which inspector, of course, we would expect to
pay as usual.

Yours very truly,

DOMINION NATURAL GAS COMPANY, LIMITED,

Hamilton District,

(Sgd.) CHARLES M. SIEGER,

General Manager.

10

Part Exhibit 74.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

Dominion Natural Gas Co., Ltd.

Oct. 18th, 1929.

City Engineer,
City Hall,
Hamilton, Ontario.

Dear Sir: —

20

As we have not as yet received permits, which we requested on May
14th, 1929, we are hereby giving you notice, that we intend to begin Mon-
day morning laying mains on the following locations in Hamilton:—

A 2" main on the west side of London Avenue, from the north side
of Dunsmore Road to the south side of Cannon Street.

A 2" main on the east side of London Avenue from the north side of
Dunsmore Road to the south side of Cannon Street.

I am writing this letter to let you know that we intend to go on with
our main extension, and also, in case you think it necessary to have an
inspector on this work. This inspector, of course, we would expect to 30
pay as usual.

Yours very truly,

DOMINION NATURAL GAS COMPANY, LTD.

Hamilton District,

(Sgd.) CHARLES M. SIEGER,

General Manager.

Part Exhibit 64.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

Oct. 18, 1929.

City Engineer,
City Hall,
Hamilton, Ontario.

Dear Sir:—

10 As we have not as yet received permits, which we requested on May 14th, 1929, we are hereby giving you notice, that we intend to begin Monday morning laying mains on the following locations in Hamilton:—

A 2" main on the west side of London Avenue, from the north side of Dunsmore Road to the south side of Cannon Street.

A 2" main on the east side of London Avenue, from the north side of Dunsmore Road to the south side of Cannon Street.

I am writing this letter to let you know, that we intend to go on with our main extension, and also, in case you think it necessary, to have an inspector on this work. This inspector, of course, we would expect to pay as usual.

20

Yours very truly,
DOMINION NATURAL GAS COMPANY, LIMITED,
Hamilton District,

General Manager.

CMS/HA.

Note: This exhibit also contains five other letters of a similar nature (all dated in 1929) and other letters printed or described elsewhere in the Record.

Part Exhibit 63.

(Defendant's Exhibit)

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

CITY ENGINEER'S OFFICE

Hamilton, Ont., Oct. 19/29.

Refer to File No. 1000-9.

Attention of W. L. McF.

The Dominion Natural Gas Company,
City.

Att. C. M. SIEGER, ESQ., General Manager.

Dear Sir:—

40 In reply to your letter of the 16th inst. re your application last spring which was not granted by the Board of Control, and further application

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 64.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
18th Octo-
ber, 1929.

Part Ex. 63.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
19th Octo-
ber, 1929.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 63.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
19th Octo-
ber, 1929.

for 2" lines on Balmoral Avenue, I beg to advise that I am instructed not to issue these permits, and instruct you herewith not to commence the work until you receive the permits.

Kindly govern yourself accordingly.

Yours very truly,
W. L. McFAUL,
City Engineer.

WLMcF/EM.

—continued

Part Ex. 74.
Letter, City
Engineer to
Board of
Control,
19th Octo-
ber, 1929.

Part Exhibit 74.

(Defendant's Exhibit)

10

Letter, City Engineer, to Board of Control.

Oct. 19, 1929.

Mr. Chairman and Members,
Board of Control.

Gentlemen:—

I am attaching herewith copy of application of the Dominion Natural Gas Co., Ltd., for the construction of mains as noted in their letter, and also advising that they intend to start work on the former application which your Board decline to approve. I have notified the Dominion Natural Gas Co. not to start work until the permits are issued.

20

Kindly instruct me what further action you desire me to take in this matter.

I am also attaching copy of application of the 18th inst. for mains on London Street.

Respectfully submitted,

City Engineer.

WLMcF/EM.
2 encls.

Ex. 66.
Letter from
H. Barr to
C. M. Sieger,
2nd Novem-
ber, 1929.

Exhibit 66.

(Defendant's Exhibit)

30

Letter from H. Barr to C. M. Sieger.

BOARD OF CONTROL

Hamilton, November 2nd, 1929.

C. M. Sieger, Esq.,
General Manager, Dominion Natural Gas Co.,
939 King St. East,
City.

Dear Sir:—

Replying to your letter of the 16th October last to our City Engineer, and referring also to your letter to him of the 14th May last, re

proposed construction of gas mains as noted in your letters, and which letters were duly forwarded by the City Engineer to the Board of Control, I am now directed by the Board of Control to request that you continue to file applications for laying of mains with the City Engineer, together with plans showing locations, such locations to be at least six feet from existing gas mains; further information may be obtained from the City Engineer.

Yours truly,
H. BARR,
Secretary.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Ex. 66.
Letter from
H. Barr to
C. M. Sieger,
2nd November,
1929.

—continued

10

Exhibit 77.

(Defendant's Exhibit)

Letter, H. Barr, to W. L. McFaul.

THE BOARD OF CONTROL,

Hamilton, Can., November 6th, 1929.

W. L. McFaul, Esq.,
City Engineer,
City.

Dear Sir:—

20 I beg to inform you that I have, by direction of the Board of Control, advised the General Manager of the United Gas & Fuel Co. to furnish an up-to-date plan of their general distributing system, and to file with you applications with location plans of any new mains to be 6 feet from existing gas mains. Also that under instructions from the Board, I have advised Mr. Sieger, General Manager of the Dominion Natural Gas Company, to continue to make applications to you for laying of gas mains with plans showing their locations, which are to be at least 6 feet from existing gas mains; no permits to be issued in the case of the Dominion Company but the usual permits in the case of the United Gas & Fuel
30 Company.

Yours truly,
(Sgd.) H. BARR,
Secretary.

Ex. 77.
Letter, H.
Barr to W.
L. McFaul,
6th November,
1929.

Part Exhibit 64.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

November 23rd, 1929.

City Engineer,
City Hall,
Hamilton, Ont.

Dear Sir:—

Within the next few days we are connecting the following services to our mains:—

J. Copper	1049 Cannon	Owens to Curb	10
J. L. Moore	1124 Cannon	Owens to Curb	
F. V. Hosking	1230 Cannon	Owens to Curb	
Mrs. J. Leeson	1234 Cannon	Owens to Curb	
Mrs. W. Hindman	1236 Cannon	Owens to Curb	
Mrs. J. Wynn	1248 Cannon	Owens to Curb	
Mrs. W. Sankey	1250 Cannon	Owens to Curb	
W. H. Bainbridge	1260 Cannon	Owens to Curb	
Mrs. R. A. Morris	140 Ottawa N.	Owens to Curb	
Mrs. S. Thompson	140 Ottawa N.	Owens to Curb	20
Mrs. M. McKay	174½ Ottawa N.	Owens to Curb	
Harry Wilson	176 Ottawa N.	Owens to Curb	
Mrs. T. Hodgkins	178½ Ottawa N.	Owens to Curb	
Mrs. W. Lang	193 Roxborough	Owens to Curb	
Mrs. H. Richardson	195 Roxborough	Owens to Curb	
W. Cochrane	233 Roxborough	Owens to Curb	
Mrs. T. Cannon	54 Frederick	Owens to Curb	
E. H. Taylor	104 Grosvenor N.	Owens to Curb	
Fred Sartaim	136 Grosvenor N.	Owens to Curb	
W. F. Breen	143 Grosvenor N.	Owens to Curb	30
Alex Gibb	164 Grosvenor N.	Owens to Curb	
R. J. Spicer	170 Grosvenor N.	Owens to Curb	
Mrs. A. Vickers	176 Grosvenor N.	Owens to Curb	
J. D. Shaw	180 Grosvenor N.	Owens to Curb	
J. C. Sinker	127 Province N.	Owens to Curb	
F. Foulds	135 Province N.	Owens to Curb	
R. W. Ward	161 Province N.	Owens to Curb	
Robt. Moat	14 Province S.	Owens to Curb	
F. N. Brotherton	65 Province S.	Owens to Curb	
Wm. Summer	125 Park Row N.	Owens to Curb	40

Respectfully,

DOMINION NATURAL GAS COMPANY, LIMITED,
Hamilton District.

Note: This exhibit also contains one other letter dated Nov. 6, 1929, and other letters printed or described elsewhere in the Record.

Exhibit 68.

(Defendant's Exhibit)

Letters and Notices from City Engineer.**Note:** This exhibit contains:—

- (1) Forty-one letters (all dated in 1930) of a similar nature to the letter of 30th April, 1928, in Ex. 59 (Record, p. 312), and one relating to a gas regulator station.
- (2) Nine notices of paving similar to Ex. 29. (Record, p. 236.)
- (3) Other letters from City Engineer to Defendant Company giving notice of street names and numbers.

*In the
Supreme Court
of Ontario*Exhibits.
Ex. 68.
Letters and
Notices from
City Engineer,
1930.**Exhibit 69.**

(Defendant's Exhibit)

Permits.

Note: This exhibit contains 203 permits, some relating to mains and some to services (all dated in 1930) on same form as Ex. 47 (Record, p. 291), and one permit to cut pavement on same form as Ex. 51 (Record, p. 305).

Ex. 69.
Permits,
1930.**Part Exhibit 67.**

(Defendant's Exhibit)

20 Letter, Dominion Natural Gas Company, Limited, to City Engineer.

February 4, 1930.

The City Engineer,
City Hall,
Hamilton, Ont.

Dear Sir:—

We are enclosing a map showing proposed gas lines we plan to install as soon as the weather conditions permit. Will you kindly give us locations for mains on the following streets:—

- A 4" main crossing Barton St., on the west side of Balmoral Ave.
- 30 A 4" main on the north side of Barton St., from the west side of Balmoral to the east side of Rosslyn.
- A 4" main on the east side of Rosslyn Ave., from the north side of Barton to the south side of Dalhousie.
- A 2" main on the south side of Dalhousie Ave., from the east side of Rosslyn to the west side of Ottawa.
- A 2" main on both sides of Dalkeith Ave., from the east side of Rosslyn to the west side of Ottawa.

Part Ex. 67.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
4th Febru-
ary, 1930.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 67.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
4th Febru-
ary, 1930.

—continuu

A 2" main on both sides of Craigmiller Ave., from the east side of Rosslyn to the west side of Ottawa.

A 2" main on both sides of Cluny Ave., from the east side of Rosslyn to the west side of Ottawa.

I am writing this letter at this time in order to give you ample time to work up the locations, and also, in case you think it necessary to have an inspector on this work. This inspector, of course, we would expect to pay as usual.

Yours very truly,
DOMINION NATURAL GAS COMPANY, LIMITED
Hamilton District.

10

General Superintendent.

CFH/F.

Note: This exhibit also contains three letters of a similar nature (all dated in 1930) and other letters printed or described elsewhere in the Record.

Ex. 70.
Letter, T.
Simpson
to W. L.
McFaul,
14th March,
1930.

Exhibit 70.

(Defendant's Exhibit)

Letter, T. Simpson, to W. L. McFaul.

Letterhead of
LEE, SIMPSON & MURGATROYD,
Barristers and Solicitors, Etc.

20

Hamilton, Ont., March 14, 1930.

W. L. McFaul, Esq.,
City Engineer,
City Hall,
Hamilton, Ontario.

Dear Sir:—

My clients, the Dominion Natural Gas Company, Limited, have instructed me to get in touch with you with the view of endeavouring to arrange the question of the issue of permits by the city for the laying of gas lines by their company. 30

For some time prior to the fall of 1929, permits were applied for by the company and regularly issued by the city. About that time, for some unknown reason, the Board of Control decided that the city should issue no more permits to this company. They intimated, however, that the company would not be interfered with in the laying of their pipes, and asked that they continue to apply for permits when they contemplated laying lines and to file plans of their proposed locations. The company

has continued to apply for permits when they contemplated laying lines and has filed plans specifying in detail the proposed locations of their lines.

While my clients feel they have every right to proceed in this manner, still it is not entirely satisfactory to them, neither is it satisfactory in so far as the city is concerned. The company has always heretofore had most harmonious relations with the city, and it is their desire that those relations continue the same in the future. They are also anxious to fulfill any obligations which have been imposed upon them.

10 During recent months, the company has filed with your department applications for permits to lay lines on several different streets in the city. They now have applications for gas services from a large number of people on these different streets. It is their desire as soon as the weather will permit, to proceed to lay these lines and supply gas to the many citizens who have already applied for their gas. They also desire to have permits issued by the city authorizing the laying of these lines.

I know of no good reason why these permits should not be issued by the city. On the contrary, there are many good reasons why these should be issued. The franchise of my clients provides for the issue of
20 these permits, and the city is entitled to have their inspectors at the expense of the company. There are a large number of citizens who desire the gas piped into their homes who cannot get this gas until these lines are laid. In addition to this, the company will employ about two hundred men in carrying out this work. This will undoubtedly materially assist in reducing unemployment in the city as soon as the weather opens.

I should, therefore, be glad if you would take the matter up at once, and if you so desire, should be glad to meet you and discuss the matter with you.

30

Yours very truly,
(Sgd.) T. SIMPSON,

THS/EA

Part Exhibit 75.

(Defendant's Exhibit)

Letter, City Engineer, to Board of Control.

March 17th, 1930.

Mr. Chairman and Members,
Board of Control.

Gentlemen:—

40 I beg to attach herewith copy of letter from Messrs. Lee, Simpson & Murgatroyd re application of the Dominion Natural Gas Company. I would ask for your instructions in connection with this letter.

In my opinion, it is advisable that at least an inspector be put on this work chargeable to the company, and for the purpose of our records,

*In the
Supreme Court
of Ontario*

Exhibits.
Ex. 70.
Letter, T.
Simpson
to W. L.
McFaul,
14th March,
1930.

—continued

Part Ex. 75.
Letter, City
Engineer to
Board of
Control,
17th March,
1930.

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 75.
Letter, City
Engineer to
Board of
Control,
17th March,
1930.

permits would be the most satisfactory method of keeping track of this work.

I would be pleased to have your further instructions in the matter.
Respectfully submitted,

City Engineer.

WLMcF/EM
Encl.

—continued

(**Note:** Attached to the above letter is a letter of Messrs. Lee, Simpson & Murgatroyd to the City Engineer, dated March 14, 1930. See 10 Exhibit 70, Record, p. 340.)

Ex. 76.
Letter,
H. Barr
to W. L.
McFaul,
1st April,
1930.

Exhibit 76.

(Defendant's Exhibit)

Letter, H. Barr to W. L. McFaul.

BOARD OF CONTROL

Hamilton, Ontario, April 1st, 1930.

W. L. McFaul, Esq.,
City Engineer.

Dear Sir:—

Re: Dominion Natural Gas Co.

20

The Board of Control at its meeting yesterday considered an opinion from the City Solicitor in the question of the Dominion Company laying gas mains in that portion of the city formerly in the Township of Barton wherein the company had franchise rights, and you are authorized by the Board to issue permits to the company upon their filing applications and plans showing proposed locations. Inspectors to be appointed on this work chargeable to the company.

Yours very truly,
(Sgd.) H. BARR,

Secretary.

30

DC.

Part Exhibit 67.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

May 9th, 1930.

The City Engineer,
City Hall,
Hamilton, Ont.

Dear Sir:—

10 We respectfully request permission to build an underground gas regulator station at the north-west corner of Vansitmart and Cope Streets. A drawing of the proposed pit is attached, and you will find it is similar to the ones you built for us at Graham Avenue and King Street East, also Campbell Avenue and Belmont Avenue.

A sketch of a proposed location is also attached and we will appreciate a location as near as possible to this point.

If permission is granted for this station, we would appreciate the city building it as in the past.

Yours very truly,
DOMINION NATURAL GAS COMPANY, LIMITED,
Hamilton District,

20

CMS/GF.

General Manager.

Note: This exhibit also contains other letters printed or described elsewhere in the Record.

Part Exhibit 67.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

November 7, 1930.

City Engineer,
City Hall,
Hamilton, Ontario.

30 Dear Sir:—

We respectfully request permission to run a 2" gas line on the north side of Dunsmure Avenue from the west side of Balmoral Avenue to the east side of Kensington Avenue.

Very truly yours,
CFH/EA. DOMINION NATURAL GAS COMPANY, LIMITED.

Note: This exhibit also contains 26 letters of a similar nature (all dated in 1930) and other letters printed or described elsewhere in the Record.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 67.
Letter, Dominion Natural Gas Company Limited to City Engineer, 17th March, 1930.

Part Ex. 67.
Letter, Dominion Natural Gas Company Limited to City Engineer, 7th November, 1930.

*In the
Supreme Court
of Ontario*

Exhibit 73.

(Defendant's Exhibit)

Permit.

Exhibits.
Ex. 73.
Permit,
1931.

Note: This exhibit contains 60 permits, some relating to mains, and some to services, all dated in 1931, on same form as Ex. 47 (Record, p. 291), and one permit to cut pavement on same form as Ex. 51 (Record, p. 305).

Part Exhibit 20.

(Plaintiffs' Exhibit)

By-law No. 4168 of City of Hamilton.

10

Part Ex. 20.
By-law No.
4168 of the
City of
Hamilton,
24th March,
1931.

BY-LAW NUMBER 4168

To Authorize the Execution of an Agreement Between the Corporation of the City of Hamilton and the United Gas & Fuel Company of Hamilton, Limited.

The Municipal Council of the Corporation of the City of Hamilton enacts as follows:—

1. That the proposed agreement dated the 24th day of March, 1931, between the Corporation of the City of Hamilton, of the one part, and the United Gas & Fuel Company of Hamilton, Limited, of the other part (a true copy whereof is set out in Schedule "A" to this by-law), is hereby approved and authorized. 20

2. The Mayor and the Clerk of the corporation are hereby respectively authorized and directed to execute the said agreement and the Clerk shall affix the Corporate Seal thereto.

Passed this 24th day of March, 1931.

S. H. KENT,
City Clerk.

JOHN PEEBLES,
Mayor.

Certified a true copy,
S. H. KENT, *City Clerk.*

(SEAL) 30

Part Exhibit 20.

(Plaintiffs' Exhibit)

*In the
Supreme Court
of Ontario***Agreement Between the Corporation of the City of Hamilton and United Gas and Fuel Company of Hamilton, Limited.**Exhibits.
Part Ex. 20.
Agreement
Between The
Corporation
of the City
of Hamilton
and United
Gas and Fuel
Company of
Hamilton
Limited,
24th March,
1931.

THIS AGREEMENT made in triplicate this 24th day of March, 1931.

BETWEEN:

THE CORPORATION OF THE CITY OF HAMILTON,
(Hereinafter Called the "City"),
of the First Part,

—and—

10

THE UNITED GAS AND FUEL COMPANY OF HAMILTON, LTD.,
(Hereinafter Called the "Company"),
of the Second Part.

WHEREAS by By-law Number 400 respecting The Ontario Pipe Line Company, Limited, passed on the 26th day of September, 1904, as amended by By-law Number 443 passed on the 13th day of March, 1905, and as further amended by By-law Number 2590 passed the 29th day of November, 1921, the consent, permission and authority of the Corporation of the City of Hamilton were given and granted to The United Gas and Fuel
20 Company of Hamilton, Limited, to enter upon the streets, public squares and public grounds of the City of Hamilton and to construct, maintain and operate and repair mains and pipes for the transportation and supply of natural or manufactured gas in the said City of Hamilton, for fuel, heating and lighting purposes; and the said by-laws provided that the Company should supply gas to the City Corporation and the inhabitants thereof at the prices and upon the terms and conditions contained in the said by-laws.

AND WHEREAS the City Corporation is desirous, without, however, impairing the investment of the company, of having gas supplied to it
30 and to its inhabitants during the next ten years at a price per thousand cubic feet of gas lower than at present charged by the company.

AND WHEREAS in consideration of the covenants and agreements hereinafter entered into by and between the parties, the city has agreed to grant to the company an exclusive franchise to transport, supply and sell gas in the City of Hamilton subject to the rights, if any, of the Dominion Natural Gas Company Limited, and the Manufacturers Natural Gas Company Limited, and the Southern Ontario Gas Company Limited.

AND WHEREAS it is expedient to amend said By-law Number 2590 as hereinafter set forth.

40 NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto have agreed as follows:—

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 20.
Agreement
Between The
Corporation
of the City
of Hamilton
and United
Gas and Fuel
Company of
Hamilton
Limited,
24th March,
1931.

—continued

1. The consent, permission and authority of the Corporation of the City of Hamilton are hereby given and an exclusive franchise for a period of ten years from and after the date hereof is hereby granted to The United Gas & Fuel Company of Hamilton, Limited (except as to and to the extent of any existing rights and privileges that may now be held by the Dominion Natural Gas Company Limited under By-law Number 533 of the Township of Barton and the agreement entered into pursuant to the said by-law, and by the Manufacturers Natural Gas Company Limited under By-laws Number 586 and 807 of the City of Hamilton and the respective agreements entered into pursuant to the said by-laws, 10 and by the Southern Ontario Gas Company Limited under By-law Number 715 of the Township of Ancaster and the agreement entered into pursuant to said by-law) to conduct, distribute and supply and sell gas in the City of Hamilton and for such purpose to enter upon all streets, public squares and all lanes and other public places now or at any other time hereafter within the jurisdiction of the Council, to dig trenches and lay and bury therein and maintain, operate and repair mains and pipes of such size as the said company may require for the exclusive transportation and distribution and supply and sale of gas in the City of Hamilton during the period of ten years aforesaid for fuel, heating and lighting purposes together with the right to construct, maintain and repair 20 under the surface of such streets and public squares, lanes and public places all necessary regulators, valves, curb boxes, safety appliances and other appurtenances that may be necessary in connection with the transportation and distribution and supply of gas.

2. The City Corporation shall not, during the said period of ten years, grant any rights, licenses, privileges or franchises to any other company, firm or individual to conduct, distribute, supply or sell gas within the limits of the said City Corporation as from time to time existing during the said period, and if during the said period any company, 30 firm or individual, including the Dominion Natural Gas Company Limited or the Manufacturers Natural Gas Company Limited or the Southern Ontario Gas Company Limited or any of them or any of their respective successors or assigns shall without due license, permission and authority, conduct, distribute, supply or sell gas within the said limits or shall commence to dig trenches, lay pipes, solicit contracts for the sale of gas, or otherwise prepare to conduct, distribute, supply or sell gas within the said limits, then the company shall have the right to take such action in any court of competent jurisdiction or otherwise as it may be advised to prevent such conducting, distribution, supply or sale of gas and/or 40 to determine or to have the question determined as to whether or not the company, firm or individual (including the Dominion Natural Gas Company Limited or the Manufacturers Natural Gas Company Limited or the Southern Ontario Gas Company Limited, or any of them or any of their successors or assigns) as the case may be, has due license, permission and authority to so conduct, distribute, supply or sell gas and/or has existing rights and privileges which justify it in so doing and all the

rights of the City Corporation in the premises are hereby assigned to the company and the City Corporation agrees that this agreement shall not be effective until the Legislature of the Province of Ontario shall have enacted a statute conferring upon the company the right to take all action contemplated by the provisions of this paragraph 2 and in accordance with the intention thereof.

3. The provisions of section 1, sub-section 6 of By-law Number 2590, passed on the 29th day of November, 1921, shall be suspended during the said period of ten years, and it is agreed that during such period the
 10 company may charge the city and the inhabitants thereof for ordinary household purposes up to, but not in excess, of seventy-five cents (75c) net per thousand cubic feet, for natural gas, manufactured gas and a mixture of natural and manufactured gas, or any other kind of gas whatsoever; provided, however, that the company or the city may at any time and from time to time apply to the Ontario Railway and Municipal Board for (and the Board shall have power to make) an order increasing or decreasing the maximum amount which may be charged by the company to the city or the inhabitants thereof for ordinary household purposes, but so that the maximum amount which the company may so charge shall
 20 in no event exceed ninety cents (90c) net per thousand cubic feet for natural gas, manufactured gas, or a mixture of natural and manufactured gas, or any other kind of gas whatsoever.

In fixing the maximum amount which may be so charged by the company within the limits aforesaid, the Board shall have regard to the gross revenues of the company derived from the sale of gas, and if after deducting therefrom all proper charges (including interest on borrowed capital and provision for depreciation and income taxes, but not including in the price paid by the company for gas purchased any amount in excess of forty-five cents (45c) per thousand cubic feet) it shall appear
 30 that the company is not earning or is earning more than a fair and a reasonable return on the amount of its paid-up capital stock, then the Board shall make an order increasing or decreasing, as the case may be, the maximum amount (within the limits aforesaid) which may be so charged for ordinary household purposes to such an amount that the revenue produced from the sale of gas for ordinary household purposes charged at such an amount when added to that produced from the sale of gas for heating houses and other buildings and for industrial or commercial purposes at the rate or amount then being received by the company after deducting all proper charges as hereinbefore referred to, will
 40 enable the company to earn a return on the amount of its paid-up capital stock which in the opinion of the Board is fair and reasonable. In the event of an application by either the city or the company as herein provided for, the City Auditor shall be entitled to make an audit of the books of the company and report the result to the City Council, making special mention of any matter which may effect the interest of the city. In no event shall the company be entitled to charge for gas sold for heating houses and other buildings or for industrial or commercial purposes

*In the
Supreme Court
of Ontario*

—
Exhibits.
Part Ex. 20.
Agreement
Between The
Corporation
of the City
of Hamilton
and United
Gas and Fuel
Company of
Hamilton
Limited,
24th March,
1931.

—continued

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 20.
Agreement
Between The
Corporation
of the City
of Hamilton
and United
Gas and Fuel
Company of
Hamilton
Limited,
24th March,
1931.

—continued

a greater amount than it is entitled to charge for gas sold for ordinary household purposes.

4. Provided, however, that the said company may charge an additional five cents (05c) per thousand cubic feet over and above the prices hereinbefore set forth, the same to be taken off by way of discount on all bills paid within 14 days from presentment of said bills. Such presentment may be effectually made by delivery of such bill at the residence of the consumer or by mailing the same to his street address.

5. Nothing herein contained shall prevent the company from charging rates for gas sold for heating houses and other buildings and for industrial or commercial purposes rates lower than those charged for ordinary household purposes. 10

6. The rights and privileges granted by this agreement shall extend until the 24th day of March, 1941, and the terms, provisions and conditions of By-law Number 400 and its amending By-laws Numbers 443 and 2590 of the Council of the Corporation of the City of Hamilton are amended so as to give full effect to the provisions and amendments herein set forth, but save as herein amended shall be and remain in full force and effect and binding on the parties hereto. This agreement shall not affect the city's right to assume ownership of the rights and franchises of the company pursuant to the terms of said By-law Number 400 and amendments thereto. 20

7. It is understood and agreed between the parties hereto that this agreement and the provisions herein contained shall become absolutely null and void on the 24th day of March, 1941, and from thenceforth the By-law Number 400 and its amending By-laws Numbers 443 and 2590 and all agreements entered into pursuant to the said by-laws or any of them and all or any of the provisions, terms and conditions therein contained, which have in any way been suspended or amended by this agreement, shall again become operative from such time as if this agreement had not been entered into by the parties. 30

8. In the event of portions of municipalities being annexed to the city, the provisions of this by-law shall apply to the portions of the said municipalities as hereafter may from time to time be annexed to the city from the date of each additional annexation.

9. All written agreements, by-laws and statutes governing the relations between the parties hereto, and the powers of the company, insofar as they are in force and effect, shall remain in full force and effect, except insofar as they are or may become inconsistent with or altered by or under the terms of this agreement, and such agreements, by-laws and statutes, and this agreement shall apply to the company's business of transporting and supplying gas. 40

10. The company agrees that it will not intentionally cease the supplying of gas to the city or consumers without giving the city at least three months' notice in writing of its intentions so to do.

11. Except as hereinafter provided this agreement shall be effective as from the time when the Legislature of the Province of Ontario at its present session passes legislation:—

(a) Conferring upon the company the right to take all action contemplated by the provisions of paragraph 2 hereof and in accordance with the intentions thereof;

(b) Conferring jurisdiction upon and requiring the Ontario Railway and Municipal Board to hear and deal with any application made to it under the terms of paragraph 3 hereof;

10 (c) Confirming and ratifying this agreement and the exclusive franchise hereby granted and declaring the same to be valid, legal and binding upon the parties hereto.

The parties hereto agree, effective as of the date of execution hereof, to join in applying to the said Legislature for the passing of the legislation contemplated by sub-paragraphs (a), (b) and (c) of this paragraph 11, and of the expense of obtaining such legislation the company shall pay \$100.00 thereof and the city shall pay the balance thereof (if any).

20 This agreement and the provisions herein contained shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns.

In witness whereof the parties hereto have hereunto affixed their respective seals under the hands of their proper officers.

SIGNED, SEALED AND DELIVERED
JOHN PEEBLES,
Mayor.

(SEAL)

S. H. KENT,
City Clerk.

30 UNITED GAS AND FUEL COMPANY OF HAMILTON, LTD.,
JOHN G. GAULD, *President.* J. F. RICHTER, *Secretary.*
(SEAL)

Certified a true copy,
S. H. KENT, *City Clerk.*

(SEAL)

Part Exhibit 71.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

March 23, 1931.

40 The City Engineer,
City Hall,
Hamilton, Ontario.

Dear Sir:—

We respectfully request permission to lay a 2" gas main along the north side of Audrey Street from East Twenty-Seventh Street for a dis-

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 20.
Agreement
Between The
Corporation
of the City
of Hamilton
and United
Gas and Fuel
Company of
Hamilton
Limited,
24th March,
1931.

—*continued*

Part Ex. 71.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
23rd March,
1931.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 71.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
23rd March,
1931.

tance of 180 feet, east, then across Audrey Street approximately 60 feet.
Sketch attached.

Very truly yours,

DOMINION NATURAL GAS COMPANY LIMITED
Hamilton District,

Engineer.

LDB/EA.

—continued

Note: This exhibit also contains three other letters of a similar nature (all dated in 1931), and a letter of April 8th, 1931, printed elsewhere in the Record.

10

Ex. 72.
Letter, City
Engineer to
Dominion
Natural Gas
Company
Limited,
4th April,
1931.

Exhibit 72.

(Defendant's Exhibit)

Letter, City Engineer, to Dominion Natural Gas Company, Limited.

CITY ENGINEER'S OFFICE

Hamilton, Ont., April 4, 1931.

Dominion Natural Gas Co.,
Hamilton, Ont.

Dear Sirs:—

Will you kindly supply us with a list of the total lengths of the various sizes of gas mains that were laid by the Dominion Natural Gas Co. during the year 1930, at your earliest convenience. 20

Thanking you, I am,

Yours very truly,

W. L. McFAUL,

City Engineer.

WCC/NN.

Note: This exhibit contains:—

(1) Five letters (dated in 1931) of a similar nature to the letter of April 30th, 1928, in Ex. 59. (Record, p. 312.)

(2) Four notices of intention to pave similar to Ex. 29. (Record, 30 p. 236).

Part Exhibit 71.

(Defendant's Exhibit)

Letter, Dominion Natural Gas Company, Limited, to City Engineer.

April 8, 1931.

Mr. W. L. McFaul,
City Engineer,
City Hall,
Hamilton, Ont.

*In the
Supreme Court
of Ontario*

Exhibits.
Part Ex. 71.
Letter, Dom-
inion Natural
Gas Company
Limited to
City Engineer,
8th April,
1931.

Dear Sir:—

10 Yours of the 4th instant to hand. We would submit the following report, showing the sizes and the number of feet of gas mains laid in the City of Hamilton during the year 1930:—

2" Pipe	4" Pipe	6" Pipe	8" Pipe	10" Pipe
136174 ft.	8543 ft.	11017 ft.	9116 ft.	853 ft.

Very truly yours,
DOMINION NATURAL GAS COMPANY LIMITED,
Hamilton District,

Engineer.

LDB/EA.

20

Note: This exhibit also contains other letters printed or described elsewhere in the Record.

Exhibit 42.

(Defendant's Exhibit)

Supplementary List of Permissions.

April 28, 1932.

**SUPPLEMENTARY LIST OF PERMISSIONS GRANTED BY
THE CITY ENGINEER TO THE DOMINION NATURAL
GAS COMPANY IN THE CITY OF HAMILTON**

30 October 1, 1923:—

Maple Avenue, Gage Avenue to Springer Avenue. Also to
Alley between Prospect and Springer Avenue.

November 5, 1927:—

Barnesdale Avenue, Main Street to Dunsmure Road.
Spadina Avenue, Main Street to Dunsmure Road.
Melrose Avenue, Main Street to Dunsmure Road.
Main Street, Melrose Avenue to Barnesdale Avenue.

June 21, 1930:—

Main Street, Rosslyn Avenue to Balmoral Avenue.

40

(Signed) E. W. KING.

Ex. 42.
Supplementary
List of
Permissions,
1923,
1927,
1930.